

BILL

No. 36 of 1913.

An Act respecting the Construction and Maintenance of
Small Ditches by the Owners of Lands to be benefited.

(Assented to 1913.)

HIS MAJESTY, by and with the advice and consent
of the Legislative Assembly of the Province of Alberta,
enacts as follows:

SHORT TITLE.

1. This Act may be cited as "*The Private Ditches Act.*" Short title

INTERPRETATION.

2. In this Act unless the context otherwise requires, the Interpretation
expression:

1. "Municipality" means and includes any incorporated Municipality
municipality whether a city, town, village or rural muni-
cipality and also a local improvement district;

2. "Council" means and includes the council of a muni- Council
cipality;

3. "Secretary" means and includes the treasurer of a Secretary
city municipality and the secretary or secretary-treasurer
of a town, village, or rural municipality or of a local improve-
ment district;

4. "Engineer" means a duly qualified engineer or a Engineer
surveyor duly qualified to practise in Alberta;

5. "Ditch" means and includes a drain open or covered Ditch
wholly or in part whether in the channel of a natural stream,
creek or watercourse or not and also the work and material
necessary for bridges, culverts, catch basins and guards;

6. "Construction" means and includes the original Construction
opening or making of a ditch by artificial means and the
disposal of the material taken therefrom;

7. "Maintenance" means and includes the preservation Maintenance
of a ditch and keeping it in repair;

8. "Nonresident" means and includes a person who Nonresident
does not reside within the municipality in which his lands
affected by proceedings under this Act are situate;

9. "Owner" means and includes any person who by any Owner
right, title, or estate whatsoever is or is entitled to be in
possession of any land and the executor or administrator
of an owner, the guardian of an infant owner, any person
entitled to sell or convey the land, an agent of an owner
under a general power of attorney or under a power of
attorney empowering him to deal with the land and as
regards roads the municipality within which the same is
situate;

10. "Road" means and includes any road surveyed and Road
set apart as a highway under the provisions of *The North-
West Territories Act*, *The Public Works Act*, or *The Land
Titles Act* and any road allowance under *The Dominion
Lands Surveys Act*;

11. "Sufficient outlet" means and includes the safe discharge of water at a point where it will do no injury to lands or roads or into a natural water-course that will carry said discharge; ^{Sufficient outlet}

12. "Court" means the district court of the judicial district within which the lands in respect of which proceedings under this Act are taken are wholly or mainly situate; ^{Court}

13. "Judge" means a judge of the court; ^{Judge}

14. "Initiating municipality" means the municipality within which is situate the land of an owner commencing proceedings under this Act; ^{Initiating municipality}

15. "Minister" means the Minister of Public Works of Alberta; ^{Minister}

16. "Form" means a form in the schedule to this Act. ^{Form}

3. No ditch the whole cost whereof according to the estimate of the engineer or the agreement of the parties will exceed \$5,000.00 shall be constructed under the provisions of this Act.

4. The lands, the owners of which may be made liable for the construction of a ditch under this Act shall be those lying within a distance of one mile from the sides and point of commencement of the ditch. ^{What lands to be liable for construction}

5. Any owner other than the municipality shall before commencing proceedings under this Act file with the secretary of the municipality in which the parcel of land requiring the ditch is situate a declaration of ownership thereof in the form A which may be taken before a justice of the peace, a commissioner for taking affidavits or the secretary of the municipality. ^{Declaration of ownership}

2. Before a municipality commences proceedings under this Act its council shall pass a resolution to the effect that such proceedings be commenced.

3. In case of omission to file such declaration through inadvertence or mistake at the time aforesaid the judge may in case of such ownership at the said time permit the same to be filed at any stage of the proceedings upon such terms and conditions as he may impose or direct.

4. Where a declaration of ownership has been filed under the provisions of this Act or such resolution passed by council such declaration or resolution shall be conclusive as conferring jurisdiction to proceed unless appealed against to the judge under the provisions of this Act.

6. The owner of any parcel of land who requires the construction of a ditch thereon shall before filing with the secretary of the municipality the requisition provided for by section 11 of this Act serve upon the owners or occupants of the other lands to be affected a notice in writing in the form B signed by him and naming therein a day and hour and also a place convenient to the site of the ditch at which all the owners shall meet and estimate the cost of the ditch and agree if possible upon the apportionment of the work and supply of material for construction among the several owners according to their respective interests therein and settle the proportions in which the ditch shall be maintained; and the notices shall be served not less than twelve clear days before the time named therein for meeting. ^{Notice to other owners affected}

7. If an agreement is arrived at by the owners as in the next preceding section is provided it shall be reduced to writing in the form C and signed by all the owners and shall within twelve days after the signing thereof be filed with the secretary of the municipality in which the parcel of land the owner of which requires the ditch is situate; but if the lands affected lie in two or more municipalities the agreement shall be in as many numbers as there are municipalities and filed as aforesaid with their respective secretaries; and the agreement may be enforced in the like manner as an award of the engineer as hereinafter provided.

Form of agreement

Filing

8. No proceedings taken or agreement made and entered into under the provisions of sections 6 and 7 of this Act shall in any case for want of strict compliance with such provisions be void or invalidate any subsequent proceedings under this Act provided the notices required by section 6 of this Act have been duly served; and any such agreement may with the consent in writing of the parties thereto (which consent shall be filed in the same manner as the agreement) or by order of the court or of the judge on an appeal under this Act be amended so as to cause the same to conform to the provisions of this Act.

Informalities not to invalidate proceedings

9. If at or before the meeting of owners provided for in section 7 of this Act it appears that any notice required by section 6 has not been duly served the owners present at such meeting shall adjourn the same to some subsequent day in order to allow the necessary notices to be duly served; and such adjourned meeting shall if such notices have been given and served as provided by section 6 be a sufficient compliance with the provisions of this Act.

Adjourning meeting for purpose of adding parties

10. The chief executive officer of the municipality shall have power on behalf of the municipality to sign the agreement aforesaid and his signature shall be binding upon the municipality.

Chief executive officer to sign on behalf of municipality interested

11. In case an agreement as aforesaid is not arrived at by the owners at the said meeting or within six days thereafter then the owner requiring the ditch may file with the secretary of the municipality in which such parcel is situate a requisition in the form D naming therein all the several parcels of land that will be affected by the ditch and the respective owners thereof and requesting that an engineer to be appointed by the municipality under this Act be asked to appoint a time and place in the locality of the proposed ditch at which the said engineer will attend to make an examination as hereinafter provided.

Requisition for appointment by engineer when no agreement arrived at

12. Upon receipt of such requisition in the form D the council shall name and appoint one person to be an engineer to carry out the provisions of this Act and such engineer shall be and continue an officer of the municipality until his appointment is revoked and another engineer is appointed in his stead who shall have authority to commence proceedings under this Act or to continue such work as may have been already undertaken.

Appointment of engineer

(2) The council when necessity requires shall provide for payment to the secretary of a fair and reasonable remuneration for services performed by him in carrying out the provisions of this Act and shall fix the charges to be made

Fees of clerk and engineer

by the engineer of the municipality for services performed by him under this Act and such charges shall not exceed \$15 per day and legitimate expenses.

(3) Every engineer appointed under this Act shall before entering upon his duties take and subscribe the oath or affirmation in the form E and shall file the same with the secretary.

13. The secretary upon receiving the requisition shall forthwith enclose a copy thereof in a registered letter to the engineer and on receipt of the same by the engineer he shall notify the secretary in writing appointing a time and place at which he will attend in answer to the requisition and on receipt of the notice of appointment from the engineer the secretary shall file the same with the requisition and shall forthwith send by registered letter a copy of the notice of appointment to the owner making the requisition who shall at least ten days before the time so appointed serve upon the other owners named in the requisition a notice in the form F requiring their attendance at the time and place fixed by the engineer and shall after serving such notice indorse on one copy thereof the time and manner of service and leave the same with the indorsements thereon with the engineer not later than the day before the time fixed in the notice of appointment.

14. Notices under the provisions of this Act shall be served personally or by leaving the same at the place of abode of the owner or occupant with some person residing thereat apparently or actually over the age of sixteen years and in case of nonresidents then upon the agent of the owner or by registered letter addressed to the owner at the post office address shown by the records of the proper land titles office or in case of the owner of unpatented land by the records of the proper Dominion lands office.

(2) Any occupant not the owner of the land notified in the manner provided by this Act shall immediately notify the owner thereof and shall if he neglects to do so be liable for all damages suffered by such owner by reason of such neglect.

(3) Whenever an owner serves any notice required by this Act he shall keep a record showing the names of the parties served and the time, place and manner of service and shall if required to do so by a judge or the secretary make an affidavit proving such service.

15. The engineer shall attend at the time and place appointed by him in answer to the requisition and shall examine the locality and if he deems it proper or if requested by any of the owners may examine the owners and their witnesses present and take their evidence and may administer an oath or affirmation to any owner or witness examined by him; if upon examining the locality the engineer is of opinion that the lands of owners upon whom notice has not been served will be affected by the ditch he shall direct that the notice required by section 13 hereof shall be served on such owners by the owner making the requisition and shall adjourn the proceedings to the day named in the notice for continuing the same for the purpose of allowing such owners to be present and to be heard upon the examination and taking of evidence.

(2) The engineer may adjourn his examination and the hearing of evidence from time to time and if he finds that the ditch is required he shall within thirty days after his first attendance make his award in writing in the form G specifying clearly the location, description and course of the ditch, its commencement and termination, apportioning the work and the furnishing of material among the lands affected and the owners thereof according to his estimate of their respective interests in the ditch, fixing the time for performance by the respective owners, apportioning the maintenance of the ditch among all or any of the owners so that as far as practicable each owner shall maintain the portion of his own land and stating the amount of his fees including the estimated cost of his inspection after the time has expired for the construction of the ditch according to his award and the other charges and by whom the same shall be paid.

(3) In making his award the engineer shall consider direct benefit only to the lands affected.

(4) The period prescribed for the engineer to make his award shall be exclusive of the time required to obtain the approval of the works or the specifications or plans thereof by the board of railway commissioners for Canada where such approval is necessary.

(5) In any case where a ditch is to be covered the engineer shall in his award specify the kind of material to be used in the covered portion of such ditch.

16. Should the engineer be of the opinion that the land of any owner will not be sufficiently affected by the construction of the ditch to make him liable to perform any part thereof and that it is necessary or not, as the case may be, to construct the ditch across or into his land he may by his award relieve such owner from performing any part of the work of the ditch and place its construction on the other owners and any person carrying out the provisions of the award upon the land of the owner so relieved shall not be considered a trespasser while causing no unnecessary damage and he shall replace any fences opened or removed by him; and the owner so relieved may claim compensation for damage done to his land by the construction of the ditch; and the engineer shall award such damages as he deems reasonable and shall state the amount thereof in the award.

Engineer may order opening of ditch across land of a person not benefited

17. The engineer shall forthwith after making his award as hereinbefore provided file the same and a plan, profile and specifications of the ditch in duplicate with the secretary of the initiating municipality but should the lands affected lie in two or more municipalities then the engineer shall file with the said secretary as many additional copies of the award, plan, profile and specifications as there are other municipalities affected and the secretary of the initiating municipality shall forward a copy to the secretary of each municipality affected; such award, plan, profile or specifications may be given as evidence in any legal proceedings by certified copy as are other official documents and the secretary of the municipality or of each of the municipalities shall forthwith upon the filing of the award notify each of the persons affected thereby within the municipality of which he is secretary by registered letter or personal service of the filing of the same and the portion of work to be done and material furnished by the

Filing award; notice to persons affected

person notified as shown by the award; and the secretary shall keep a book in which he shall record the names of the parties to whom he has sent notices, the address to which the same was sent and the date upon which the same was deposited in the post office or personally served.

(2) The secretary of the initiating municipality shall forthwith forward one copy of the award, plan, profile, and specifications to the Minister to be filed in his department. Copy of plans, etc., to be sent to minister

18. If the lands affected by the ditch are situate in two or more municipalities the engineer of the initiating municipality shall have full power and authority to continue the ditch into or through so much of the lands in any other municipality as may be found necessary but within the limits hereinbefore provided; and all proceedings authorised under the provisions of this Act shall be taken and carried on in the municipality where commenced. Powers of engineer of municipality in which proceedings commenced

19. In every case where lands or roads in two or more municipalities are affected the secretary of the initiating municipality shall forward to the secretary of each of the other municipalities a certified copy of every certificate affecting or relating to lands or roads therein respectively and the council thereof shall pay the sum for which lands and roads within its limits are liable to the treasurer of the initiating municipality and unless the amounts are paid within twelve days after demand in writing by the parties declared by the certificate liable to pay the same such council shall have power to take all proceedings for the collection of the sums so certified to be paid as though all the proceedings had been taken and carried on within its own limits. Certificates relating to lands or roads in adjoining municipalities

20. The council of any municipality may enter into an agreement with any railway company for the construction or enlargement by the railway company of any ditch or culvert on the lands of such railway company and for the payment of the cost of such work after completion out of the general funds of the municipality and the council shall have power to assess and levy the amount so paid exclusive of any part thereof for which the municipality may be liable under the award as to the cost of the work in the same manner as taxes are levied upon the lands mentioned in the award and in the relative proportion of the estimated cost of the work to be done and materials furnished by the respective owners in the construction of such ditch; and such assessment shall in every case be determined by a supplementary award made by the engineer and shall be subject to appeal to the judge in the same manner as other awards made under this Act. Culverts, etc., on railway lands

(2) No agreement with a railway company shall be entered into by a council under this section which will impose a special liability on the owners without the consent in writing filed with the secretary of the municipality of two-thirds of the owners liable for the construction of the ditch in respect to which such work on railway lands is to be undertaken.

(3) The cost of any such work on railway lands shall be exclusive of the sum fixed as the limit of the cost of the work imposed by section 3 of this Act.

21. Any owner dissatisfied with the award of the engineer and affected thereby may within twelve clear days after the date of the mailing or service of the last of the notices of the filing of the award as provided in section 17 hereof appeal therefrom to the judge and the proceedings on the appeal shall be as hereinafter provided.

Appeals from
award to
judge

(2) The appellants shall serve upon the secretary of the initiating municipality a notice in writing of his intention to appeal from the award shortly setting forth therein the grounds of appeal.

Notice of
appeal

(3) The secretary in the next preceding subsection mentioned shall after the expiration of the time for appeal forward by registered letter or delivery a copy of the notice or notices of appeal and a certified copy of the award and also the plans, profiles and specifications to the judge who shall forthwith upon the receipt of the registered letter or documents aforesaid notify the secretary of the time he appoints for the hearing thereof and shall fix the place of hearing at the city, town or village nearest to the ditch unless the judge for the greater convenience of the parties and to save expense fixes some other place for the hearing; the judge may if he thinks proper order such sum of money to be paid by the appellant or appellants to the said secretary as will be a sufficient indemnity against costs of the appeal; and the secretary upon receiving notice from the judge shall forthwith notify the engineer whose award is appealed against and all parties interested in the manner provided for the service of notices under this Act.

Clerk to
notify judge
and judge to
fix time and
place for
hearing

(4) Any appellant may have the lands and premises inspected by any other engineer or person who for such purposes may enter upon such lands and premises but shall do no unnecessary damage.

Inspection of
premises by
another
engineer

(5) The secretary of the municipality to whom notice of appeal is given shall be the clerk of the court and shall record the proceedings.

Clerk of
the court

(6) It shall be the duty of the judge to hear and determine the appeal or appeals within two months after receiving notice thereof from the secretary of the municipality as hereinbefore provided or within such further period as the judge on hearing the parties may decide to be necessary in order to allow proper inspection of the premises to be made as authorized by the next following subsection.

Judge to
hear and
determine
within two
months

(7) The judge may set aside, alter or affirm the award and correct any errors therein; he may examine parties and witnesses on oath and may inspect the premises and may require the engineer to accompany him; and should the award be affirmed or altered the costs of appeal shall be in his discretion and if set aside he shall have power to provide for the payment of the costs in the award mentioned and also the costs of appeal and may order the payment thereof by the parties to the award or any of them as to him may seem just and may fix the amount of such costs.

Powers of
judge on
appeal

(8) The judge shall be entitled to charge for holding court for the trial of appeals under this Act and for the inspection of the premises the sum of five dollars a day which charge shall be considered part of the costs of appeal under the provisions of the next preceding subsection.

Fees and
disbursements
of judge

(9) The award so altered or affirmed shall be certified by the secretary together with the costs ordered and by whom to be paid and shall be enforced in the same manner

Enforcement
of award as
amended

as the award of the engineer and the time for the performance of its requirements shall be computed from the date of such judgment in appeal; and the secretary shall immediately after the hearing send by registered letter to the secretary of any other municipality in which lands affected by the ditch are situate a certified copy of the changes made in the award by the judge which copy shall be filed with the award; and each secretary shall forthwith by registered letter notify every owner within the municipality of any change made by the judge in the portion of work and material assigned to such owner.

22. No award made by an engineer under this Act shall be set aside by the judge for want of form only or on account of want of strict compliance with the provisions of this Act and the judge shall have power to amend the award or other proceedings and may in any case refer back the award to the engineer with such directions as may be necessary to carry out the provisions of this Act.

Judge may amend or refer back award

23. Every award made under the provisions of this Act shall after the lapse of the time hereinbefore limited for appeal to the judge and after the determination of appeals, if any, by him, where the award is affirmed be valid and binding to all intents and purposes notwithstanding any defects in form or substance either in the award or in any of the proceedings relating to the works to be done thereunder taken under the provisions of this Act.

When award to be binding notwithstanding defects

24. In all appeals under this Act from the engineer's award the judge shall possess all such powers for compelling the attendance of and for the examination on oath of all parties and other persons as belong to or might be exercised by him in the district court.

Powers of judge as to taking evidence

25. Upon an appeal to a judge under this Act the secretary of the municipality shall have the like powers as the clerk of a district court as to the issuing of subpoenas to witnesses upon the application of any party to the proceedings or upon an order of the judge for the attendance of any person as a witness before him.

Clerk may issue subpoenas

(2) The fees to be allowed to witnesses upon an appeal under this Act shall be upon the scale of fees allowed to witnesses in any action in the district court.

Fees

26. The municipality or each of the municipalities shall within twelve days after the expiration of the time for appeal, or after appeal, as the case may be, pay to the engineer and the judge and all other persons entitled to the same their charges and fees or the portion thereof awarded or adjudged to be paid by the owners therein and shall if the same are not forthwith repaid by the persons awarded or adjudged to pay the same cause the amount with ten per centum added thereto to be placed upon the tax roll or assessment roll in cases where the assessment roll is also the tax roll as a charge against the lands of the persons so in default and the same shall thereupon become a charge upon such lands and shall be collected in the same manner as taxes.

Municipalities to pay costs, etc., and collect same from persons liable

27. The engineer at the expiration of the time limited by the award for the completion of the ditch shall inspect the same and if he finds the ditch or any part thereof not

Letting work on noncompliance with award

completed in accordance with the award he may let the work and supply of material to the lowest bidder who shall give security to be approved by the engineer in favour of the municipality by which he was appointed for the due performance thereof within a limited time; but no such letting shall take place:

- (a) Until notice in writing of the intended letting has been posted up in at least three conspicuous places in the neighbourhood of the place at which the work is to be done for ten clear days; and
- (b) Until the expiration of twelve days after the sending of the notice by registered letter as provided in section 14 hereof to nonresidents interested in the said award.

(2) If however the engineer is satisfied of the good faith of the person failing in the performance of the award and there is good reason for the nonperformance thereof he may in his discretion and upon payment of the fees and charges extend the time for performance. Extension of time for compliance

(3) Any owner in default of supplying the material and doing the work after proceedings are begun to let the same shall be liable for the fees and expenses occasioned by his default and the same shall form a charge on his land and if not paid by him on notice the council shall pay the same on the certificate of the engineer and shall cause the amount with ten per centum added thereto to be placed on the tax roll or assessment roll in cases where the assessment roll is also the tax roll against the lands of the person in default to be collected in the same manner as other taxes. Liability of person in default of doing work after proceedings began

(4) The engineer may let the work and supply of material or any part thereof by the award directed a second time or oftener if it becomes necessary in order to secure its performance and completion.

28. The engineer shall after receipt of notice in writing of the supplying of material and completion of the work let as in the next preceding section mentioned inspect the same and shall if he finds the material furnished and the work completed certify the same in writing in the form H stating the name of the contractor, the amount payable to him, the fees and charges to which the engineer is entitled for his services rendered necessary by reason of the non-performance and by whom the same are to be paid. Certificates of engineer upon completion of work let

29. The council shall at its meeting held next after the filing of the certificate or certificates as in the next preceding section mentioned pay the sums therein set forth to the persons therein named; and unless the owners within the municipality upon notice pay the sums for which they are thereby made liable the council shall have power to cause the amount for which the owner is liable together with ten per centum added thereto to be placed upon the tax roll or assessment roll in cases where the assessment roll is also the tax roll and the same shall thereupon become a charge against the lands of such owners respectively and shall be collected in the same manner as other taxes. Payment of amounts named in certificates of engineer

30. If it appears to the engineer that heavy work is required the engineer may cause the same to be done by letting it out to public competition by tender or otherwise instead of requiring each owner benefited to do his Letting contracts for heavy work

share of the work and the engineer shall by his award determine the fractional part of the whole cost thereof which shall be paid by each of the owners benefited and upon completion of such heavy work shall certify to the secretary of the municipality by which he was appointed the total cost thereof including his fees and charges and the said secretary and the secretary of any other municipality affected shall notify each of the owners liable to contribute under the award within their respective municipalities of the said total cost and the part to be paid by him, and unless forthwith paid the same with ten per centum added thereto shall be placed on the tax roll or assessment roll in cases where the assessment roll is also the tax roll of the municipality in which his lands are situate and the same shall thereupon become a charge against the land of each owner so liable and shall be collected in the same manner as other taxes.

(2) It shall be the duty of the initiating municipality through the treasurer thereof to pay the contractor for such heavy work as soon as done to the satisfaction and upon the certificates of the engineer and also to pay the fees and charges of the engineer in connection therewith.

31. In case any owner during or after the construction of a ditch desires to avail himself of such ditch for the purpose of draining lands other than those contemplated by the original proceedings he may avail himself of the provisions of this Act as if he were an owner requiring the construction of a ditch; but no owner shall make use of such ditch after construction unless under an agreement or award pursuant to the provisions of this Act.

32. This Act shall apply to the extension, deepening, widening or covering of any ditch already or hereafter constructed no matter by whom or when or under what authority and the proceedings to be taken for procuring such extension, deepening, widening or covering shall be the same as the proceedings to be taken for the construction of a ditch under the provisions of this Act; but in no case shall a ditch be covered unless it will provide capacity for all the surface and other water from lands and roads draining naturally towards and into it as well as for the water from all the lands made liable for the construction thereof.

33. The maintenance of any ditch, whether covered or open or of any creek or watercourse that has been deepened or widened under any authority in that behalf, or constructed, deepened, widened or covered under the provisions of this Act shall be performed by the respective owners in such proportion as is provided in the original or any subsequent award and the manner of enforcing the same shall be as hereinafter provided.

34. If any owner whose duty it is to maintain any portion of a ditch neglects to maintain the same in the manner provided by the award any of the owners, parties to the award, whose lands are affected by the ditch may in writing notify the owner making default to have his portion put in repair within ten days from the receipt of such notice and if the repairs are not made and completed within such ten days the owner giving the notice in writing may request the council to have the portion complained of inspected by an engineer.

(2) The inspection by the engineer and the proceedings for doing and completing the repairs required and enforcing payment of costs, fees and charges shall be as hereinbefore provided in case of noncompletion of the construction of a ditch but should the engineer find no cause of complaint he shall certify the same with the amount of his fees and charges to the owner who complained and also to the secretary of the municipality and the owner who made complaint shall pay the fees and charges of the engineer and if not forthwith paid by him the same shall be charged and collected in the same manner as is provided for by this Act in the case of other certificates of the engineer.

35. Any owner interested in or affected by any ditch heretofore constructed or hereafter constructed otherwise than under this Act may take proceedings for the deepening, widening, extending, covering or repairing of such ditch in the same manner as for the construction of a ditch under this Act: Proceedings for widening, etc.

Provided always that the extent of the work and costs thereof and assessment therefor shall not exceed the limitations imposed by sections 3 and 4 of this Act.

36. Any owner party to the award whose lands are affected by a ditch whether constructed under this Act or any other authority in that behalf may at any time after the expiration of two years from the completion of the construction thereof or in case of a covered drain at any time after the expiration of one year take proceedings for the reconsideration of the agreement or award under which it was constructed and in every such case he shall take the same proceedings and in the same form and manner as are hereinbefore provided in the case of the construction of a ditch: Proceedings for reconsideration of agreement or award

Provided that in case any ditch after its construction proves insufficient for the purposes for which it was constructed so as to cause an overflow of water upon any lands along the said ditch and cause damage to the same any owner party to the award may at any time after the expiration of six months from the completion of the ditch take proceedings as aforesaid for the reconsideration of the agreement or award under which such ditch was constructed for the purpose of remedying the defect in that particular respect. Proviso

37. No action, suit or other proceeding shall lie or be had or taken for a *mandamus* or other order to enforce or compel the performance of an award or completion of a ditch made under this Act but the same shall be enforced in the manner provided for by this Act. Actions for mandamus etc., not to lie

38. In carrying into effect the provisions of this Act the forms set forth in the schedule hereto may be used and the same or forms to the like effect shall be deemed sufficient for the purposes mentioned in the said schedule. Use of forms

39. Where it is desired to construct a ditch through lands not included in a municipality an owner may commence proceedings under this Act by filing with the Minister the declaration of ownership referred to in section 5 hereof and in such case or in case a ditch commenced in a municipality is to be extended into or through lands not included in any municipality the Minister shall with respect to such Application to works in unorganised territory

lands have all the powers and perform all the duties invested in or devolving upon a council or secretary with respect to lands in a municipality and all the provisions of this Act shall *mutatis mutandis* apply to work in such unorganized territory.

SCHEDULE.

FORM A.

(Section 5.)

DECLARATION OF OWNERSHIP.

In the matter of *The Private Ditches Act* and in the matter of a ditch in township.....in range.....west of the.....meridian in the Province of Alberta.

I,.....of.....in the Province of Alberta.....do solemnly declare and affirm that I am the owner within the meaning of *The Private Ditches Act* of the.....quarter (or as the case may be) of section.....in township.....in range.....west of the.....meridian, in the Province of Alberta, being (*describe the nature of ownership*).

Solemnly declared and affirmed
before me at.....in
the Province of Alberta
this.....day of.....
19..

.....
A Commissioner for Oaths, J.P. or
Secretary of Municipality.

FORM B.

(Section 6.)

NOTICE TO OWNERS OF LAND AFFECTED BY PROPOSED DITCH.

.....Alta.....19....
To.....
Sir,—

I am within the meaning of *The Private Ditches Act* the owner of the.....quarter (or as the case may be) of section.....in township.....in range.....west of the.....meridian in the Province of Alberta and as such owner I require a ditch to be constructed (or if for reconsideration of agreement or award to deepen, widen or otherwise improve the ditch state the object) for the draining of my land under the said Act. The following other lands will be affected (*here set out the other parcels of land and the name of the owner in each case, also each road and the municipality within which it is situated*).

I hereby require that you as owner of the said (*describe his land*) will attend at (*state place of meeting*) on.....

the.....day of.....19....
 at the hour of.....o'clock in the.....noon with
 the object of agreeing if possible on the respective portions
 of the work and materials to be done and furnished by the
 several owners interested and the several portions of the
 ditch to be maintained by them.

Yours, etc.,

.....
Name of Owner.

FORM C.

(Section 7)

AGREEMENT OF OWNERS.

.....Alta.....19....

Whereas it is found necessary that a ditch should be
 constructed (or deepened, or widened, or otherwise improved)
 under the provisions of *The Private Ditches Act* for the
 draining of the following lands (and roads if any): (here
 describe each parcel of land and give name of owner, including
 applicant's own land and also roads and the municipality
 within which situated):

Therefore, we the owners within the meaning of the said
 Act of the said lands (and if roads proceed and the.....
 mayor, overseer or reeve of the said municipality on behalf
 of the council thereof) do agree each with the other as
 follows:

That a ditch be constructed (or as the case may be) and
 we do hereby estimate the cost thereof at the sum of \$.....
 and the ditch shall be of the following description (here give
 point of commencement, course and determination, its depth,
 bottom and top, width and other particulars as agreed upon;
 also any bridges, culverts or catch basins, etc., required).

I,.....owner of (describe the
 lands) agree to (here give portion of work to be done or material
 to be supplied) and to complete the performance thereof
 on or before the.....day of.....19....

I,....., owner of, etc., (as above and
 so on with all the owners and the whole ditch).

That the ditch when constructed shall be maintained as
 follows:

I,....., owner of (describe his lands) agree
 to maintain the portion of the ditch from (state point of
 commencement) to (state the point of termination of his
 portion).

I,....., owner of, etc. (as above and so
 on with the owners and the whole ditch).

.....
 To be signed here by all the owners.

Signed in the presence of
)

FORM D.

(Section 11.)

RECQUISITION FOR THE EXAMINATION BY ENGINEER.

. Alta., 19....

To (Name of Secretary).

Secretary of

(P.O. Address).

Sir,—

I am within the meaning of *The Private Ditches Act* the owner of the quarter (or as the case may be) of section in township in range west of the meridian in the Province of Alberta, and as such I require to construct (deepen, widen or otherwise improve as needed) a ditch under the provisions of the said Act for the drainage of my said land, and the following lands and roads will be affected: (here describe each parcel of land to be affected as in the notice for the meeting to agree and state the name of the owner thereof) and the said owners having met and failed to agree in regard to the same I request that an engineer to be appointed by the municipality for the purpose of the said Act be asked to appoint a time and place in the locality of the proposed ditch at which he shall attend and examine the premises, hear any evidence of the parties and their witnesses and make his award under the provisions of the said Act.

.
Signature of party applying.

FORM E.

(Section 12 (3))

In the matter of *The Private Ditches Act*:

I, of in the Province of Alberta (*engineer or surveyor*) make oath and say (or do solemnly declare and affirm) that I will to the best of my skill, knowledge, judgment and ability honestly and faithfully and without fear of, favour to or prejudice against any owner or owners perform the duties from time to time assigned to me in connection with work under *The Private Ditches Act* and make a true and just award thereon.

Sworn (or solemnly declared and affirmed) before me at in the Province of Alberta, this day of 19....

FORM F.

(Section 13.)

NOTICE OF APPOINTMENT FOR EXAMINATION BY ENGINEER.

.....Alta|.....19....

To (*Name of owner*).
 (*P.O. Address*).

Sir,—

You are hereby notified that.....has been appointed engineer for the purposes of *The Private Ditches Act* and has in answer to my requisition fixed the hour of.....o'clock in the.....noon of.....day the.....day of.....19.... at.....in the Province of Alberta as the time and place for examining the premises and site of the ditch required by me to be constructed under the provisions of the said Act (*or as the case may be*) and you as owner of lands affected are required to attend with any witnesses that you may desire to have heard at the same time and place.

Yours, etc.,

.....
Signature of Applicant.

FORM G.

(Section 15 (2))

AWARD OF ENGINEER.

I,....., the engineer appointed by the council of (*city, town, village, rural municipality or local improvement district, as the case may be*) under the provisions of *The Private Ditches Act* having been required so to do by the requisition of.....owner of the.....quarter (*or as the case may be*) of section.....in township.....in range.....west of the.....meridian in the Province of Alberta filed with the secretary of said municipality and representing that he requires certain work to be done under the provisions of the said Act for the drainage of the said land and that the following other lands (and roads, *if any*) will be affected (*here set out the other parcels of lands or roads affected as in the requisition*) did attend at the time and place named in my notice in answer to said requisition and having examined the locality (and the parties and their witnesses *if such be the case*) find that the ditch (*or the deepening or widening of a ditch*) is within the said Act and is required.

The location, description and course of the ditch and its point of commencement and termination are as follows:

(*Here describe the ditch as to all above particulars.*) The said work will affect the following lands (and roads, *if any*). (*Here set forth and describe the lands and state the owners.*)

I do therefore award and apportion the work and the furnishing of material among the lands (and roads, *if any*) affected and the owners thereof according to my estimate of their respective interests in the said work as follows:

1. (*Name, owner and description of his land*) shall make and complete (*here fix the point of commencement*

and ending of his portion) and shall furnish the following material (state what material) all of which according to my estimate will amount in value to \$..... and I fix the time for the performance of such work and providing such material at not later than the.....day of19....

2. (Name of owner and description of land and so on as above to the end.)

I do further award and apportion the maintenance of the ditch as follows:

1. (Name of owner and description of land) shall maintain (here state point of commencement and ending of his portion).

2. (Name of owner, etc., as above.)

3. (Name of owner, etc., as above) shall receive \$..... as compensation for damages which shall be borne and paid as follows: (State by whom and by what lands respectively).

My fees and the other charges attendant upon and for making this award are (here give fees and other charges in detail) amounting in all to \$..... which shall be borne and paid as follows:

(State by whom and by what lands respectively).

WITNESS:

.....
Signature of Engineer.

FORM H.

(Section 28.)

CERTIFICATE OF ENGINEER.

To.....

Secretary of.....

I hereby certify that has furnished the material and completed the work (as the case may be) which under my award made in accordance with the provisions of *The Private Ditches Act* and dated the..... day of19.., one..... owner of thequarter (or as the case may be) of sectionin township.....in range..... west of the.....meridian in the Province of Alberta was adjudged to furnish or perform and having failed to furnish or perform the same, it was subsequently let by me to the said for the sum of \$..... and as he has now completed the furnishing and performance thereof he is entitled to be paid the said amount.

I further certify that my fees and charges for my services rendered necessary by reason of such failure are (give items) amounting to \$..... and said amount payable to the said contractor and my said fees and charges are chargeable on (describe land to be charged therewith) under the provisions of *The Private Ditches Act*.

Dated this.....day of.....19....

.....
Signature of Engineer.

No. 36

FOURTH SESSION
SECOND LEGISLATURE
3 GEORGE V
1913

BILL

An Act respecting the Construction
and Maintenance of Small Ditches
by the Owners of Lands to be
benefited.

Received and read the

First time.....

Second time.....

Third time.....

EDMONTON:
J. W. JEFFERY, Government Printer
A.D. 1913