

legislative session, shall constitute and be known as the regents provided for in this act.

§ 17. EXPERIMENTAL STATION.] There is hereby established an Agricultural Experiment Station in connection with the Agricultural College of Dakota, and under the direction of the board of regents of said college, for the purpose of conducting experiments in agriculture, according to the terms of section 1 of an act of Congress, approved March 3d, 1887, and entitled "An act to establish agricultural experiment stations in connection with the colleges established in the several States, under the provisions of an act, approved July second, eighteen hundred and sixty-two, and of the acts supplementary thereto."

§ 18. ASSENT OF LEGISLATURE TO CARRY OUT PROVISIONS OF ACT OF CONGRESS.] The assent of the Legislature of Dakota is hereby given, in pursuance of the requirements of section nine of said act of Congress, approved March 3d, eighteen hundred and eighty-seven, to the grant of money therein made, and to the establishing of an Experiment Station, in accordance with section one of said last mentioned act, and assent is hereby given to carry out all and singular the provisions of said act.

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

Approved, March 11, 1887.

ARTESIAN WELLS.

CHAPTER 7.

PROVIDING FOR CONSTRUCTION AND MAINTENANCE.

AN ACT to Provide for the Construction and Maintenance of Artesian Wells, and the Assessment and Collection of Taxes Therefor.

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

CHAPTER I.—ARTESIAN WELLS.

§ 1. MAY BE LOCATED—WHEN] That artesian wells may be located, established, constructed, and maintained whenever the same shall be conducive to the public convenience or welfare.

§ 2. ARTESIAN WELL DEFINED.] The word "artesian well," whenever used in this act, shall be deemed to include any water

course or ditch connected for the purpose of drainage, and any artificial ditch or drain, proposed or constructed for such purpose.

CHAPTER II.—WELL COMMISSIONERS.

§ 1. JUDGE OF PROBATE.] For the purpose of carrying into effect the provisions of this act, the judge of probate shall be ex-officio county artesian well commissioner, and shall have jurisdiction over all artesian wells within his county, except that in all cases where the entire artesian well shall be laid in one county, and the benefits to be derived therefrom, and the assessments for its construction shall extend to lands situated in one or more adjoining counties, then all such artesian wells shall be laid by the commissioners of such counties, acting jointly, and all their proceedings shall be had under the provisions of this act, regulating the construction of artesian wells traversing more than one county.

§ 2. WELLS IN CITIES—APPEALS.] In case it is proposed to run a part of an artesian well through an incorporated city, the whole of such artesian well shall be located, established and constructed, and the assessment for its construction made by the county artesian well commissioner, in the same manner as herein provided for the construction of other artesian wells by county artesian well commissioners, and wherever the word “township” is used in this act it shall be construed to mean “city,” as the case may be; *Provided*, That when an appeal is taken from the assessment of such commissioner by the owner of lands in a city, such appeal shall be made to the common council of such city, subject in every other respect to the provisions of this act, covering appeals made to township boards; *Provided*, That in case the resident owners or freeholders of a majority of the property assessed as benefitted, shall appeal to the county commissioners and protest against the laying out and constructing of any such well, then such well shall not be constructed.

§ 3. DUTIES OF WELL COMMISSIONER.] It shall be the duty of each county artesian well commissioner to make and keep a full financial statement of each artesian well laid out by him. The county artesian well commissioner shall make and keep in his office, in a book to be provided for that purpose, a complete record of each artesian well applied for, under his supervision, under the provisions of this act, which record shall include a copy of the application for the laying out of the artesian well, of the minutes of the survey, of the release of the right of way, when the same has been released, together with the minutes of his doings, of his orders of determination of necessity, and of establishing the artesian well and his assessment of benefits, and where special commissioners or a jury have been called, it shall also contain a copy of the application to the district court, of the return of the special commissioners or jury, as the case may be, and of all other papers in his office necessary to show a complete history of each artesian

well, all of which said original papers shall then be deposited and filed in the office of the county clerk.

§ 4. ACKNOWLEDGMENTS—OATHS—WHAT IS SUFFICIENT CONVEYANCE.] Artesian well commissioners may take acknowledgments of releases of rights of way, and administer oaths in all proceedings in any way pertaining to artesian wells under this act. A simple form of release of right of way and damages, that shall set forth by reference to the survey of artesian wells, or by other convenient description, the particular land intended to be conveyed, and signed and acknowledged by the person having the right to convey, shall be deemed a sufficient conveyance under the provisions of this act.

§ 5. ANNUAL REPORT—WHAT TO CONTAIN.] Every county artesian well commissioner shall make a report to the board of county commissioners at their annual meeting in October of all artesian wells constructed, finished or begun under his supervision during the year then ending, and he shall also render to them a full financial statement of each artesian well. The reports required by this section shall include an itemized statement of all expenses and disbursements on account of each and every artesian well laid or operated by him during the year, and a debit and credit balance of every such artesian well.

CHAPTER III.—LOCATING OF WELLS.

§ 1. EXPENSES—HOW PAID.] Before the commissioner takes any action toward locating or establishing any artesian well, there shall be filed with him an application, signed by not less than five freeholders of the township or townships in which such artesian well, or the lands to be benefitted thereby and to be assessed therefor may be situated, one or more of whom shall be owners of lands liable to be assessed for benefits in the construction of such artesian wells, giving a general description of the beginning, the route and the terminus thereof. Such applicants shall be jointly and severally liable for all costs and expenses, in case the commissioner, upon examination, or upon examination and survey shall determine that the same is unnecessary or impracticable, or in case the proceedings shall be dismissed for other cause. If the person signing such application shall refuse to pay such costs and expenses, the commissioner shall bring suit in a court of competent jurisdiction and collect such costs and expenses, with costs of suits. If upon the presentation of such application the commissioner shall deem the financial responsibility of the petitioners insufficient, he shall have the right to return such application for additional signatures.

§ 2. WELL COMMISSIONER TO MAKE ORDER OF DETERMINATION—HOW—WHEN.] Upon the filing of such application the commissioner authorized to act thereon shall, as soon as practicable thereafter, proceed to personally examine the route of the proposed ar-

tesian well, and if in his opinion it is necessary and conducive to the public convenience or welfare that the application should be granted, he shall, as a means of determining the practicability thereof, make a survey and measurement of the line of the proposed artesian well, or cause the same to be made by a competent surveyor; if upon such survey he shall find such artesian well to be practicable he shall make his order of determination in writing in accordance therewith, and shall establish the commencement, route and terminus of said artesian well. For such purpose he shall have the right to enter upon any such lands traversed by the route of the proposed artesian well, or otherwise connected with the purpose of the proceeding. In locating such artesian well the commissioner shall not be limited or confined to the precise starting point, route or terminus set forth in the application. The record or minutes of the survey shall show the line and route of the artesian well.

§ 3. PROCEEDINGS IN DISTRICT COURT—WHEN.] If within twenty days after the making of such order of determination all the persons through whose lands the propoposed artesian well is to pass shall not have executed a release of right of way, and all damages on account thereof, the commissioner shall, as soon as practicable, make application to the district court of the county in which such lands are situated, for the appointment of three special commissioners, who shall be resident freeholders of the county, to determine the necessity for such artesian well, and for the taking of private property for the use and benefit of the public, for the purpose thereof, and the just compensation to be made therefor. Such application shall be in writing, and shall set forth:

First. The fact that an application for an artesian well was made, and when, describing the artesian well, and also giving the route thereof, according to the application and survey;

Second. That an order determining the necessity for the artesian well was made by the commissioner, giving the time when the order was made;

Third. The names of the persons, if known, who have not released right of way and damages, the description or descriptions of land owned by each such person that will be affected by the artesian well, and the descriptions of land owned by non-residents or unknown persons, and the fact that they have each and all neglected or refused to execute release of right of way and damages.

§ 4. DISTRICT COURT TO ISSUE CITATION.] The court to whom such application is made shall make an examination at the time of such application of all the proceedings of the commissioner so far as had, and, if such proceedings be found to be in accordance with the statute, such court shall at once appoint a time and place of hearing upon the application, which time shall be fixed not less than thirty (30) nor more than forty (40) days thereafter, and the court shall issue a citation to all persons whose lands are traversed by such artesian well, or who will be liable to assessments for benefits in the construction thereof, and who have not released right of

way and all damages on account thereof, to appear at the time and place designated in said citation, and be heard with respect to such application, if they so desire, and show cause, if any there be, why said application should not be granted.

§ 5. WHAT CITATION TO CONTAIN—HOW SERVED.] The citation shall recite so much of the premises as will show jurisdiction, and in the case of resident owners, shall be addressed to such owners by name; in the case of non-resident owners, it shall be addressed to the owner or owners of the several descriptions of land involved. It shall describe the artesian well by its commencement, terminus and general course, and shall set forth that lands owned by the persons to whom it is addressed will be crossed by such artesian well, or will be subject to assessment for its construction, and that a description and survey of such artesian well is on file with the court issuing the citation. Such citation shall be personally served by the commissioner, or some other competent person, upon every person whose lands are traversed by such artesian well, or who will be liable to assessment, for benefits in the construction thereof, and who has not released the right of way, and all damages on account thereof, and who is known and resides within the township or townships in which any such lands are situated, by delivering to him a copy thereof, or by leaving the same at his residence, with some person of suitable age and discretion who shall be informed of its contents. In all cases of personal service, at least ten (10) days shall intervene between the day of service and the day of hearing, and the court issuing such citation shall require proof of such service, by affidavit, showing the time, place and manner of such service. Citations shall be served upon townships by leaving a copy thereof with the supervisor, or at his residence; upon cities, by leaving a copy thereof with the mayor or clerk; upon the Territory, by leaving a copy thereof with the prosecuting attorney of the county in which such lands are situated; upon railroad companies, by leaving a copy thereof with the agent of any ticket or freight office of the company operating such railroad; and upon other private corporations, by serving the same upon the officer or person designated by law in cases of civil process. If (the owner of any) lands involved be non-resident, a copy of the citation so far as it affects such lands shall be published in some newspaper published and circulating in the county in which such lands are located, for at least two (2) weeks previous to the day of hearing, which publication shall be deemed to be sufficient notice to all non-resident parties interested in such artesian well. The first publication of such notice shall be at least fourteen (14) full days before the day of hearing, and proof of its publication shall be made as above provided in case of personal services.

§ 6. SPECIAL COMMISSIONERS—HOW APPOINTED.] The court to whom such application is made shall, at the time and place fixed in the citation, or at any time to which it may adjourn, and upon

proof of service and publication, where required, proceed to hear all persons whose estate or interests are to be affected by the proceedings, and such persons may show cause against the prayer set forth in the application, and may disprove any of the facts alleged therein, and said court shall hear the proofs and allegations of the parties, and if no sufficient cause is shown against granting the prayer set forth in said application, said court shall make an order appointing three (3) disinterested and competent resident freeholders as special commissioners to ascertain and determine the necessity for such artesian well, and to appraise and determine the damages or compensation to be allowed to the owners or parties interested in the real estate proposed to be taken for the right of way of such well. Such court shall, immediately upon the appointment of such commissioners and with the concurrence of the artesian well commissioners, appoint a time and place (such time to be not less than five (5) nor more than fifteen (15) days thereafter), at which time such special commissioners shall meet the artesian well commissioner, and other parties in interest, to consider of the matter and things with the respect to which they have been appointed, and said court shall make public announcement thereof, and thereupon the proceeding shall be deemed a continuing proceeding, and no further notice of the time and place of hearing shall be required, and such appointment and announcement shall be made a part of the record in the case; *Provided*, That any one (1) person whose estate or interest is to be affected by the proceeding may demand and have from such court, at the time of hearing of said application, a jury of twelve (12) freeholders of said county to ascertain and determine the necessity for taking or using such lands, and to appraise and determine the damages and compensation to be allowed therefor. The demand of any one (1) of the parties interested for a jury shall be deemed to be a demand for all, and if no jury be demanded on the part of any person interested in said proceedings before the appointment of special commissioners shall be made by such court, his or her right to the same shall be deemed to have been waived. Whenever such demand for such jury shall have been made, the court shall proceed in the same manner as is provided by law in case a jury is demanded for taking private property for the use of railroad companies, and all further proceedings in the matter had by such court and jury shall be in conformity with the provisions of law as aforesaid, so far as the same shall apply; *Provided*, That when such jury shall have made their report, and the same shall have been confirmed by such court, a certified copy of such order of confirmation shall be furnished by the court to the artesian well commissioner.

§ 7. SPECIAL COMMISSIONERS TO TAKE OATH.] If no demand for a jury shall be made, and the court shall have granted the prayer set forth in the application, such court shall proceed to deliver to the artesian well commissioner a copy of the order ap-

pointing the special commissioners, and the artesian well commissioner shall notify such special commissioners of their appointment and of the time and place they are required to meet with him and with the other parties in interest. They shall be sworn to faithfully discharge the duties of special commissioners in the matter in which they are called to act, and to well and truly determine the necessity of such artesian well, and of the taking of private property for the use and benefit of the public, for the purpose thereof, and the just compensation to be paid therefor. The said commissioners, with the artesian well commissioner and other parties in interest who may be present, shall meet at the time and place ordered by said court and proceed at that time, or at any time to which they may adjourn, to view said premises, and for such purpose they shall have the right to enter upon any lands traversed by the route of the proposed artesian well.

§ 8. DUTIES OF SPECIAL COMMISSIONERS.] The said special commissioners shall hear the proofs and allegations of the several parties in interest, and shall ascertain and determine the necessity for such artesian well; and for the taking of such private property for the use and benefit of the public for the purpose thereof; and the just compensation to be made therefor in each case, which compensation shall be determined without reference to any benefits that may accrue to the land in consequence of the construction of such proposed artesian well. There shall be produced by the artesian well commissioner, at such hearing, the original application for the laying out of such artesian well, and the minutes of his action thereon, so far as had; also copies of the order of determination and the application to the probate court, with the citation annexed, the minutes of the surveyor, signed by him, and the order appointing the special commissioners. The commissioners may adjourn such hearing from day to day, for any cause, not exceeding in all ten (10) days, announcement of which adjournments shall be then and there publicly made.

§ 9. SPECIAL COMMISSIONERS TO MAKE RETURN TO WELL COMMISSIONER—WHEN.] The said special commissioners shall, within fifteen (15) days from the date of their first meeting, make a return in writing of their hearing, determination, and of their several awards, and shall file said return with the artesian well commissioner, who shall examine the same, and if he shall find such return not to be in substantial conformity with the statute, he shall return the same to the special commissioners for correction, with his objections in writing. The special commissioners shall thereupon proceed to correct their return, and file the same with the artesian well commissioner within five days. When the artesian well commissioner shall find such return to be without material error he shall file the same with the other papers in his possession pertaining to such artesian well. Such return shall be deemed a sufficient conveyance to vest the fee of the lands necessary to be taken for such artesian well, and upon which damages are awarded

in the county in which they are situated; or in case the land is not in any organized township, then in the county; *Provided*, That the amount of compensation that may have been awarded therefor shall have been paid, or tendered, or secured to the person entitled thereto, as hereinafter provided.

§ 10. PROCEEDINGS DISMISSED AT COST OF APPLICANTS—WHEN.] In case the special commissioners or jury shall decide such artesian well to be necessary, they shall so state in their return, and the artesian well commissioner shall thereupon dismiss the proceedings at the cost of the applicants, and no further application for the same object shall be entertained within one year thereafter.

§ 11. WELL COMMISSIONER TO PROCEED—WHEN.] If at any time before the appointment of special commissioners or jury provided for in this act, or at any time before the filing of their return and award of damages, all of the parties through whose lands the proposed artesian well is to pass, shall execute a release of right of way, and all damages on account thereof, then all proceedings for the appointment of special commissioners, and all action taken by them after their appointment shall be discontinued and void, and the artesian well commissioner shall proceed as if no application for special commissioners had been made.

§ 12. WELL COMMISSIONER TO DRAW WARRANTS—WHEN.] The artesian well commissioner shall draw his orders severally on the county treasurer for the amounts awarded in the return of the special commissioners or jury, describing in each order the lands in payment whereof it is drawn, and before such artesian well shall be constructed such order shall be tendered by the well commissioner to the party entitled thereto; *Provided*, That if the owner of any lands upon which damages have been awarded be unknown and such lands be not occupied, or in case of a minor or insane or otherwise incompetent person, such order shall be deposited with the clerk of district court, payable to the owner of such description of land upon which such damages were awarded. Such order shall be held by such clerk, to be delivered by him to the owner of such lands when called for, otherwise legally demanded, and the same shall thereby be deemed to have been lawfully tendered to the owner of such lands. It shall be the duty of such county treasurer at any time upon presentation to him of any such artesian well order drawn for the payment of such right of way or damages, to pay the same out of any moneys in his hands belonging to the general fund of such county and refund such amount out of the first moneys collected by him on account of such artesian well.

§ 13. WELL COMMISSIONER TO MAKE TENDER IN LAWFUL MONEY.] If the owner of any lands upon which such damages have been awarded shall, upon the tender of such order to him, refuse to accept the same, the commissioner shall make such tender in lawful money, and for that purpose he shall be authorized to endorse such order and present the same to the county treasurer for

payment, and it shall be the duty of such treasurer to pay such order as hereinbefore provided. If, however, there shall be no money in the general fund of such county treasurer, the commissioner shall be authorized to have such order discounted wherever he may be enabled to do so; *Provided*, Such discount shall not be more than at the rate of ten per cent. per annum, and he shall charge the amount of such discount to the expense and cost of such artesian well, and draw his order therefor. The commissioner shall thereupon make to such owner a tender, in lawful money, of the amount awarded to him, and if he shall refuse to accept such money, the commissioner shall deposit the same with the county treasurer, taking duplicate receipts therefor, one of which he may retain, and the other he shall file with the county clerk. Such money shall be held by such treasurer to be delivered by him to such owner when called for or otherwise legally demanded.

§ 14. NOTICE TO BE SERVED ON RAILROAD COMPANY—WHEN—LIABILITY.] Whenever it is necessary to run an artesian well across the right of way or road bed of any railroad company, it shall be the duty of the railroad, when notified by the commissioner so to do, to make and maintain the necessary opening through said road bed and to build and maintain a suitable culvert. Notice in writing to make such opening and to construct such culvert shall be served upon such company, by leaving a copy thereof with the ticket or freight agent or general officer of such railroad company at least thirty days before such railroad company shall become liable.

§ 15. PENALTY—DISTRICT ATTORNEY TO PROSECUTE.] In case such railroad company shall refuse or neglect to comply with the provisions of the preceding section, it shall be liable to a penalty of ten dollars for each day's refusal or neglect to make such opening and construct such culvert. The district attorney of the county in which such railroad company shall have refused or neglected to comply with the provisions of the preceding section shall, upon complaint being made by the commissioner, bring suit to collect such penalty or fines, and it shall be his duty to prosecute the same to a final determination in any court having competent jurisdiction.

§ 16. WELL UNDER JURISDICTION OF ROAD SUPERVISOR—WHEN.] All that part of such artesian well which is laid and constructed along, or within the limits of, or across any public highway shall be under the jurisdiction of the overseer of highways or road supervisor, and it shall be his duty to keep the same open and free from all obstructions, and when any highway is subsequently constructed along or across such artesian well, then so much of said well as shall come within the limits of such highway shall also be kept open and free from obstruction as above provided.

CHAPTER IV.—CONSTRUCTION OF ARTESIAN WELLS.

§ 1. FINAL ORDER ESTABLISHING WELL—NAME—ADVERTISING FOR PROPOSALS—ASSESSMENT OF BENEFITS.] Upon the release of

right of way and damages, or upon the determination and return of the special commissioners, or the order of the probate court, as the case may be, the well commissioner shall make his final order establishing the well; and shall give the same a name by which it shall be known and recorded. He shall give not less than sixty days' notice of the time and place of letting, by posting notices thereof in five or more public places in each township traversed by such artesian well, and by causing a notice thereof to be published not less than six insertions in one or more weekly newspapers published and of general circulation in the county. Such notice shall also state that at the time of such letting, or at such other times or places as the commissioner may designate, (which time may be before or after such letting), the assessment of benefits will be subject to review. On such review the overseer of highways of any township may appear on behalf of such township, and the road supervisors for any road district; at such review the commissioner shall hear the proofs and allegations of all parties in interest, and shall carefully reconsider and review his assessment of benefits, and equalize the same as may seem just and equitable.

§ 2. TAX—HOW SPREAD AND COLLECTED.] At the time and place of letting, and before receiving any bids, the commissioner shall have the right, and it shall be his duty, to determine whether the whole of the per cent. of the taxes to be spread for benefits to lands in the construction of such well shall be assessed and collected in that same year, or whether the same shall be divided into two, three, four or five equal installments, one installment to be collected in that same year, and the other installments in the years following. Such determination, however, shall be made then and there, and shall be publicly announced for the information of bidders; *Provided*, That the per cent. of tax, determined by the commissioner to be assessed against townships shall all be spread in the first year.

§ 3. COMMISSIONER TO RECEIVE BIDS—PAYMENTS—HOW MADE.] The commissioner shall thereupon proceed to receive bids on the well and make contract with the lowest responsible bidder by giving adequate security for the performance of the work. Such security shall cover the completion of the job in the manner and within the time fixed in the contract, and shall be in a sum to be fixed and determined by the commissioner. The commissioner shall reserve the right to reject any and all bids, and may adjourn such letting in whole or in part from time to time, to such other time or place, to be by him at the time of such adjournment publicly announced, as shall to him seem proper, but not in all more than forty days from and after the time of letting first advertised. No payment exceeding two-thirds of the amount earned on any contract shall be made to any contractor until after the completion and acceptance of his work by the commissioner.

CHAPTER V.—ASSESSMENT AND REVIEW.

§ 1. APPORTIONMENT OF BENEFITS AND COSTS.] The commissioner shall apportion the per cent. of the costs of construction of such well which any townships traversed thereby shall be liable to pay, by reason of the benefit to the public convenience or welfare, or in case that part of the county is not organized into civil townships, then to the county at large, and he shall also apportion the per cent. of benefits to accrue to any piece or parcel of land by reason of the construction of such well, over and above the per cent. assessed against such township, as aforesaid, which per cent. of benefits shall be apportioned upon and assessed against the lands benefitted according to such assessment of benefits, and which apportionments he shall announce at the time and place of letting, as provided in chapter four. Such assessment of per cent. for benefits shall thereupon be subject to review and correction, and may be appealed from in the manner hereinafter provided; *Provided*, That in all cases where a well is constructed by the county well commissioner, and when the lands to be assessed therefor are situated in more than one township, or partly in a township and partly in the county not organized into townships, such commissioner shall first determine and apportion among such several townships and the county at large, the per cent. of the entire amount to be levied for the construction of said well, which each township and the county at large, and the lands therein situated are to bear. From this determination there shall be no appeal.

§ 2. APPEALS—WHAT TO STATE.] The owner of any lands assessed a per cent. for benefit for the construction of any well, who may conceive himself aggrieved by the assessment made by the commissioner, may within ten days after the day of review, as provided for in the preceding section, take an appeal to the township board of the township in which his lands so assessed are situated, by filing with the township clerk, or when said lands are not in an organized township, to the board of county commissioners, by filing with the county clerk or auditor a notice to that effect, addressed to the township board, or board of commissioners, and by filing also a bond with such clerk in the sum of two hundred dollars, with one or more sureties, to be approved by such clerk, conditioned upon the payment of all costs in case the assessment made by the commissioner shall be sustained. In such appeal the appellant shall also state whether the Territory is an interested party.

§ 3. PROCEEDINGS ON APPEAL SUBJECT TO REVIEW ON CERTIORARI.] The township or county clerk or auditor shall thereupon call a meeting of the township board or board of county commissioners, to consider such appeal. The time for such meeting shall be fixed not less than six or more than twelve days from the date of filing such appeal. A notice of the time and place for hearing such appeal shall be posted in at least five public places in said township

or county, and shall be served upon the members of the township or county board, the commissioner, the appellant to be a resident of the township, and upon the district attorney of the county in all cases where the Territory is an interested party. Such service shall be made not less than six days before the day of hearing, and may be made either by personal service or by causing a copy thereof to be left at their several places of residence. At such hearing the board shall have the right to review all assessments. Only one notice of appeal for each well shall be entertained by the township or county clerk, or auditor; *Provided*, That the proceedings in establishing any well shall be subject to review upon certiorari, as herein provided. Notice of such certiorari shall be served on the commissioner within ten days after the determination of such commissioner in establishing any well, as provided in section one of chapter four, in the same manner as notice is required to be given of certiorari for reviewing judgments rendered by justices of the peace, and the writ shall be issued and served, and bond given and approved, and subject matter brought to issue in the same time and manner, as near as may be, as in such cases provided, except that such certiorari may be heard by the court during term, or at chambers, upon eight days' notice given to the opposite parties, and the district court shall hear and determine the same without unnecessary delay, and if any material defect be found in the proceedings for establishing the well, such proceedings shall be set aside; if the proceedings be sustained, the party bringing the certiorari shall be liable for the costs thereof; and if they be not sustained, the parties petitioning for the well shall be liable for the costs. If no certiorari be brought within the time herein prescribed, the well shall be deemed to have been legally established, and its legality shall not thereafter be questioned in any suit at law or equity; *Provided, further*, That when such proceedings are brought, the commissioner shall postpone the letting of contracts and all other proceedings until after the determination of the court.

§ 4. MEMBER OF BOARD ON APPEAL DISQUALIFIED—WHEN—VACANCY—HOW FILLED.] No member of the township or county board whose lands may have been assessed for benefits in the construction of such well shall act upon such appeal. In case any member of such board shall be so disqualified, his place shall be filled in the same manner, and by the same persons as is provided by law for other cases, if disqualified members of township boards.

§ 5. DUTY OF BOARD ON APPEAL—ACTION OF BOARD FINAL.] The township or county board shall proceed, at the time and place specified in the notice, to view the grounds and review the assessments made by the commissioner, and to hear the proofs and allegations of all parties in respect to the matter of such appeals, and if in their judgment there be manifest error or inequality in such assessments, they may order such changes to be made as they

may deem just and equitable. The action and decision of said board shall be final, and such action and decision shall be reduced to writing, and signed by the board making the same, and shall be delivered to the commissioner, together with all other papers relating thereto.

§ 6. COSTS OF APPEAL—HOW PAID.] In case the assessment of the commissioner shall be sustained by such township or county board, the appellant shall pay the whole costs and expenses of such appeal. Such costs and expenses shall be ascertained and determined by the township or county clerk, or auditor, and if not paid the appellant shall be liable on his bond for the full amount of such costs in an action at law to be brought by the commissioner on the bond before any court having competent jurisdiction.

§ 7. ASSESSMENTS FOR BENEFITS—HOW CONSTRUED—LANDS—HOW DESCRIBED.] All assessments of benefits under the provisions of this act shall be upon the principle of benefits derived. All descriptions of land under the provisions of this act shall be made by giving the legal subdivision thereof whenever practicable, and when the tract of land which is to be benefitted or affected by such well is less than such legal subdivision, it may be described by designation of the lot or other boundaries, or in some way by which it may be known.

§ 8. FURTHER ASSESSMENT WHEN THE AMOUNT ASSESSED IS INSUFFICIENT.] Whenever the amount assessed for the construction of any well shall not be sufficient to complete the same, and to pay all the costs and incidental expenses, a further assessment shall be made to meet the deficit or additional expense. Such further assessment shall be apportioned, assessed, levied and collected as provided in the first instance and on the same percentage, and shall be collected in one year, but there shall be no review of, nor appeal from, such further assessment.

CHAPTER VI.—LEVY AND COLLECTION OF WELL TAXES.

§ 1. COMPUTATION OF COSTS—APPORTIONED BETWEEN DIFFERENT TOWNSHIPS—WHEN.] Within ten days after the letting of contract, and in case of an appeal, then forthwith after such appeal shall have been decided, the commissioner shall make a computation of the entire cost of such well, which shall include all the expenses of locating, establishing and constructing the same, including the commissioner's fees, cost of survey, fees and expenses of special commissioners, or jury, and amount of contracts for construction, also the costs of appeal in case the assessment of benefits made by the commissioner shall not be sustained, and all other expenses, and he shall add the whole into a gross sum, and add thereto ten per centum of said gross sum to cover contingent expenses, and the entire sum so ascertained shall be deemed to be the cost of construction of such well. In case the well and the assessment therefor shall affect more than one township, the commissioner shall apportion such sum between the several town-

ships so affected, and upon the county where affected, upon the basis and per cent. determined upon by him as provided in section one of chapter five.

§ 2. ASSESSMENT ROLL—WHAT TO CONTAIN—WELL SHALL NOT BE CONSTRUCTED—WHEN.] The commissioner shall thereupon make a special assessment roll for such well for each township affected thereby, and for any land not included in any organized township, which roll shall be designated “(giving the name) Well Special Assessment Roll,” and he shall enter therein a correct description of all the tracts, parcels, or subdivisions of land benefitted by such well, as provided in sections one and seven of chapter five, and place opposite each description the amount of the per cent. heretofore determined upon by him or by the township board. He shall also enter thereon the amount of the per cent. apportioned to such township, and shall add a certificate in writing of his determination made at the time and place of letting, whether the taxes assessed for benefits shall be paid in one or two years. Such rolls shall be dated and signed by said commissioner, and filed on or before the last Wednesday in September of each year, in the office of the county clerk of the county in which such lands may be located; *Provided*, That in case the resident owners or freeholders of a majority of the property assessed, as liens fitted, shall appeal to the county commissioners and protest against the laying out and constructing of any such well, then such well shall not be constructed.

§ 3. COUNTY CLERK TO SPREAD ON ROLL.] It shall be the duty of the county clerk to spread on his roll the total amount of all the well taxes determined upon by the commissioner, to be assessed upon the township at large as a part of the township tax for the year in which the same was assessed, and in the same column with the general township tax. He shall also spread upon said roll separately, and immediately following the other descriptions, all tracts or parcels of land specified by the commissioner to be assessed for benefits, and shall place opposite each description, in a column marked “Well Taxes,” the amount of taxes apportioned thereon; *Provided*, That no well taxes shall be so spread, unless directed by the board of county commissioners, as in case of other township taxes. All wells shall be entered separately, naming each particular well.

§ 4. WELL TAXES—HOW COLLECTED.] All well taxes assessed under the provisions of this act, shall be collected in the same manner as territorial and other general taxes are collected, and collecting officers are hereby vested with the same power and authority in the collection of such taxes as are or may be conferred by law for collecting general taxes. All taxes levied under the provisions of this act, with all lawful costs, interests and charges, shall be and remain a perpetual lien upon the lands upon which they are assessed, and a personal claim against the owner or owners of such lands until they are paid.

§ 5. COUNTY TREASURER PROCEEDS THE SAME AS WITH OTHER TAXES—WHEN.] If the taxes levied for the construction of any well are not collected by the county treasurer, they shall by him be proceeded on, together with the lands upon which they are levied at the same time, and in the same manner, in every respect (naming in each case the particular well) as lands are returned for territorial, county and township taxes, and such taxes shall follow such lands, the same as all such other taxes, and all the general provisions of law now existing, or that may be hereafter enacted for enforcing the payment of township, county and territorial taxes shall apply to such well taxes, and to the lands returned delinquent therefor, in the same manner and with like effect.

§ 6. COMMISSIONER TO DRAW ORDERS—HOW.] All orders for the payment of lands for right of way, for services rendered and work performed, shall be drawn by the commissioner upon the well fund of each particular well. All orders for the payment of lands for right of way and for all other services rendered and expenses incurred (except contract for construction), shall be paid out of the first year's taxes, and the balance of such first year's taxes (if any) shall be applied in payment of the contract for the construction of such well. For the balance due upon such contract the commissioner shall draw an order payable out of the second year's assessment; *Provided*, That no commissioner shall draw orders payable in any one year for a larger amount than each year's assessment, but shall draw as near as may be to the exact amount assessed. All accounts of well commissioners for personal services shall be audited and allowed by the board of county commissioners.

§ 7. INJUNCTION SHALL NOT ISSUE—WHEN.] After any taxes have been assessed for the construction, location, or establishment of any well, no injunction shall issue to restrain the spreading of the same upon the tax roll, nor to restrain the collection thereof, nor shall the same be in any manner stayed, unless the amount of such assessment shall first be paid into the county treasury, to be applied upon such tax in case the court, in which the suit upon which such injunction is tried, shall so order.

§ 8. RELIEF FROM ERRONEOUS TAXES.] The collection of no tax levied or ordered to be levied for the payment of the location or construction of any well under this act, shall be perpetually enjoined or declared absolutely void in consequence of any error or informality of any officer in the location and establishment thereof, nor by reason of any error or informality appearing in the record of the proceedings by which any such well shall have been located and established, nor on account of any irregularity or informality in the condemnation of right of way, nor for want of any record thereof; but the court in which any action may be brought to recover any tax or assessment paid, or to declare void the proceedings to locate and establish any well, or to enjoin any tax or

assessment levied or ordered to be levied for the payment of the labor and expense thereof, shall if there be manifest error in the proceedings, allow the plaintiff in action to show that he has been injured thereby. The court may on application of either party, appoint such person or persons to examine the premises or to survey the same, or both, as may be deemed necessary.

§ 9. COURT SHALL ALLOW PROOF—MAY CORRECT GROSS INJUSTICE—COSTS OF—HOW PAID.] The court in which such proceedings are begun shall allow proof that the well was necessary and conducive to the public convenience or welfare, and that all the steps required by law have been substantially complied with, notwithstanding the record required to be kept by the commissioner. In case no substantial error is found, the court may correct any gross injustice in the award of damages, or assessment of benefits, as may appear after hearing the proofs and allegations of both sides, and shall make such order in the premises as shall be just and equitable, and may order that such tax or assessment remain on the tax roll for collection, or order the same to be levied or relieved, or may perpetually enjoin the same or any part thereof, or if the same has been paid under protest, may order the whole or such part thereof, as is just and equitable, to be refunded, the cost of such proceedings, if error or injustice be shown, shall be apportioned among the parties, or if no manifest error or injustice be shown, such costs shall be collected of the party bringing the action.

§ 10 WHEN PROCEEDINGS SET ASIDE BY DISTRICT COURT—WELL COMMISSIONER TO REASSESS—WHEN.] Whenever any well has been located, established, and the work of construction completed, or partially completed, and any court has declared such proceeding illegal or void for any cause other than that such well is unnecessary, and not conducive to the public convenience or welfare, the commissioner shall without unnecessary delay proceed to relay and complete such well under the provisions of this act, and reassess upon the lands benefitted by such well the original cost thereof, together with the expenses of relaying and completing, and shall continue so to do until such well has been legally established and constructed; *Provided*, That any person who has paid the tax for benefits assessed against him for such well shall be allowed the amount so paid, and the county treasurer or other officer authorized to receive payment for taxes assessed in any township or city shall accept the receipt, heretofore issued for the payment of such well taxes, as cash, the same to apply on such renewed assessment; the receipt so received by the county treasurer or other officer shall be credited to him and allowed as money.

CHAPTER VII.—WELLS TRAVERSING MORE THAN ONE COUNTY.

§ 1. PROCEEDINGS THE SAME IN EACH COUNTY.] Whenever it may be desired to construct a well traversing more than one county or affecting lands lying in more than one county, an appli-

cation therefor shall be made to the county well commissioner of either county traversed by the proposed well. Such application shall be subject to the same conditions and the applicants to the same obligations and liabilities as in other wells under this act.

§ 2. WELL COMMISSIONERS TO ACT JOINTLY—WHEN.] If upon examination the commissioner shall deem the same to be necessary and for the good of the public convenience or welfare, he shall as soon as practicable thereafter fix a time and place of meeting, and notify the county well commissioner or commissioners of such other county or counties to that effect, and furnish him or each of them with a certified copy of such application. Such commissioner or commissioners shall at the time and place fixed as above meet with the well commissioner having the original application, and they shall thereupon and thereafter jointly take all steps and perform all acts and sign all papers, as well commissioners are required to do, singly in the case of other wells including the application to the district court.

§ 3 SPECIAL COMMISSIONERS TO BE APPOINTED—WHEN AND HOW.] In case all the persons whose lands are traversed by such well as proposed in this chapter shall not, within twenty days after the issue of the order of determination as provided in section five of chapter three, have voluntarily released the right of way therefor, and all damages on account thereof, the said commissioners shall apply to the judge of probate of each county in which any such unreleased lands may be situated, for the appointment of three special commissioners. When such application shall be made, and when all papers shall have been found to be in conformity with the provisions of this act, the court to whom such application has been made shall appoint such special commissioners, and shall deliver to each well commissioner a certified copy of the order of the appointment of such special commissioners. Such special commissioners shall be resident freeholders of the county in which they are appointed. All proceedings had in the appointment of special commissioners under the provisions of this chapter shall be similar to those provided in chapter three, for the appointment of other special commissioners.

§ 4. SPECIAL COMMISSIONERS' DUTIES SAME AS HEREINBEFORE PROVIDED.] When such special commissioners shall have been notified of their appointment in the same manner as provided in chapter three, they shall at the time and place fixed by the district court meet with the well commissioner of their county and view the whole line of such well or such portion thereof as shall be deemed sufficient, and shall under the same oath and conditions perform their services in the same manner and with like effect as hereinbefore provided in this act for other special commissioners. Before any contract for the construction of any part of such well shall be let, the county well commissioners shall agree and determine upon the just per cent. of the whole cost of construction which each county shall bear, which determination shall be in

writing and signed by them, and a copy thereof made for each county well commissioner affected by said well.

§ 5. ASSESSMENT BY EACH COMMISSIONER AS HEREIN PROVIDED SUBJECT TO APPEAL.] Each commissioner shall thereupon assess within his own jurisdiction such amount as may have been determined upon, and shall assess against the townships such per cent. thereof as may be justly charged against them severally by reason of benefits to the public convenience or welfare, and the balance he shall apportion against the lands in proportion as they will be benefitted thereby. Each commissioner shall furnish such several assessments to the clerk of the county in which the lands affected thereby may be situated, and such assessments shall be computed, divided, spread, collected and returned in the same manner in every respect as provided in the case of other wells constructed under this act. Such assessments shall be subject to the same right of appeal and under the same conditions as hereinbefore provided. The taxes for such wells, when collected by the township treasurer, shall be paid over to the county treasurer of their respective counties, to be disbursed by him on the joint order of the commissioners.

§ 6. FULL RECORD OF WELLS TO BE MADE BY THE COMMISSIONERS.] A full record of such wells shall be made and entered by the several commissioners in the well record books of their respective counties, and all the papers relative to the construction of such wells not otherwise provided for in this act, shall be filed in the clerk's office of the county in which the application was originally made. The parts of each of such wells situated and lying in any one county shall thereafter be under the care and supervision of the county well commissioner of such county.

CHAPTER VIII.—MISCELLANEOUS.

§ 1. COUNTY CLERKS TO PROCURE BOOKS, BLANKS AND STATIONERY.] County clerks shall be authorized, and it shall be their duty, to procure at the expense of their respective counties the necessary books, blanks and stationery for the use of well commissioners, and each commissioner shall furnish, upon request, blank applications to any person who may desire to file an application for the locating of any well.

§ 2. COMPENSATION.] Well commissioners shall receive for their services a sum not to exceed three dollars per day for each day actually and necessarily spent by them in the discharge of the duties of their office, to be fixed by the board of county commissioners. Special commissioners shall receive the same compensation as the county well commissioners, and newspaper publishers shall receive legal rates for advertising.

The judge of probate shall receive ten cents per folio for making exemplified copies of any proceedings had in the probate court, two dollars for the appointment of special commissioners, including the certified copy of the order of their appointment,

and three dollars for all services performed in case a jury is had.

§ 3. ATTORNEY GENERAL TO DRAFT BLANK FORMS.] It shall be the duty of the Attorney General to draft, or cause the same to be done under his supervision, a complete set of all the blank forms that may be used or required under the provisions of this act.

§ 4. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

§ 5. This act shall take effect from and after its passage and approval.

Approved, March 11, 1887.

ASSIGNMENTS.

CHAPTER 8.

AMENDING AND RE-ENACTING SECTION 2042 OF THE CIVIL CODE.

AN ACT to Amend and Re-enact Section Two Thousand and Forty-two (2042) of the Civil Code of Dakota.

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

§ 1. That section two thousand and forty-two (2042) of the Civil Code be amended and re-enacted so as to read as follows, to-wit:

SEC. 2042. WHEN ASSIGNEE TO ACCOUNT.] After the lapse of six months from the date of filing his bond the assignee, on motion of any one of the creditors, with ten days' notice, accompanied by an affidavit of the creditor, his agent or attorney, setting forth his claim, and the amount thereof, and that no account has been filed within six months, may be ordered by the court, or by the judge thereof, at any place in his judicial district, to render an account of his proceedings, within a given time, to be fixed by the court, or the judge thereof, not to exceed fifteen days.

§ 2. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

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

Approved, February 5, 1887.