

DITCHES AND DRAINS.

CHAPTER XXXVIII.

FOR LOCATING AND CONSTRUCTING DITCHES, DRAINS AND WATER COURSES.

AN ACT to provide for locating and constructing ditches, drains and water courses in Union and Clay counties, Dakota Territory.

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

SECTION 1. That the county commissioners of Union and Clay counties, shall have power, at any regular session, whenever in their opinion the same is demanded by, or will be conducive to the public health, convenience or welfare, to cause to be established, located and constructed, as hereinafter provided, any ditch, drain or water course within such county.

Commissioners have power to cause ditches to be constructed.

SEC. 2. That before the county commissioners of any county shall take any steps towards locating or establishing any ditch, drain or water course, there shall be filed with the county commissioners of such county, a petition from one or more persons owning lands adjacent to the line of the proposed ditch, drain or water course, setting forth the necessity of the same, with a description of its proposed starting point, route and terminus, together with the names of the owners and occupants or agents of the lands through which the same may pass.

Certain petition to be filed with commissioners.

SEC. 3. That if they shall be satisfied that notice of such application has been given, by publication three weeks successively in a newspaper published in the county, or by post-

When commissioners may locate and establish the ditch.

ing up notices in three of the most public places in the neighborhood of such proposed ditch, drain or water course, at least twenty days before the meeting of the board, at which such petition is presented, shall, at their next regular meeting, if no remonstrance has been presented to the location of said proposed ditch, drain or water course, locate and establish the same.

Persons damaged to make application.

SEC. 4. That if any person or persons claiming compensation for lands appropriated for the purpose of constructing any ditch, drain or water course, under the provisions of this act, shall make his, her or their application in writing therefor to the county commissioners, on or before the third day of the session at which the petition has been set for hearing, and on failure to make such application, shall be deemed and held to have waived his, her or their right to such compensation.

When viewers must be appointed.

SEC. 5. That if any person or persons may at any time previous to the third day of the session at which the petition has been set for hearing, set forth such grievance by way of remonstrance, the said board shall thereupon appoint three discreet and disinterested freeholders, as viewers, and appoint a day and place for them to meet.

Duties of viewers.

SEC. 6. That such viewers, having five days notice, to be given by the person or persons remonstrating, shall meet at the time and place designated, and take an oath faithfully to discharge the duties assigned them, and proceed to view the proposed ditch, drain or water course, assess the damages, if any, which such objector or objectors may sustain from such ditch, drain or water course being opened, and shall report the same at the ensuing session of such board.

When damages to be paid by the county.

SEC. 7. That if a majority of the viewers assess and report compensation in favor of the objector or objectors, and the board shall consider the proposed ditch, drain or water course, to be conducive to the public health, convenience or welfare, they shall order the costs and compensation to be paid out of the county treasury: *Provided*, That in arriving at such determination and award, the benefits to accrue to such owner or occupant by reason of such ditch, drain or water course, are to be considered in making such award; but if a majority report against a claim for compensation, the objector or objectors shall pay the costs; and when payment of compensa-

tion is made as herein provided, such ditch, drain or water course shall be established and recorded.

SEC. 8. That said county commissioners, whenever they shall have established any such ditch, drain or water course, shall divide the same into suitable sections, not less in number than the number of owners of land through which the same may be located, and shall also prescribe the time within which the work on such sections shall be completed.

Duty of commissioners in locating ditch.

SEC. 9. That the county commissioners shall cause notice to be given of the time and place of letting, and of the kind and amount of work to be done on said sections, and the time fixed by them for its completion, by publishing for thirty days in some newspaper printed, or of general circulation in said county, and shall let the work upon said sections respectively, to the lowest bidder therefor; and the person or persons taking such work at such letting, shall, on the completion thereof, to the satisfaction of the county commissioners, be paid for such work out of the county treasury, upon the order of the county commissioners: *Provided*, That if any person or persons to whom any portion of said work shall be let as aforesaid, shall fail to perform said work, the same shall be re-let by the county commissioners, in the manner hereinbefore provided.

Commissioners to give notice of letting of contracts.

SEC. 10. That the viewers shall be allowed such fees for services under this act, as the county commissioners shall in each case deem reasonable and allow; and all other fees and costs accruing under this act shall be the same as provided by law for like services in other cases, and all costs, expenses, cost of construction, fees and compensation for property, determined under this act, shall be paid out of the county treasury, out of the general fund, on the order of the county commissioners: *Provided*, That no part of the same except the compensation for property appropriated, shall be paid out of the county treasury, till the sum shall have been levied and collected as provided in the next section of this act.

Certain costs and fees how paid.

SEC. 11. That the county commissioners shall make an equitable apportionment of the costs, expenses, costs of construction, fees and compensation for property appropriated which shall accrue and be assessed, and determined under this act, among the owners of the land benefited by the location

Costs to be assessed on property benefited.

and construction of such ditch, drain or water course, in proportion to the benefit to each of them through along the line, or in the vicinity of whose lands the same may be located and constructed respectively; and the same may be levied upon the lands of the owners to be benefited in said proportions, and collected in the same manner that other taxes are levied and collected for county purposes.

When to take effect.

SEC. 12. This act shall take effect and be in force from and after its passage and approval.

Approved, January 15, 1875.

DIVISION OF COUNTIES.

CHAPTER XXXIX.

TO PREVENT THE DIVISION OF ORGANIZED COUNTIES.

AN ACT preventing the division of organized counties in certain cases.

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

Counties how they may be divided.

SECTION 1. No organized county in the territory, with an area of eight hundred and fifty square miles or less, shall be divided, or have any part stricken therefrom, without submitting the question to a vote of the people of the county, nor unless a majority of all the legal voters of the county shall vote for the same.

When to take effect.

SEC. 2. This act shall take effect and be in force from and after its passage and approval.

Approved, January 6, 1875.