

between the points designated in section 1 hereof by grades, fills, embankments or otherwise, are hereby ratified, approved and confirmed.

§ 3. EMERGENCY.] And whereas, an emergency exists in that a portion of said highway has already been constructed, and it is necessary to resume and complete the construction thereof as soon as possible, and there is no existing law on the subject, therefore, this act shall take effect and be in force from and after its passage and approval.

Approved February 28, 1903.

PUBLIC WAREHOUSES.

CHAPTER 142.

[S. B. No. 51—Kirkeide.]

WAREHOUSES ON RAILROAD RIGHTS OF WAY.

AN ACT to Provide for the Erection of Public Grain Warehouses and Grain Elevators, on or Near the Right of Way of Railways, and Providing for Condemnation Proceedings in Connection Therewith, and to Repeal Sections 1796, 1797 and 1799, of the Revised Codes, North Dakota, 1899.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. WAREHOUSE ON RAILROAD RIGHT OF WAY. APPLICATION.] Any person, firm or corporation desirous of erecting and operating at or contiguous to any railway station or siding a warehouse or elevator for the purchase, sale, shipment or storage of grain for the public for hire may make application in writing, containing a description of that portion of the right of way of said railroad on which said person, firm or corporation desires to erect a warehouse or elevator, and the size and capacity of the warehouse or elevator proposed to be erected, and the time for which it is desired to maintain said warehouse or elevator to the person, firm or corporation owning, leasing or operating the railway at such station or siding for the right, privilege and easement of erecting and maintaining for the time stated in said application, and for reasonable compensation such warehouse or elevator as aforesaid, upon the right of way appertaining to such railway at such siding or station, and within and between the outside switches of the yard of such railway station or siding, and upon paying or securing in the manner hereinafter prescribed reasonable compensation for the right, privilege and easement aforesaid, shall absolutely and unconditionally be entitled to the same.

§ 2. SAME. COMPENSATION. NOTICE TO APPLICANT OF ACCEPTANCE OR REJECTION.] The application provided in the first section of this act shall also state the amount the applicant deems a reasonable compensation for the right, privilege and easement he desires to acquire, and said applicant shall tender and pay to such person, firm or corporation, from whom such easement is sought, the sum stated in such application, and in case the amount so named and tendered is not accepted, and the parties cannot agree on the amount to be paid for such right, privilege and easement, the same shall be ascertained, assessed and determined by proceedings in the district court of the county in which the station or siding at which the right, privilege and easement sought is situated, which court is hereby given full jurisdiction in the premises, and shall at all times be deemed open and in session for the purposes of this act. It shall be the duty of any person, firm or corporation to whom application is made for the right to erect and maintain an elevator or warehouse under the provisions of this act, to within ten days after the receipt of said application notify said applicant in writing of the acceptance or rejection of the amount stated in said application to be reasonable compensation for the right, privilege and easement sought to be acquired, and in case said person, firm or corporation fails to notify the applicant within said ten days, said person, firm or corporation shall be deemed to have accepted said amount, and upon payment or tender thereof said applicant shall be deemed to have acquired the right, privilege and easement applied for.

§ 3. SAME. PROCEDURE IN DISTRICT COURT.] Proceedings in the district court shall be instituted and carried on as follows: The party seeking the right, privilege and easement aforesaid shall present to and file with the district court a petition in writing and under oath specifying and describing the right, privilege and easement sought and the time for which the same is sought and the fact that the parties to the proceedings are unable to agree upon the amount of compensation therefor. A copy of the application for such privilege shall be attached to said petition and thereupon it shall at once be the duty of the court, by its order in writing, to fix upon a place and a time not more than thirty days thereafter where and when the court will try, ascertain, assess and determine the amount of such compensation; a certified copy of which order at least twenty days before the time so fixed upon, shall be served upon the party from whom the right, privilege and easement is sought as summons are served in civil actions of said court, and such service when made shall be ample notice to and summons for the party so served to appear and join in the proceedings and shall be ample to give the court full jurisdiction over the party against whom the proceedings are instituted and the property involved in the proceedings.

§ 4. SAME. TRIAL. ELECTION OF GROSS SUM OR ANNUAL RENTAL. WRIT.] At the time and place so fixed for ascertaining, assessing and determining the compensation aforesaid, the court shall im-

mediately proceed to try said matter, without a jury, if the parties consent, and if they do not consent and if the time and place fixed for said hearing is at a general or special term of said court where a petit jury has been summoned, the court shall proceed to a hearing of such matter with a jury selected and sworn from the panel present at such term, in the same manner as jurors are selected and sworn from the panel present at such term, in the same manner as jurors are selected in civil actions, and if the regular panel is exhausted before a jury is secured, talesmen may be summoned. In case said proceedings are made returnable at any other time than at a term where a petit jury shall have been summoned, the court shall make an order requiring the selection of twenty-four jurors from those returned by the county commissioners, which jury shall be drawn and selected in the same manner as provided by law for the drawing of jurors for general terms of the district court, and from the jurors so returned, a jury shall be selected the same as in civil actions and the trial shall proceed after the manner of trials in civil actions, and the court or jury, as the case may be, shall find and assess compensation both in the form of an annual rental and in the form of a gross sum for the right, privilege and easement sought, and immediately after the finding or verdict has been made the party against whom the proceedings have been taken shall elect whether to receive the annual rental or the gross sum found, and in case such election is not made by this party, then the other party to the proceedings may make such election, and after election is made as aforesaid, judgment shall be rendered adjudging, among other things, that upon payment of the gross sum found or the annual rental found, yearly in advance, as the case may be, the party instituting the proceedings shall be entitled to the right, privilege and easement of erecting and maintaining the elevator or warehouse asked for in the application and petition aforesaid, and for the time therein specified; and thereupon the party in whose favor said judgment is rendered shall be entitled to a writ of execution in proper form to immediately invest such party with the right, privilege and easement aforesaid.

§ 5. FORFEITURE. APPEAL. COSTS.] In case the annual rental is elected the same shall be paid yearly in advance, and if not so paid after thirty days' default the right, privilege and easement aforesaid shall be absolutely forfeited. Within thirty days after the entry of said judgment as hereinbefore provided, but not later, an appeal may be taken by either party to the supreme court, but such appeal shall not stay or hinder the use or enjoyment to the fullest extent of the right, privilege and easement asked for by the petition and conferred by the judgment, if the party instituting the proceedings shall make and file a bond with sureties, to be approved by the court, in an amount double the gross sum or annual rental, conditioned to pay such sum or rental and to abide and satisfy any judgment the supreme court may render in the premises. Costs and disbursements as in civil actions shall, in each court, be paid by the unsuccessful

party. If the findings of the court or jury is for a less or the same amount as tendered by the petitioner before instituting the proceedings, then the petitioner shall be deemed the successful party; but if the amount found is larger than the sum tendered, then the petitioner shall be deemed the unsuccessful party. In the supreme court, if the judgment or order appealed from is reversed or modified, the appellant shall be deemed the successful party; but if the judgment or order appealed from is affirmed, the respondent shall be deemed the successful party.

§ 6. SAME. WAREHOUSES TO BE DEEMED PUBLIC. TO BE OPEN FROM SEPTEMBER 15TH TO JANUARY 15TH.] All elevators and warehouses erected and maintained under the provisions of this act, shall be deemed public elevators and public warehouses and shall be subject to legislative control and shall be kept open for business for the public for reasonable business hours from the fifteenth day of September in each calendar year to the fifteenth day of January in each succeeding calendar year. Any person, firm or corporation who fails to comply with the provisions of this [section] shall forfeit the rights, privileges and easements acquired under this act.

§ 7. SAME. ERECTION OF WAREHOUSES.] Any persons, firms or corporations availing themselves of the provisions of this act shall within sixty days after the amount to be paid for the easement acquired thereunder is finally determined, by agreement or by proceedings in court, commence the erection of the warehouse or elevator stated in the application referred to in section one and complete the same within ninety days thereafter, and in case of failure to comply with the provisions of this section they shall be deemed to have abandoned the right, privilege and easement acquired, and the part or portion of the railroad right of way described in their application shall be subject to selection by other applicants who may desire to avail themselves of the provisions of this act.

§ 8. REPEAL.] That all acts and parts of acts in conflict herewith are hereby repealed, and sections 1796, 1797 and 1799 of the revised codes of North Dakota, 1899, are expressly repealed.

Approved March 2, 1903.