

§ 1881. If the petition is signed by qualified electors of the county equal in number to at least three-fifths of all the votes cast in the county at the last preceding general election, the board must, at the next general election, submit the question of removal to the electors of the county.

Approved March 9, 1899.

DAMS.

CHAPTER 71.

[H. B. 71.]

MAINTENANCE OF DAMS.

AN ACT to Provide for the Construction and Maintenance of Dams Across Running Streams for Use in Operating Mills and for Irrigation Purposes.

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

§ 1. DAMS FOR MILLS OR IRRIGATING PURPOSES.] When any person may be desirous of erecting and maintaining a dam upon his own land, across any water course not navigable, and shall deem it necessary to raise the water by means of such dam, or occupy ground for mill yard, or for irrigation purposes, so as to damage by overflowing or otherwise, real estate not owned by him, nor damaged by consent, he may obtain the right to erect and maintain said dam by proceedings as in this act provided; provided that all dams erected under the provisions of this act shall be constructed with such sluiceways as will allow fish to ascend any stream so dammed.

§ 2. SHALL PETITION THE COURT.] He shall present to the judge of any court of record in which jury trials are had in the county, or, if there be no such court in the county, then in the district in which said dam or any part thereof is to be located, a petition naming each person known to be affected or damaged, setting forth the place as near as may be, where said dam is to be located, the height to which it will be raised, the purposes to which the water power will be applied, and such other facts as may be necessary to show the objects of the petition.

§ 3. COMMISSIONERS.] Upon the presentation of such petition, the judge shall appoint three disinterested residents of the county in which said dam or a part of it is to be erected, commissioners to meet at the place of its proposed erection, on a day specified by such judge, and to inquire, touching the matters contained in said petition, and the judge shall fix the fees of said commissioners.

§ 4. SHALL TAKE OATH.] Before entering upon their duties the commissioners shall severally take and subscribe an oath before

some person qualified to administer oaths, faithfully and impartially to discharge the duties of their appointment.

§ 5. SHALL GIVE NOTICE.] At the request of the petitioners the commissioners shall give, or cause to be given, notice of the time, place and object of their meeting to every person named by said petitioner.

§ 6. THIRTY DAYS NOTICE.] At least thirty days notice shall be given in all cases, which shall be served in the manner prescribed by law for the service of summons in the District Court, and such notice shall be published for at least four successive weeks in a newspaper in the county nearest the location of the proposed dam.

§ 7. PRELIMINARY SURVEY.] The commissioners shall meet at the time and place specified in the notice, and shall cause a preliminary survey to be made, and shall proceed to examine the point at which said dam is proposed to be erected, and the lands and real estate above and below which will probably be injured by the erection of said dam; shall hear the allegations and testimony of all parties interested, and shall proceed to make a separate assessment of damages which will result to any person by the erection of said dam for mill or irrigation purposes and its maintenance.

§ 8. REPORT OF PROCEEDINGS.] Within thirty days after completing their examination, the commissioners shall file the petition, their appointment, jurats (oaths), and a report of their proceedings, in the office of the clerk of the court in the first section of this act mentioned, and shall give notice of the filing of said report as of their meeting, to all persons named in the petition, or that may be shown to be damaged by the preliminary survey.

§ 9. PAYMENT OF DAMAGES.] Upon the filing of said report the petitioners may make payment of the damages assessed to the parties entitled to the same in the following manner, to-wit:

1. To parties laboring under no disability.
2. To guardians of infants, husbands or trustees of femmes covert.
3. To guardians or conservators of insane persons.

And receipts for such payment filed in the office of the clerk aforesaid shall stop the parties receipting from all further claim or proceeding in the premises. Payments to parties residing in the state, but not in the county or counties where said dam or a part of it is to be erected, as well as to the infants who have no guardians, and insane persons who have no guardians or conservators, and payments to parties residing out of the state, and to persons whose names are unknown and to persons who shall refuse to receive the payments when tendered, shall be made by depositing the money with the treasurer of the county or counties aforesaid, who shall pay out the same upon the order of the commissioners or court, take receipts for all payments, and file the same with the order, in the office of the clerk of the court aforesaid, and such deposit shall have the same effect as the first mentioned receipts unless an appeal be taken by the party entitled thereto.

§ 10. APPEAL.] Appeals from the assessments made by the commissioners may be taken and prosecuted in the court aforesaid by any party interested (the petitioner excepted), not under legal disability, by husbands or trustees of femmes covert, guardians of infants, guardians or trustees of insane persons, and in cases where infants or insane persons have no guardians or conservators, appeals may be taken by the friends of such persons and a written notice of such appeal be served upon the appellee, as a summons in ordinary civil actions; provided, that no appeal shall be taken after the expiration of thirty days from the time of the notification of the filing of the report aforesaid.

§ 11. SHALL FILE BOND.] The erection of said dam shall not be hindered, delayed or prevented by the prosecution of any appeal; provided, the petitioner shall execute and file with the clerk of the court in which the appeal is pending, a bond to be approved by said clerk with surety or sureties, conditioned that the person executing the same shall pay whatever amount is required by the judgment of the court, and abide any rule or order of the court in relation to the matter in controversy.

§ 12. BOND APPROVED BY CLERK.] The appellant shall file with the clerk aforesaid a bond with surety, to be approved by said clerk, in double the amount of the assessment appealed from, payable to the people of the state, for the use of all persons interested, in the condition in which bond the proceedings appealed from shall be recited, with condition for the due and speedy prosecution of the appeal, and that he or they will satisfy the judgment that may be rendered in the premises and pay the costs of the appeal, if adjudged to do so by the court in reference to the matter in controversy.

§ 13. WHEN SUBMITTED TO JURY.] Appeal shall bring before the court the propriety of the amount of damages reported by the commissioners in respect to the parties to the appeal, and unless the parties otherwise agree, the matter shall be submitted to and tried by a jury the same as other appeal cases, and the court or jury, as the case may be, shall assess the damages aforesaid, making the verdict conform to the question and facts in the case.

§ 14. EXEMPLARY DAMAGES.] No exemplary or vindictive damages shall be allowed by the commissioners, court or jury.

§ 15. JUDGMENTS.] Upon verdicts rendered by juries, or an assessment by the court, judgment shall be entered, declaring that upon payment of the damages assessed by the court or jury, as the case may be, and costs, if any, the right to erect and maintain the dam aforesaid, according to the petition, shall, as against the parties interested in such verdict be and remain in the petitioner, his heirs and assigns forever, subject to be lost as hereinafter provided, and payments of such judgments made as payments of assessments, by the commissioners as hereinbefore provided.

§ 16. WATER POWER SHALL NOT BE INJURED.] No dam shall be erected or maintained under the provisions of this act to the injury of any water power previously improved.

§ 17. ACTION FOR DAMAGES.] No action for damages, occasioned by the erection and maintenance of such dam shall be hereafter sustained unless such action be brought within two years after the erection of said dam; provided, that such limitation shall not run against and apply to persons living on and holding government land under the pre-emption laws, until a patent for the land damaged or overflowed shall have been issued.

§ 18. ANY PERSON MAY MAINTAIN DAM.] Any person may obtain a right to maintain or raise a dam heretofore erected upon his own land, across any water course not navigable, by complying with the provisions of this act, adapting his petition to the nature of the case.

§ 19. MAY SUSPEND SUIT.] Upon the evidence of the commencement of proceedings, as provided in sections 2 and 18, the court before which any suit for damages occasioned by such dam shall be instituted after the commencement aforesaid, shall have power to suspend any such suit until the result of such proceeding shall be known.

§ 20. COSTS.] The costs of all proceedings under this act, except such as arise or grow out of appeals, shall be paid by the petitioner, and costs of appeals shall be paid as the court may direct.

§ 21. SURVEYS AND EXAMINATIONS.] For the purpose of making surveys and examinations relating to any proceedings under the provisions of this act, it shall be lawful to enter upon any land doing no unnecessary injury.

§ 22. WHEN CONSTRUCTION MUST COMMENCE.] Any person having obtained right to erect and maintain, or to maintain or raise any dam, under the provisions of this chapter, who shall not within one year thereafter begin to build said dam, and finish the same and apply the water power thereby created to the purposes stated in his petition within three years; or in case the said dam shall be destroyed shall not begin to rebuild in one year after such destruction, and finish in three years, or in case of a mill dam shall fail to keep such mills in operation for one year at any one time, shall forfeit all rights acquired by virtue of the provisions of this act unless at the time of such destruction the owner be an infant, or otherwise disabled in law, in which case the same time shall be allowed after the removal of such disability; provided, however, where the water, backed up by any dam belonging to any mill owner or machinery, is about to break through or over the banks of the stream or race, or to wash a channel so as to turn the water of such stream or race, or any part thereof, out of its ordinary channel, whereby such mill or machinery will be injured or affected, the owner or occupier of such mill or machinery, if he does not own such banks or the lands lying contiguous thereto, may, if necessary, enter thereon and erect and keep in repair such embankments and other works as shall be necessary to prevent such water from breaking through or over the banks of such stream or race, or wash-

ing a channel as aforesaid, such owner or occupier committing thereon no unnecessary waste or damage, and being liable to pay any damages which the owner of the land may actually sustain by the erection and repair aforesaid; and provided, further, that if any person shall injure, destroy or remove any such embankment or other works, the owner or occupier of such mill or machinery or in case the said dam is for purposes of irrigation, the owner thereof, may recover of such person all damages he may sustain by reason of such injury, destruction or removal.

Approved March 8, 1899.

DAIRY PRODUCTS.

CHAPTER 72.

[H. B. 117.]

MANUFACTURE AND SALE OF DAIRY PRODUCTS.

AN ACT to Regulate the Manufacture and Sale of Dairy Products, and Imitations and Substitutes Therefor, Prescribing Penalties for Violations, to Create a Deputy Commissioner of Agriculture, Prescribing His Duties, and Fixing His Salary.

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

§ 1. ASSISTANT DAIRY AND FOOD COMMISSIONER.] In order to secure the better enforcement of the provisions of this act, and to promote the improvement of the product of the dairy the commissioner of agriculture by and with the advice and consent of the governor shall appoint one deputy in his department to be known officially as assistant dairy and food commissioner, who shall have a practical knowledge of, and experience in the manufacture of dairy products, and hold his office during the term of the commissioner of agriculture subject to removal from office for inefficiency, neglect or violation of duty. The said assistant commissioner shall receive a salary of six hundred dollars per annum and his actual and necessary expenses in the discharge of his duties under this act, and shall be charged under the direction of the commissioner of agriculture with the enforcement of the various provisions thereof.

The sum of one thousand dollars annually is hereby appropriated to which shall be added the amount in fines collected in the enforcement of the provisions of this act, to be paid for such purposes out of any moneys in the treasury not otherwise appropriated, and any money so appropriated not expended in the enforcement of the provisions of this act shall revert to the state school fund. All charges, accounts and expenses authorized by this act shall be paid