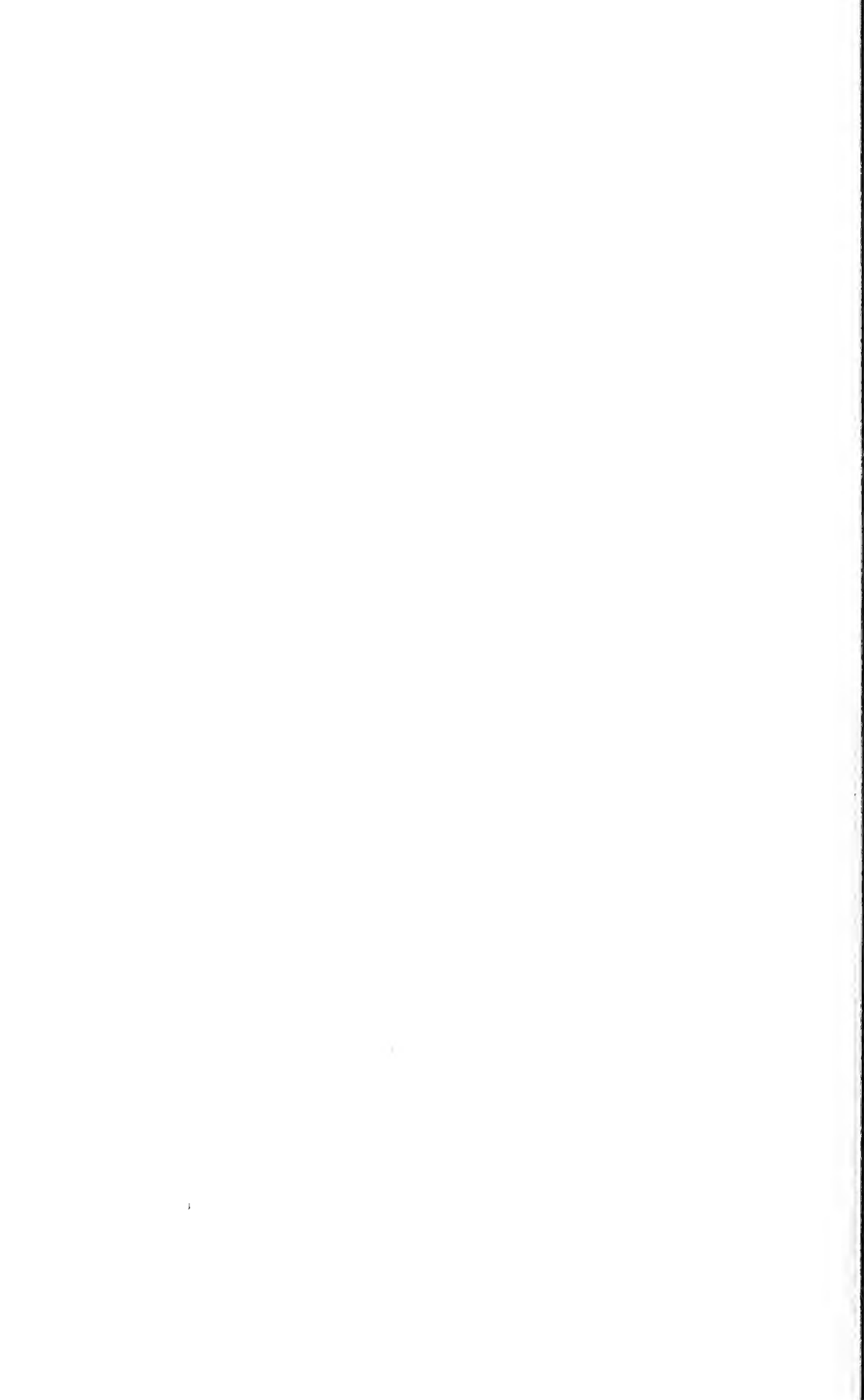


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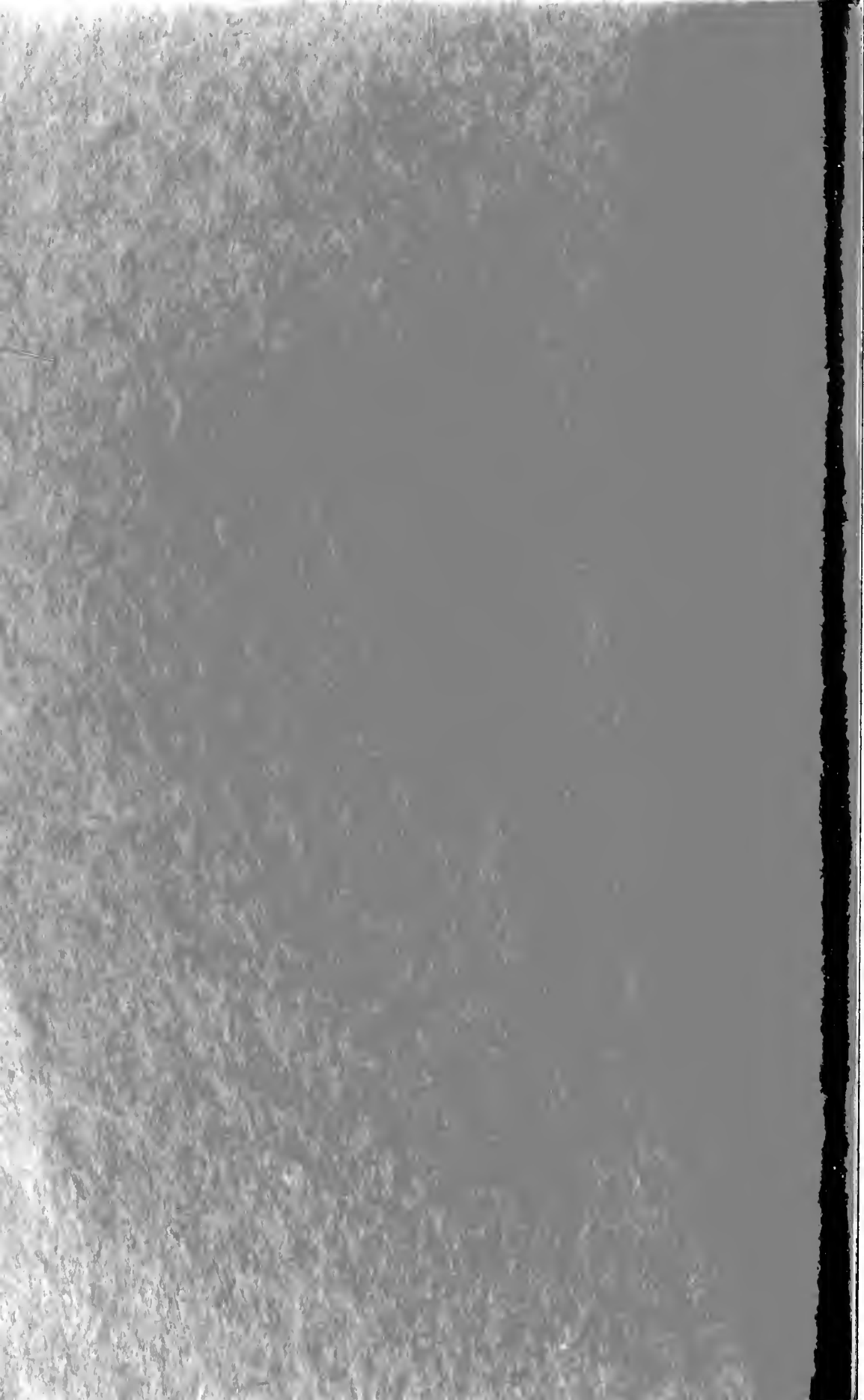
ILLINOIS FARM DRAINAGE LAW . . .

A manual
for farm owners, drainage com-
missioners, and others inter-
ested in farm drainage matters

By H. W. HANNAH

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Illinois

FARM DRAINAGE LAW

By H. W. HANNAH¹

THIS MANUAL on Illinois farm drainage law is designed chiefly for farm owners and drainage commissioners, although it is hoped that it may also be useful to many others professionally concerned with farm drainage. Its purpose is first to explain our Illinois drainage law so that farmers and drainage commissioners can understand it and its application; and second, to make clear the legal implications in drainage situations so that competent legal aid can be obtained before a situation becomes controversial.

It is not a handbook on the organization of drainage districts and the legal procedures involved in their organization. These matters are complicated and call for competent legal help.

Indeed, many students of drainage law consider Illinois laws among the most unworkable and unwieldy in the United States. We have two separate and distinct legislative acts, each of which contains provisions for several kinds of districts and for complicated and involved organizational procedures. Another difficulty is that much of the law is now found in court cases, not in the statutes themselves.

The Illinois Legislative Council, the Illinois State Bar Association, and certain other organizations have been and are currently concerned with the improvement of Illinois drainage laws. But until needed and appropriate legislation is enacted, it behooves drainage lawyers and engineers, drainage commissioners, and farm owners to but study, understand, and make the most efficient and practical application of the present law and of the decisions construing it.

¹ Professor of Agricultural Law and member of the Illinois bar.

Part I

RULES OF DRAINAGE IN ILLINOIS

LAWS OF NATURAL DRAINAGE

Basic law recognizes natural differences in level of lands. The basic principle of the law of natural drainage is that a landowner takes whatever advantages or inconveniences of drainage nature placed upon his land. What these advantages or inconveniences are depends ultimately on the level of the owner's land in relation to the land around it — is his ground higher, or lower?

The Illinois Supreme Court adopted the law of natural drainage before the Legislature enacted any laws governing drainage. (The law of natural drainage derives from the Roman written code and is used in many countries.) This Court held that there was no other rule so equitable and easy of application.¹

Using this Supreme Court decision as a basis, Illinois courts have since considered hundreds of drainage disputes. Certain interpretations and modifications of the rule have emerged from their decisions. They are discussed on pages 9-13.

The civil-law principles of natural drainage apply to all Illinois farm lands, regardless of whether they are in drainage districts. Iowa and Kentucky, like Illinois, base their drainage laws on the civil law, but Missouri, Wisconsin, and Indiana follow another legal concept known as the common-enemy rule.²

¹"As water must flow, and some rule in regard to it must be established where land is held under the artificial titles created by human law, there can clearly be no other rule at once so equitable and so easy of application as that which enforces natural laws. There is no surprise or hardship in this, for each successive owner takes whatever advantages or inconvenience nature has stamped upon his land." *Gormley v. Sanford* (1869), 52 Illinois 158, p. 162.

²According to some writers, there are two other concepts of drainage law in operation in the United States besides the civil-law concept; one is known as the "common-enemy" rule, the other as the "reasonable-use" rule. Theoretically the common-enemy rule gives a landowner an unrestricted right to deal with surface water coming to his land. But actually the courts which follow this concept have developed many limitations on his right to dispose of surface waters. The reasonable-use concept gives a landowner the right to deal with surface water, but his right depends on the degree of his need and the damage his neighbor would suffer from his ditching, tiling, or other drainage operations. The courts which follow this rule may arrive at conclusions just as unreasonable as any arrived at by courts which follow either of the other two rules.

It is perhaps accurate to say that the present soundness and usability of the drainage doctrine in a particular state depends at least as much on the insight and wisdom of key personnel on the bench and in the legal profession as on any rule which might have been adopted.

A landowner must receive surface water flowing naturally from higher ground. One of the most important principles of Illinois drainage law is that the owner of land so situated that surface water naturally flows onto it from higher ground by means of natural depressions or swales is bound to receive such water. (In legal language, the lower ground is known as the *servient tenement*, the higher ground as the *dominant tenement*.)

This rule means that the owner of a farm which is lower than an adjoining one must take the water that flows naturally to his land or arrange for its drainage. Likewise, unless a city has adopted a system of artificial drainage, the owner of a lot which is lower than an adjoining lot must receive the water coming from the higher lot. It also means that a railroad or a highway embankment must be built with enough openings to take care of water that would naturally flow across the right of way in a state of nature.

The rule is qualified in one important way: *the surface water must drain off in a natural depression or channel*. A landowner is under no duty to receive water which does not flow in a defined channel; that is, diffused water. The courts have held, however, that an owner's right to natural drainage is the same whether the water flows in a watercourse or only at certain times in a depression or channel.

A landowner may collect surface water, discharge it, and hasten its flow to lower ground. If the law had limited the right of the owner of higher-lying ground to draining it just as it had been drained in a state of nature, the law would have been of little real advantage. The cultivation and improvement of land necessarily make changes in the amount of water drained off and in the speed of its flow. The law, however, did not so limit the rights of a landowner.

In an early case the court held that in the interest of good husbandry a landowner could drain his ponds or collect surface water that would naturally be held in pools and hasten its flow by digging artificial ditches. But he could do this only if the water was discharged on lower land at the place where it would have flowed if the ponds or pools had been filled with dirt and the water forced out into natural channels of drainage. (This decision was brought about when a man who had a pond on his farm proposed to cut through the rim of the pond and let the water flow through natural channels to lower land. The owner of the lower land tried to prohibit, in legal terms *to enjoin*, the action.)

This decision means that all lands lying within a natural basin may be drained into the watercourse (whether a stream or a mere depression) which drains that basin, and that the owners of the lower lands cannot object to the flowage being thus increased. The water can be carried by artificial ditches or by tile lines but either must drain only the natural basin, and the water must enter the lower land at the

point it would have entered it in a state of nature. The courts have also held that the substitution of tile for surface drainage does not amount to an abandonment by the owner of his natural drainage rights.

In one case that reached the courts the natural course of drainage through land that drained onto the right of way of a railroad was an "oxbow loop." The water entered the farmer's land in times of rain from a rocky gorge and carried sand and debris which were deposited on his land at the end of a long meander. The landowner proposed to cut a ditch straight through the loop and discharge the water on the railroad's right of way at the same point where the loop had discharged the water. The effect of the short cut was to hasten greatly the speed of the flow against the railroad embankment and to cast sand and debris on it. The court held that the actual damage occasioned the railroad was no ground for an injunction against the owner of the higher ground, and that he had a right to eliminate the oxbow.

It seems clear then that by common law in this state owners of lower ground, including highway authorities and railroad companies as well as private property owners, are under a legal duty to receive all waters coming from higher land through natural channels. Furthermore, the owner of the higher ground has a legal right, in the interests of good husbandry, to accelerate the flow in such natural channels by tiling or by digging artificial ditches on his own land to carry off the water more quickly.

This legal right is, however, limited. The owner of higher ground cannot cut through a natural divide and divert water into the lower land that never could have reached it in a state of nature. Apparently the right to drain a natural basin onto lower land by artificial means is not qualified by the fact that the accelerated flow actually injures the owner of the lower land.

Although there appear to be no Illinois decisions considering the question, it is probable that this right to accelerate the flow by artificial ditches or tile is limited to the requirements of good husbandry. If it were done wantonly, with the purpose of injuring the owner of the lower ground, then it is possible that by analogy to the spite-wall and spite-fence cases a court of equity might enjoin the acts of the owner of the higher ground.

A landowner may drain surface waters into watercourses. The owner of higher ground can drain his land, within a natural basin, into a natural watercourse flowing through his land. As a practical matter, the owner's right to drain into a stream is not often questioned, because if a creek has ample banks, draining into it does no actual harm. But even if such drainage does actual damage to the owners of lower-lying ground, the owner of the higher ground has a legal right to drain

into the stream so long as he does not cut through a natural divide but simply hastens the flow of water from the basin into the creek which drains it. Within the meaning of this rule, overflow waters from a creek or small stream are surface waters. And the owners of lower land are bound to receive and care for such overflow water. The courts have also held that the owner of a stream bank has the right to improve it.

A landowner has no right to obstruct the flow of surface water.

The owner of lower land obviously has no right to build a dam, levee, or other artificial structure that will interfere with the drainage of higher land, according to the civil law as it is applied in Illinois.

On the other hand, the owner of higher land cannot compel the owner of lower ground to remove natural obstructions, such as shrubs, weeds, brushwood, cornstalks, or other crop residues, that may accumulate and impair natural drainage.

One of the reasons for drainage districts is that there is no way to make others remedy such a situation. Of course, owners may and many times do cooperate with one another in such matters, either informally or through mutually binding agreements.

Whether an agreement or contract altering the natural drainage on farm land is binding depends on the sufficiency of the agreement. When a farm on which artificial drains have been constructed is sold to several separate owners, the new owners acquire mutual easements.

Easements of drainage or of obstruction. When a landowner is harmed by another owner and fails to enforce his rights, the harmful practice may itself become a right, generally known as an *easement*. (An easement is any acquired right to cross or to use another's property.) For example, if an owner of higher ground fails to take action when the owner of lower land dams or obstructs the flow of surface water, the owner of the lower ground may acquire a right to maintain the dam by what is known as prescriptive, adverse, or long-continued use. The period of use recognized in Illinois is twenty years. Likewise, the owner of lower land may acquire a right to have no surface water drain on his land from higher ground when the water has been diverted from the lower ground for the prescriptive period.

By this same process the owner of higher ground may acquire the right to change the place where his surface water enters lower ground, to enter lower ground and clear out a channel, or to maintain other artificial conditions not permitted under the rules of natural drainage.

Whether an owner has acquired such a right is a mixed question of fact and of law, not easily determined. It should also be pointed out that any right to drainage acquired in such a manner may be less desirable than drainage through a natural channel. In theory the holder of an easement is strictly limited to the benefits he had while

he was acquiring the easement; whereas an owner's drainage through a natural depression or channel may be materially improved within interpretations placed by the Illinois courts on the civil-law rule.

Summary of the rules of natural drainage. 1. A landowner has the right to do certain things to improve the drainage on his land. He can: (a) widen, deepen and clean natural depressions that carry his surface water; (b) straighten out channels on his own property and accelerate the movement of surface water, so long as he does not change the natural point of entry on lower land; (c) drain ponds or standing water in the direction that they overflow; (d) tile his property to expedite the flow of water so long as he does not change the point of entry on lower land, bring in water from another watershed, or connect his tile to the tile of other owners without consent; (e) fill up ponds or low places where water may stand, and force water out into natural drainage channels; (f) expedite the flow of surface waters through natural lines of drainage by either open or closed drains, into a watercourse or stream; (g) construct grass waterways, check dams, terraces, or other soil conservation structures, so long as his drainage waters still come within the rules explained above and in the discussion of the *Statutory Enlargement of the Rules of Natural Drainage*, page 9.

2. Public highway authorities have the same rights as private owners. They may, in addition, change the natural drainage when the change is necessary in the public interest and when compensation is made for any property thus taken or damaged.

3. There are some things a landowner must not do to the lands that surround him. He must not: (a) dam or obstruct a natural channel so that the escape of surface water from higher land is retarded or so that the channel is shifted; (b) divert water to lands that do not naturally receive his drainage; (c) change the point of entry of surface water on lower land; (d) bring in water from another watershed that would not have flowed across lower land in a state of nature; (e) pollute any waters that pass from his land through the property of others — whether surface or underground waters, streams, or diffused waters; (f) connect tile with other owners' tile lines or with highway tile lines without consent; (g) dam up or impound large bodies of water which escape and cause serious damage to owners of lower lands, even though such waters may escape through natural channels; (h) accelerate the flow of water needlessly or with malicious intent to the material damage of the owner of lower land, even though the flow is accelerated through natural channels.

STATUTORY ENLARGEMENT OF RULES OF NATURAL DRAINAGE

If two farms are on the same flat level, a landowner, according to the rules of natural drainage, has no right to cast water on adjoining land or to dig a ditch through adjoining land even though both farms may be rendered useless for lack of drainage. Likewise, the prohibition against cutting through slight ridges and divides often makes cultivation of swampy land difficult.

Neither does the law of natural drainage give a landowner who has natural drainage any right to go on another's land to open up a channel to drain off his lands when the drainways have become choked or clogged or when the fall is so slight that surface waters are not drained away fast enough to allow the land to be cultivated.

Where lands are valuable for cultivation and the country depends largely on agriculture, public welfare demands that adequate systems of drainage be provided. It is the main purpose of the drainage statutes of the state to make it possible for lands to be improved for agriculture and sanitation by draining off the surface waters where the natural or common-law drainage rights are inadequate.

Two early laws enlarged an owner's right to improve his drainage beyond the point permitted by the court's interpretation of the civil-law rule. The first, a part of the Agricultural Drainage Act (1885), consists of seven sections under the general heading "Rights of Drainage." The second (1889) concerns drains constructed by mutual license or agreement. Neither act alters a landowner's rights or duties on his own land. Both laws are important, however, because they offer a means, apart from district organization, whereby a landowner can, to a limited extent, improve or maintain his drainage across the lands of others.

Rights provided by the Agricultural Drainage Act. This law does three things. *First*, it codifies the rules of natural drainage.¹ The Illinois courts have assumed that codification of the civil-law rules has not in any way altered the rules as they are interpreted and used. This codification section of the law does, however, add some certainty to a landowner's right to the use of highway drains, provided he has the consent of the highway commissioner.

Second, this law provides that an owner may extend his drains

¹The codification section reads: "Owners of land may drain the same in the general course of natural drainage, by constructing open or covered drains, discharging the same into any natural watercourse, or into any natural depression, whereby the water will be carried into some natural watercourse, or into some drain on the public highway with the consent of the commissioners thereto; and when such drainage is wholly upon the owner's land he shall not be liable in damages therefor to any person or persons or corporation."

across the land of others when such extension is necessary to perfect his drainage and when such extension meets certain conditions imposed by law. It also sets up the procedure whereby he may secure such drainage.

The procedure is predicated upon the following conditions: (a) refusal of other owners to consent; (b) the assumption that the owner seeking to extend his drainage will do so at his own expense; (c) the necessity of such an extension to obtain a proper outlet; (d) the water carried by such drain will empty into a natural watercourse or into a natural depression leading to a natural watercourse, or it will drain into a public highway; (e) the consent of the commissioners if a highway drain is to be used; (f) the extension, if constructed, will be an ample and properly made tile ditch; (g) payment of damages incurred by owners across whose property the extension is constructed; (h) the filing of a bond for not less than fifty dollars, with approved security, covering costs and damages; (i) the filing of a plat, showing the course of the proposed construction and where it will discharge.

The procedure is initiated before a justice of the peace, by summons. If the justice, or the jury if a jury is impaneled, find for the plaintiff (the owner seeking to extend his drainage) and if all conditions in the law are met, the owner can proceed to construct his drain. He must first, however, pay the judgment and costs to the justice. He may abandon the construction of the drain, even after judgment in his favor, but he must pay the costs of the trial. And if he abandons construction, he cannot commence suit for the same purpose within a year following the judgment.

Third, this law makes willful injury to such a drain punishable by fine and provides that for a third and subsequent offense the punishment is imprisonment. Willful interference with the construction of such a drain is subject to the same penalties.

Conversely, the law places on the owner who builds such a drain and upon his heirs and assigns the duty of keeping it in good repair so that it will not injure the property through which it passes. To meet this obligation, the builder or his heirs and assigns have the privilege of entering the lands of others at any time in proper season. The law provides triple damages for unnecessary damage to the servient (lower) land.

Drains constructed by mutual license or agreement made legal.

The second early law that enlarged a landowner's drainage rights made those drains constructed by mutual license, consent, or agreement legal. Since in each instance there is a question of fact as to whether the drain is one for the mutual benefit of all the lands interested in it the act itself states that it shall be deemed a drain for mutual benefit when —

1. “. . . any ditch or drain, either open or covered, has been heretofore or shall be hereafter constructed by mutual license, consent, or agreement of the owners of adjoining or adjacent land, either separately or jointly, so as to make a continuous line upon, over, or across the lands of several owners.”

2. “. . . the owner or owners of adjoining or adjacent lands shall hereafter by mutual license, consent, or agreement, be permitted to connect a drain with another already so constructed.”

3. “. . . the owner or owners of the lower lands have heretofore or shall hereafter connect a drain to a drain constructed by the owner or owners of the upper lands.”

The courts, interpreting these provisions, have added the following rules: (a) this act has no relation to or bearing on ditches authorized by the drainage acts; (b) a writing is not essential to proving consent or agreement; (c) licenses revoked before this act took effect will not be revived by it (what constitutes a revocation is not always clear); (d) the act is intended to enlarge the natural rights of drainage between adjoining landowners and to protect the drains involved; (e) highways and highway commissioners are included in the act in the same way as are landowners; (f) owners have a right to have such a mutual system maintained as it was originally established; (g) drains which come under this act create a perpetual easement on the premises involved; (h) the act applies to existing ditches and to ditches constructed in the future — providing the elements necessary to constitute mutuality, agreement, or consent are present; (i) the rules of natural drainage are not affected except insofar as the mutual drain itself enlarges or alters those rights as between the particular owners involved.

Once a mutual drain is determined to exist, two laws become applicable: (a) one party to the drain cannot legally authorize connection by an outside owner unless all parties to the drain consent; (b) none of the interested parties can close a drain or interfere with the flow of water through it without the consent of all parties.

Appropriate action can be taken to enforce both laws. To enforce the first, a bill in chancery can be maintained to compel a disconnection or the closing of the unlawful connection and damages can be collected. To enforce the second, a mandatory injunction can be sought to compel the removal of the obstruction.

Though this law is of value in preserving or securing drains for an owner, it contains no positive provisions permitting him to go on the lands of others and improve his drainage. In the absence of agreement, the alternatives which an owner in a mutual drain may have are either to institute proceedings before a justice of the peace and pay for the work himself, or petition for the organization of a user district.

(For a discussion of user districts, see pages 36-37.) It may be true, of course, that the extent of the mutual agreement includes upkeep and maintenance on the drain, or it may be that such right has accrued by prescriptive use. Only the particular facts in each case can be relied upon to determine if either of these conditions exists.

Owner's duty to clean out watercourses. In 1897 a law was enacted which provided that all landowners in Illinois must clean out annually all the brush, trees, logs, and other impediments to the flow of water in the bed of any stream, however small. The cleaning must extend from the top of one bank to the top of the opposite bank of any such stream for as far as the stream runs along or borders the land of any owner. When the stream runs between the lands of two or more owners, each owner must clean his part of it. The law further provides that streams or runs less than 15 feet wide and the rivers of the state are not included in the act and that the act is not to interfere with fencing, flood-gates, bridges, or culverts.¹ A second section of this same act provides that the assessor is to determine compliance and cause a penalty to be entered against the property if in his opinion the owner is not complying. This provision was held unconstitutional by the Illinois Supreme Court.

Drainage lawyers are uncertain as to the value of this law. At one point in the act streams "however small" are included; then further in the same section "runs less than 15 feet wide" are excluded, as are also "rivers of the state." No test is given for a determination of width, or of what constitutes a stream or run. There are no Supreme or appellate court cases interpreting this law.

Summary of statutory enlargements. The statutory enlargements of the civil-law rules of natural drainage may aid a particular landowner in four ways (these are additions to the rights the civil-law rule gives him): he may (a) extend a natural drain across the property of others when such is necessary to secure a proper outlet, but when doing this he must follow the procedure and meet the conditions outlined in the statute; (b) connect to a drain along the highway with the consent of the highway commissioners; (c) prevent owners of lower ground from interfering with the flow of water through a natural drain, or from destroying or impairing such drains; (d) invoke

¹This law reads: "All persons owning land in this state shall clean annually all brush, trees, logs, and other impediments to the flow of water in the bed of any stream, however small, and extending from the top of one bank to the top of the opposite bank of any such stream, as far as any such stream shall run or border the land of any owner, and when any stream shall run between the lands of two or more owners, each party shall clean his part of such stream: Provided that streams or runs less than 15 feet wide, and rivers of this state, shall not be included herein, and this act shall not interfere with fencing, flood-gates, bridges, culverts . . ."

the provisions of the law against an owner who does not clean out a stream in accordance with the 1897 statute.

In addition to these specific statutory enlargements of the civil-law rule, an owner may create rights by contract or by prescriptive use. But in spite of enlargement by court interpretation, statutes, and contracts between owners, and the acquisition of rights by prescriptive use, thousands of Illinois landowners would have remained comparatively helpless with regard to securing adequate drainage or flood control had not comprehensive drainage district laws been provided by the legislature. The rest of this manual deals with these laws.

Part II

ILLINOIS LAWS ON DRAINAGE DISTRICTS

Natural drainage rules do not adequately meet the needs of landowners in many parts of the state, particularly in the flat prairie areas and in river bottoms, where both drainage and flood protection are needed.

To cover the inadequacies of the natural drainage rules and give landowners a means of securing proper drainage, the legislature in 1879 passed two laws, the Levee Act and the Farm Drainage Act. These laws, still in force, provide for drainage districts based on a system of assessments which permits districts to include only those lands that are benefited. The courts hold that if a man has adequate drainage under natural-drainage rules, he is not benefited by a drainage district (except for sanitary benefits which are negligible) and his land cannot be included in a drainage district against his wish. (For a discussion of the rules of natural drainage, see Part I of this circular.)

In other words, before a drainage district can get jurisdiction over a man's land, it must appear that he has imperfect natural drainage. The mere fact that the ditches of a drainage district carry off water that originates on his land does not mean, in a legal sense, that he is benefited by the drainage district. If it appears that the water would naturally have flowed off the land, or could legally have been made to flow off it by artificial ditches, then he has adequate drainage and cannot be taxed simply because that water, after it leaves his land, finds its way to the ditches of a drainage district.

Thus a drainage district has no jurisdiction over land sought to be included in it unless the district benefits the land.

The primary purpose of the Levee Act and the Farm Drainage

Act is to provide landowners a legal entity or organization which can be used to force unwilling owners into the district and to secure adequate drainage or flood protection for the lands lying within such entity. Although the two acts are distinct, they do not apply to distinct areas or situations, and a group of interested landowners may generally choose the one under which it wishes to petition and organize. Furthermore, it may choose the kind of district it desires under either act — under the Levee Act, a regular, outlet, or mutual district; under the Farm Drainage Act, a township, union, special, user, mutual, or river district. Subdistricts may be organized under either act.

Some kinds of districts, however, are more important and usable than others. For example, the appropriate district for large-scale operations involving both drains and levees is the regular levee district, whereas the appropriate organization for a small area lying wholly within a township might well be the township or mutual district.

About half the total acreage in drainage districts in Illinois is in levee districts. The table below, taken from a survey the Illinois Tax Commission published in 1941, indicates the relative importance of the various types of districts.

	<i>Number of districts in 1937</i>	<i>Acreage</i>
Levee Act		
Levee districts.....	524	2 656 000
Outlet districts.....	2	58 000
Farm Drainage Act		
Township districts.....	497	1 082 000 ^a
User districts.....	18	
Union districts.....	327	815 000
Special districts.....	78	637 000
Mutual districts, both acts.....	95	206 000
Total.....	1 541	5 454 000

(^a Includes acreage in user districts.)

From 1925 until the time the Illinois Tax Commission survey was made, only 468, or slightly more than 30 percent, of these districts had been active. There are no data on the organization of river districts under the Farm Drainage Act.

As a result of court interpretation, important principles have been established which influence the organization and operation of all drainage districts. Those principles which have resulted from judicial consideration of the constitutional provision¹ on drainage are listed below

¹The constitution of 1870 contained a provision authorizing the General Assembly to pass laws permitting landowners or occupants to construct drains and ditches, for agricultural and sanitary purposes, across the lands of others.

and must be kept in mind throughout succeeding sections dealing with the details of organization and operation.

1. Assessments can be levied only against land which is benefited.
2. Assessments on land cannot exceed the benefits which the land will receive.
3. Drainage districts are public corporations charged with specific governmental functions and, if necessary, may acquire rights in land by instituting eminent domain proceedings and paying just compensation to the owner.
4. Assessments are not limited to land alone but may be levied against improvements, providing there are benefits.
5. "Benefits," or the estimated value of the proposed drainage works to a particular property, are not limited to "agricultural or sanitary" benefits, but may include other kinds, such as those occurring to a railroad or manufacturing concern. Therefore assessments may be levied against such property.
6. A landowner is entitled to a hearing on the question of benefits before he can be compelled to pay drainage assessments.
7. Drainage districts are dependent solely upon statute, and the requirements of the acts must be fulfilled to make their organization legal.
8. The Levee Act and the Farm Drainage Act are separate and distinct laws and have no relation to each other.

THE LEVEE ACT

Organization of Regular Districts

Steps from initial action to court's finding for petitioners. 1. The adult landowners in the proposed district must initiate organization by petition. The petition must be filed in the county court of the county in which most of the proposed district lies. It must be signed

In an early decision the Illinois Supreme Court held that the constitutional provision on drainage did not authorize special assessments. In 1878 this provision of the constitution was amended (the first amendment) to provide that districts could levy special assessments on property benefited through the exercise of its power to ". . . construct and maintain levees, drains and ditches, and to keep in repair all drains, ditches and levees heretofore constructed under the laws of this state. . . ." Thus districts were able to finance their operations. Also, it should be noted that the amendment permits individuals as well as districts to extend their drains across the lands of others.

In 1879, the year following the adoption of the constitutional amendment, the General Assembly approved the Levee Act and the Farm Drainage Act, and provided that districts could be organized in accordance with their provisions.

by a *majority* of the landowners who own *one-third* of the land in the proposed district, or by *one-third* of the landowners who own a *majority* of the land in the proposed district.

A smaller number of landowners may also petition for organization. The petition must be signed by at least twenty-five percent of the landowners. It must be filed with the county board of the county in which most of the proposed district lies. If the county board considers such organization advisable, it then petitions the county court.

If the cost of proposed work will not exceed \$2,000, the petitioners may, if they wish, file the petition with a justice of the peace who will then act in place of the county court.

Any petition must include: (a) the name of the proposed district; (b) a statement showing the necessity of the district; (c) a description of the proposed starting points, routes, and termini of the work; (d) a general description of the lands that would be affected and the names of the owners; (e) a general description of works already in existence when the objective of the petitioners is repair and maintenance; and (f) a request for the organization of the district and appointment of commissioners.

By court ruling, owners may sign the petition at any time prior to the time the court takes action on the petition. But after the court's action, a petitioner may withdraw his name from the petition only if a majority of the other petitioners consent or when he can show he was fraudulently induced to sign it.

Petitions must be carefully prepared. Failure to state correctly and logically what is needed, the omission of material requirements, the inclusion of territory already in another district, and other irregularities will render a petition ineffective. Legal assistance in its preparation is indispensable.

2. The county clerk must address notice of the filing of the petition to all persons interested. The notice must be given at least three weeks prior to a designated return day; on that day the petitioners will ask for a hearing. The law requires the county clerk to give such notices by posting them on the door of the courthouse in all counties involved and in at least ten of the most public places in the district. He must also publish a copy of the notice once a week for three successive weeks in one or more newspapers published in the county from which most of the district will be formed.

The clerk is also required, within three days after the first publication, to mail notices to nonresident landowners (as listed in an affidavit accompanying the petition). Nonresident means residing outside the county or counties included. The notice must: (a) state in what court the petition is filed; (b) give the starting points, route, termini, and general description of the work (a petition is not invalidated, however, by not containing descriptions of drains and ditches); (c) state

the boundaries and name of the proposed district; and (d) give the term return day on which the petitioners request a hearing. Resident landowners are not entitled to a notice addressed to them personally.

3. After a petition is filed and notice of a hearing published, the county court hears the petition. The court may adjourn the hearing from time to time and permit amendment. During this time any party affected may appear and contest the necessity or utility of all or any part of the proposed work. Both contestants and petitioners may offer any competent evidence in this regard.

4. After petition, notice, and hearing, the court determines: (a) that the petition either has or has not been signed by the requisite number of persons owning the required amount of land; and (b) that the proposed works either are or are not necessary or useful. If the court finds against either (a) or (b), the petition is dismissed at the cost of the petitioners.

Steps from appointment of initial commissioners to the court's order confirming organization. 1. The court appoints three commissioners after it finds for the petitioners. Before they enter upon their duties, the commissioners must subscribe to and file an oath. They must give bond payable to the state before they collect or receive money.

2. The commissioners must organize for the conduct of business. One must be elected chairman and one may be elected secretary. A majority of the commissioners constitutes a quorum. Their meetings must be held in the county or counties in which the district is located. When actually engaged in district business, they are entitled to five dollars a day and necessary travel expenses.

3. The commissioners must examine the land and determine the following things: (a) whether the proposed project is feasible, and if not, what would be feasible; (b) the probable cost; (c) the probable annual cost of upkeep; (d) what lands will be injured and the probable aggregate amount of damage; (e) what lands will be benefited and whether the aggregate amount of benefits will equal or exceed the cost of construction; and (f) whether the proposed district embraces all lands that will be damaged or benefited; if it does not, they must report additional lands that will be affected. The commissioners have the right to employ an engineer to go upon lands in the proposed district and make examinations, plans, plats, and surveys.

4. The commissioners must prepare a report for the court on the things listed in Step 3. They must make this report on a date the court set at the time it appointed them. Their report must show: (a) whether the proposed levees or ditches will be sufficient to protect the land permanently from overflow or to drain it; (b) the probable annual expense; (c) what lands will be benefited and the aggregate amount of such benefits; (d) whether aggregate benefits

will equal or exceed annual costs; (e) whether the proposed district embraces all the lands benefited, and if not, what additional lands will be benefited.

If the commissioners find that the benefits are greater than the costs, expenses, and damages, they must have surveys and specifications made as required by law. They must report these to the court as well as the starting point, route, and ends of the proposed construction. They are not confined to the plan in the petition but may alter it to secure maximum benefits and minimum damages. And they may extend or contract the proposed boundaries, so long as the petition still fulfills the original requirements as to number of signers and acreage. The court may continue hearings for the period permitted by law.

If the commissioners find that the costs, expenses, and damages are more than equal to the benefits, they must so report to the court, and the court must dismiss the proceedings at the cost of the petitioners.

5. The court sets and publishes a date for a hearing after the commissioners' report is filed. At the hearing all persons may appear and contest the confirmation of the report, show that it should be modified, or that additional work should be undertaken. Any competent evidence may be introduced to support the contentions which are made.

6. The court must do one of five things after the hearing: (a) confirm the report and enter the prescribed order declaring the district organized; (b) modify the report and confirm it; (c) order the commissioners to review and correct the report before it is confirmed; (d) refer the report for amendment and adjourn the hearing; or (e) find that the district should not be organized.

Steps initial commissioners or their successors must take to complete organization. 1. The commissioners must, by voluntary agreement, acquire the necessary rights of way and releases of damages as soon as the order creating the district is signed. If certain owners will not agree, the law provides that after payment or tender of the amount allowed in eminent domain proceedings the commissioners may go upon the lands for the purpose of constructing and maintaining the proposed work. Any person who willfully prevents or prohibits such entry may be fined not more than \$25 a day for each day's hindrance.

When additional ditches or works are necessary, the commissioners again proceed as far as they can by voluntary agreement. If the owners and commissioners cannot agree, the value of the land and the damages may be ascertained and paid in the manner prescribed by law under eminent domain procedure.

2. The commissioners must make out an assessment roll against each tract of land in accordance with benefits assessed against the tract. The roll must contain, in proper columns, the names of the owners, a description of the premises, the acres in each tract, and the benefits and damages assessed against each tract.

3. The assessment roll made by the commissioners is filed with the county clerk and a hearing date set and published. A jury is impaneled and on the day of the hearing objections may be made by any landowner. The jury then examines the land of anyone who asks for examination and ascertains benefits and damages. The jury then reaches a verdict and transmits it to the county court.

Landowners may appeal the assessment to the county court within ten days after the list is deposited with the clerk. Anyone who appeals must give bond. The taking of an appeal, however, neither prevents the collection of assessments from those who did not appeal, nor delays the progress of the work. An improper notification to any party does not affect the validity of the tax or special assessment against others, but only against the land of the persons involved.

A new assessment may be made when the original is annulled for any irregularity in procedure. The fact that an assessment is void as to one or more tracts of land or that tracts have been omitted through error does not void the assessment on other tracts. Provision is made in the law for validating such void or omitted assessments.

When the works of a drainage district benefit the road or railroad of any corporation, or the streets and alleys of any municipal corporation, such corporations must be included in the assessment roll.

When an adequate ditch or drain has been constructed and the benefited land taxed, the same land cannot again be assessed for the improvement of the lands in any drainage district lying above it.

The county court is vested with authority to extend the time of paying assessments, to divide assessments into more or fewer installments than was originally provided, and to refund bonds issued by the district. By following the procedure established by law, a landowner may petition to be relieved of an assessment.

Subject to the approval of the court, the commissioners may convey real estate belonging to the district to secure a loan or may negotiate a loan with the federal government or any of its agencies.

4. Commissioners must publish notice of assessment and may order payment in installments. They may designate the amount of the installments and the dates for payment. They must publish notice of the assessment for three weeks.

If the commissioners make no order to pay in installments, the whole amount becomes due thirty days after confirmation of the assessment. Upon the filing of a certified copy of the tax list in the office of the county recorder, the assessment becomes a lien upon the land.

Such taxes draw interest which may be collected and enforced as part of the tax. If the tax is payable in installments, interest may be at the rate of 6 percent payable annually.

A landowner who pays one installment on a tract cannot object to paying the remaining installments on the same tract. Also, after an assessment has been confirmed, the organization or jurisdiction of the district cannot be attacked. If he performs work for the district, a landowner may pay his assessment in labor.

5. The commissioners must appoint a treasurer after the assessment roll has been confirmed and before any collections are made. The treasurer has the following duties: (a) to keep proper books of account for all money received and disbursed; (b) to pay out money only on order of a majority of the commissioners; (c) to preserve a file of all orders for the payment of money; (d) to pay bonds or interest coupons which are lawful obligations of the district when they are due without an order from the commissioners; and (e) to turn over all books and properties of the office to his successor.

The treasurer may not be appointed from among the commissioners. He is required to post a bond approved by the court, serves for a term of two years, receives as compensation a sum fixed by the commissioners before his appointment, and may be removed from office by the court upon petition of a majority of the commissioners or for good cause shown.

The treasurer may ask the commissioners to pick a bank or banks or other depository for district funds. No bank can qualify unless it furnishes the commissioners with its last two sworn statements of assets and liabilities and with all statements of resources and liabilities which it is required to furnish to the auditor of public accounts or to the comptroller of currency.

6. The commissioners or the treasurer must make out a list of delinquent assessments and turn it over to the county collector. Assessments, installments, or annual benefits not paid by the date specified in the commissioners' published notice become delinquent. A list of them must be in the hands of the county collector not later than September 8 following the time they become delinquent. The collector transfers the list to his tax books.

If payment is not made on or before the annual sale of lands for nonpayment of taxes, the commissioners can petition the circuit court for an order to sell the property. This remedy for the collection of assessments is in addition to those provided under the general revenue laws for the collection of delinquent assessments or taxes. The law provides for the appointment of a receiver when, after a foreclosure sale, assessments are still delinquent. Also, the commissioners, acting for the district, may purchase land foreclosed upon for drainage district assessments.

It is further provided that when an annual benefit or maintenance tax is delinquent for more than six months the commissioners may apply to any court of competent jurisdiction for the appointment of one of the commissioners as receiver of the rents and income until the tax, penalties, interests, costs, and expenses of the receivership are satisfied. The commissioner or treasurer is authorized to receive delinquent payments and as evidence of payment to present the county collector with a memorandum on or before the day of the sale. When a receiver is in possession of real property or is charged with the collection of its income and drainage assessments are delinquent on the property, the commissioners may apply to a court of competent jurisdiction for appointment of one of the commissioners as a receiver for the district.

Other things that initial commissioners or their successors may do.

1. They may levy assessments for repair, maintenance, or completion of district work. If an assessment for keeping the works of a drainage district in repair is not included in the original petition or if the amount assessed becomes insufficient, the commissioners may levy an assessment for the purpose or increase the original assessment. (This assessment is known as the assessment of annual benefits.) To levy this assessment, the commissioners follow the same procedure as that for levying additional assessments. The sum assessed by the commissioners, however, must not in any one year exceed 45 cents for each acre in the district. But the commissioners may set aside a portion of the annual benefits and accumulate an emergency fund equal to 20 percent of the original cost of construction. The commissioners may then levy up to 15 cents more an acre to maintain and build up this fund.

The commissioners must report to the county court before July 1; their report must include an estimate of the money needed by the district for the coming year. The court then fixes the amount to be paid. This assessment (annual benefit) is payable on September 1. After the court confirms the commissioners' report, the assessment becomes a lien on the land. The amount of annual benefits to be collected under a court order, however, cannot exceed in any year: 45 cents an acre on agricultural lands; \$3 an acre on industrial, manufacturing, and public utility lands; \$1 a lot on improved lots, and 25 cents a lot on vacant or unimproved lots and land platted as city, town, or village property. These limits do not apply to a district having a pumping plant.

When the works of a district are endangered or need emergency repairs and when sufficient annual benefits are not available, the commissioners may borrow up to two-thirds of the amount of the annual benefits to be collected the following September.

The funds from an annual benefits assessment, made on order from the court, may be used for the following purposes: (a) repair

and maintenance; (b) incidental and necessary expenses for the year; (c) completion of ditches, drains, or levees embraced in the proceedings; (d) raising, strengthening, or protecting of completed ditches, drains, or levees; and (e) construction of additional ditches, drains, or levees when necessary to protect lands embraced in the district.

2. Commissioners may petition the court to change the plan of work. When the commissioners feel that it would be in the best interest of the district to change the "method of construction of any part of the proposed work or the route of any proposed ditch — or levee — or the size, capacity, or plan of any such proposed work," they may petition the county court to allow the change. The petition must state the nature of the proposed change and give an estimate of the added cost or the decreased expense. The court then gives notice and sets a hearing date. Following the hearing, the court finds either for or against the proposed changes. If general funds of the district are not sufficient to carry out the changes, a roll of additional assessments may be returned.

Important Rules Laid Down by Courts

Many controversies have arisen over the organization of drainage districts. Illinois courts have, as a result, developed certain rules. Among those that apply to a levee district are these.

1. Signatures may be withdrawn or added to a petition at any time prior to the time the court takes action on the petition. After that time, however, a signature may be withdrawn only with the consent of the majority of the other petitioners, or upon a showing that it was secured through fraud or misrepresentation.

2. The preliminary order of the county court must contain a definite statement of the findings that the court made on the questions which by law it must consider.

3. An order is ineffective if the court does not acquire jurisdiction by following the statutory requirements in detail, or if material errors or omissions in the petition remain uncorrected.

4. Neither a levee nor a farm drainage district may be organized to correspond with the boundaries of a township or other political unit unless such a unit constitutes a natural watershed and contains lands that can be efficiently connected by a continuous line of ditches or drains. Such a situation is unlikely.

Organization of Outlet and Mutual Districts

Organization of outlet districts follows usual procedure for regular levee districts. Outlet districts must benefit land already in two or more drainage districts as well as land not in such districts. Their

purpose is to deepen and widen the natural outlets for collected waters, not to construct original drainage or levee works.

Organization of mutual drainage districts. When all the landowners in an area are willing to sign a mutual agreement, and when this agreement has been acknowledged by a notary public or any one authorized by law to administer oaths and has been recorded in the drainage record, a district is formed. The original commissioners may be appointed by the county judge upon the request of the owners or they may be designated by agreement. Subsequent commissioners are appointed by the county court, as in regular levee districts.

The mutual agreement may cover these points or it may cover fewer or additional ones: location and character of work to be done, adjustment of damage, amount of assessment to be levied,¹ assessment against each tract, and how the work shall be done.

When no contract for construction is awarded by a mutual district or when the county court feels it was organized to prevent the inclusion of its lands in a district by petition, the lands in the mutual district may be included in a district by petition.

Appointment of Commissioners

The affairs of a drainage district are conducted by drainage commissioners. The success with which any district operates is dependent, therefore, in large part on the ability and interest of the commissioners and upon their willingness to become well informed about their jobs.

All commissioners in levee districts are appointed by the county judge. On the first Monday in September they are appointed for three-year terms, their terms being staggered so that one of the three is named annually.

The law provides, however, that the court shall appoint only such persons as are petitioned for by the landowners owning more than one-half the land in the district. But if such a petition is not filed on or before September 1, the judge must use his own discretion and appoint some suitable person within ten days.

After the original construction work in a levee district is completed, the judge may, upon petition by a majority of the landowners, dispense with two commissioners and appoint only one for a three-year term. The court will again appoint three commissioners when it appears that additional work is needed, provided one or more landowners petition for such appointment.

¹ A prominent drainage lawyer, commenting on this item, remarked, "I know of several districts organized about forty years ago by mutual agreement where assessments were limited to definite amounts of money, adequate then but completely inadequate today, with the result that those lands cannot now be adequately drained without expensive dissolution or reorganization proceedings."

In mutual levee districts the petitioners may select the first three commissioners to be approved by the county judge. After the appointment of these first commissioners, the procedure is the same as in other levee districts. In outlet districts the procedure is the same as in other districts.

In districts organized by petition to the county board, one of the three commissioners must be the county superintendent of highways. When the district includes land in more than one county, the superintendent in the county having the largest area in the district must be the one appointed. In such districts, not more than two of the commissioners can be from one county.

Powers and Duties of Commissioners

Generally speaking, commissioners have the power and authority to do and the duty of doing all things necessary for the accomplishment of the purposes of the law. Their powers and duties, however, are specifically prescribed by law and are strictly construed. These powers and duties are: (a) to go upon the land, employ necessary assistance, and adopt a plan or system of drainage; (b) to obtain the necessary right of way by agreement, or if necessary, by eminent domain proceedings; (c) in the corporate name of the district, to enter into contracts, sue and be sued, plead and be impleaded, and do "all such acts and things as may be necessary for the accomplishment of the purposes of this act"; (d) to compromise suits and controversies and employ necessary agents and attorneys; (e) to carry out specific provisions of the law relative to making various types of assessments, employing a treasurer, employing other assistance, annexing lands, borrowing funds, enforcing payment of assessments, consolidating and dissolving districts; (f) to let contracts for "the surveying, laying, constructing, repairing, altering, enlarging, cleaning, protecting, and maintaining of any drain, ditch, levee or other work"; to let contracts by bid if the work to be done is the construction of the principal work and the cost is more than \$500; (g) to borrow money up to 90 percent of assessments unpaid at the time, for the payment of any authorized debts or construction; (h) to widen, straighten, deepen, or enlarge any ditch or watercourse, to remove driftwood and rubbish whether the ditch is in, outside of, or below the district; (i) to cause railroad companies to construct, rebuild, or enlarge bridges or culverts when necessary; (j) to make annual or more frequent reports as required by the county court; (k) to conduct meetings in the county or counties in which the district is located (commissioners are entitled to \$5 a day and necessary travel expense); (l) to hold meetings at least on the first Tuesday in March, May, July, and September of each year, and oftener if necessary; (m) to provide suitable books for

the keeping of the assessment records and drainage record; (n) to sell or lease any land owned by the district; and (o) to own and operate a dredge boat.

The court may, for good cause, remove any commissioner appointed by it and may fill all vacancies. Also, the law provides for a penalty and removal from office of a commissioner who refuses or neglects to discharge the duties imposed on him by law.

Changing Farm Drainage Districts to Levee Districts

One-fifth of the adult landowners in any farm drainage district may petition to organize the district as a levee district. The petition is directed to the town clerk in drainage districts under township organization and to the drainage commissioners in other districts. The clerk or commissioners then name an election day. They must choose the day in accordance with provisions regarding notice under the Levee Act and carry out all such provisions. At the election, landowners vote either for or against organization under the Act.

If a majority of the voters favor the change, a certified copy of the result is sent by the canvassing official (either the county clerk or justice of the peace) to the officer having custody of the records of the district. It is his duty then to file and record this certification in the drainage district records, and from that time the district is regarded as being under the Levee Act.

Annexing and Detaching Lands From Districts

Annexing land. Aside from land added to one district by consolidation of two or more districts, land can be added to a district in one of three ways: (a) a landowner may voluntarily connect with a district's drains; his action is deemed an application for annexation and the commissioners may then take action to have his land added to the district and subject his land to assessment; (b) the commissioners may bring land in by entering a complaint and getting a hearing before the county court or before a justice of the peace; and (c) by the same procedure as outlined for the organization of a district, the owners in an area may petition for annexation.

Any district which has as its objective the protecting of lands from overflow and which constructs levees or pumping plants may include any lands benefited. Part or all of such lands may be in other districts and still be included if the districts they are in do not have levees or pumping plants.

Detaching land. Land may be detached from a district when such lands are contiguous to the district and "have never been, are not and cannot be benefited by the system of drainage carried on." The steps in making the disconnection are: (a) the commissioners petition the

county court (the petition must describe the land, state that it is not benefited and that it would be in the best interest of the district or of the owner that the land be disconnected; also a map and a certified list of nonresident landowners must be filed with the petition); (b) the clerk of the court gives notice of a hearing; (c) the court holds the hearing; (d) the court finds for or against the petition for disconnection; and (e) if the court finds for disconnection, it enters an order and a decree of disconnection.

Consolidation of Districts

Any two or more drainage districts, organized under either the Levee Act or the Farm Drainage Act, may consolidate and organize as a single district under the Levee Act. The following steps are required: (a) a petition to the clerk of the county in which the majority of the land is situated, signed by one-tenth of the landowners who own one-fifth of the land in the proposed consolidated area (the petition must contain certain statements required by the law); (b) the clerk must give notice of a hearing; (c) the court must hold a hearing; (d) the court issues an order dissolving the former districts and consolidating them into a single district.

Before the court issues the above order, however, it must find that: (a) the petition is properly signed; (b) the number of landowners favoring consolidation own more than one-half the acreage in the proposed consolidated district; (c) that the districts are contiguous; and (d) that the consolidation will be beneficial to the owners of a majority of the land.

The court appoints three commissioners for the consolidated district. Prior obligations or indebtedness of a former district must be paid from its funds or from assessments made in the debtor district.

Abandoning and Dissolving Districts

Abandoning districts. Before a contract for the construction of drainage works is made, all or any portion of the proposed works may be abandoned upon petition of a majority of the adult landowners who own one-third of the area. The county court conducts a hearing, which may be continued if necessary, and determines if any portion of the work should be abandoned. In its order the court provides for any abatement of assessments which may result from the abandonment or for refunds.

In levee districts organized since 1927, the whole district may be abolished through this same procedure, provided that the majority of landowners who sign the petition own more than one-half the land and are assessed for one-half the cost of the proposed work.

Dissolving districts. Any kind of district may be dissolved at any time by order of the county court, under the following conditions: (a) at least four-fifths of the adult landowners who own not less than three-fourths of the area must petition the court; (b) the clerk of the court must give notice of a hearing and the court hold one; (c) the district must be free from debt; and (d) the costs of dissolving the district must be advanced.

Any real or personal property belonging to the dissolved district must be sold by the master in chancery on order from the county court. Proceeds after costs are paid go to the county treasurer to be applied against any indebtedness of the dissolved district. This last provision presents a question of legal interpretation since a district cannot be legally dissolved while it has any indebtedness.

Commissioners' Duty to Keep Drainage Records

The commissioners are required to keep a book known as the Drainage Record. One of the commissioners must act as secretary and make entries in the record. It must be open for public inspection by those interested and must contain among other entries the following: (a) a brief memoranda of all transactions concerning the district; (b) a record of the issuance of bonds, of contracts that have been let, of orders on the treasurer, materials and tools purchased, of warrants to the treasurer for the service of commissioners, and of sums paid for work done.

Owners' and Districts' Rights and Duties Concerning Ditches and Drains

As a result of statutes, decisions, and the application of common-law rules, certain principles can be stated concerning an owner's and a district's rights and duties with respect to ditches and drains.

An owner has the right to use the water in a ditch, fish or trap in it, take ice from it, cross it, and move his implements along its banks so long as he does not impair the functioning of the ditch or break down its banks.

A district has the right: (a) to enjoin (prohibit or restrain by court order) pollution of a ditch; (b) to subject the land of anyone who connects his drains to those of the district to the jurisdiction of the district; (c) to have any person fined who wrongfully or purposefully "fills up, cuts, injures, destroys or in any manner impairs the usefulness of any drain." (If the injury is to a levee and causes flooding, the person shall be deemed guilty of a felony, and besides being fined may be imprisoned for a term of one to five years. The commissioners can also recover damages to their work from him.)

Illinois courts have decided that a district is *not* required to fence

its ditches or rights of way. It is also not required to construct farm bridges¹ across its ditches, but the cost of a bridge may be considered in determining damages to particular property.

Other Legal Provisions Affecting Levee Districts

Drains across railroads. Railroad companies are by law required to provide enough culverts or bridges in their embankments to permit a natural flow of water. If after notice by a district, a company neglects or refuses to make the necessary construction, it becomes liable to the district and is subject to a \$25 daily penalty for each day of neglect.

The drainage commissioners have the authority to remove the bridges or culverts of a railroad, road, or municipal corporation when necessary. The cost of replacement must be borne by the corporation. This latter provision of the law has been held unconstitutional, however, with respect to municipal corporations (cities, villages, townships, and others).

Proceedings before a justice of the peace. When the cost of proposed works does not exceed \$2,000, the proceedings for the organization of a levee district may be held before a justice of the peace instead of before the county court.

Liberal construction of the Levee Act. A provision in the Levee Act states that the act shall be "liberally construed to promote the ditching, drainage, and reclamation of wet or overflowed lands." The collection of assessments shall not be defeated because of any "omission, imperfection, or defect in the organization." It is further provided that "this act shall not be construed to repeal or interfere with any other law on the subject of drainage."

The Illinois courts have held that the section of the Levee Act providing for liberal construction can apply only if the court has jurisdiction. If, for example, there are defects in the petition or insufficient notice has been given, the court might not acquire jurisdiction and then this provision could have no effect.

THE FARM DRAINAGE ACT

Organization of One-Town, Union, and Special Districts

Steps in organizing one-town districts. 1. Action is initiated by a petition that must be signed by a majority of the landowners who own more than one-third of the land in the proposed district, or by one-third of the landowners who own a majority of the land. The petition

¹This also applies to farm drainage districts organized since June 28, 1919.

must be addressed to the drainage commissioner, who presents it to the town clerk. The Farm Drainage Act makes the commissioners of highways in counties under township organization the initial commissioners for one-town and union districts, and the town clerk the clerk of such districts.

The petition must: (a) set forth the proposed boundaries or describe the tracts of land involved; (b) state that the lands require a combined system of drainage or protection from wash and overflow; (c) contain a request that the district be organized to accomplish on the lands mentioned, all or certain of the purposes specified by law, through special assessments on the property benefited; (d) give the names and addresses of landowners, so far as known.

2. Within five days after the petition is filed in his office, the town clerk must: (a) give the highway commissioner written notice, and (b) post written or printed notices in at least three public places in or near the proposed district, stating that a meeting of the commissioner will be held at a certain time and place for the purpose of organizing the district. The time is prescribed by the commissioner; it must not be less than 8 days or more than 15 days from the date of the notice.

3. At the hearing the commissioner must: (a) ascertain if the petition is signed by the requisite number of owners; (b) accept the signature of other owners who desire to sign the petition; (c) hear persons, other than petition signers, who wish to controvert material statements in the petition; (d) administer oaths, examine witnesses produced, decide controversial questions, and file written findings; (e) dismiss the petition if it is not signed as required by law; (f) adjourn for three-day intervals to give the petitioners time to get additional signatures or for other necessary reasons.

4. If the commissioner finds for the petitioners, he must: (a) adjourn the meeting to a time not less than eight or more than fifteen days hence and publicly announce such date; (b) go upon the lands and make a personal examination; (c) if he feels that it is necessary, employ a competent civil engineer to make a survey and estimate.

5. At the adjourned meeting, the commissioner shall (a) examine the engineer's report if there is one; (b) enlarge or contract the boundaries described in the petition if necessary; (c) permit additional signatures on the petition; (d) enter a finding that the requisite number of landowners have signed; (e) adjourn the meeting, at not less than five-day intervals, for a total of not more than fifteen days for the purpose of making additional examinations and findings; (f) if it is his conclusion that the lands will be benefited and if the evidence indicates that costs will not exceed benefits, record his finding; (g) enter an order organizing the district if the finding was favorable; or enter an order organizing the district even though the finding was

negative if two-thirds of the owners who own half the land desire the district and leave their names on the petition; (h) have a map made and filed with other papers, showing the boundaries of the district.

Special provisions are made for handling the organization of districts that involve only two landowners. They are: (a) acreage of land is not a condition to organization; (b) the town clerk notifies each party concerned; (c) the commissioner holds his first meeting on or near the lands in question, views the land, hears statements from the parties on the merits of the organization and adjourns for a total period of not more than ten days to employ an engineer or for other good cause; if the commissioner decides for organization, he then fixes the boundaries to embrace the land of the two parties who will be benefited.

Organizing union districts. The steps necessary in organizing a union, or two-town, district are the same as those for a one-town district, with the three following exceptions:

1. The petition is filed with the clerk of the township in which most of the proposed district lies.
2. The drainage commissioner in each township is a commissioner for organization.
3. The two townships need not lie in the same county.

The Illinois courts have held that if the land included lies in more than two townships, the purported union district is not a legal organization.

Organizing special districts. A special district must be organized when lands lie in three or more towns or in a county not under township organization, or when they lie in two counties, one under township organization and one not. The steps in organizing such a district resemble those prescribed for levee districts:

1. The petition must contain the same information and be prepared in the same way as the petition for one-town or union districts. But it must be filed with the county court and must be accompanied by a bond securing the payment of procedural costs if the district is not established. The bond must be signed by three responsible persons.

2. The clerk of the county court must: (a) post notices in at least five public places in the townships involved; (b) publish notices for three successive weeks in some weekly newspaper; the posting of notices and first publication must be at least twenty days prior to the hearing; (c) mail a notice to each landowner in the proposed district whose name is not signed on the petition. This notice must contain a copy of the petition and must state the return day of court when the petition and interested parties will be heard.

3. The court must examine the petition and make a finding rela-

tive to its sufficiency. Other duties and powers of the court at the hearing are: (a) to permit additional signatures on the petition; (b) to permit landowners whose names are not on the petition to produce witnesses and controvert any material statement in the petition; (c) to continue the hearing from time to time until all matters are heard and determined.

4. If the court finds against the petitioners, an order is entered to that effect. If it finds for them, it enters an order and appoints three drainage commissioners. Following an examination and report by the commissioners, the court holds a hearing on a date set at the time the commissioners were appointed. If it appears to the court that the lands will be benefited in excess of costs, an order is entered organizing the district.

Election of Commissioners

Commissioners in all farm drainage districts except small special districts are elected. In one- or two-town (union) districts, the township highway commissioner is by law the drainage commissioner until three commissioners are duly elected and qualify for office. After the district is organized, the commissioners are elected at an election held on the second Saturday in March — one commissioner to hold office for three years, one for two, and one for one year. After this first election, elections are held on the second Saturday in March to elect one commissioner for a three-year term. Adult owners of land in the district may vote, and any district landowner residing in the county is eligible to be commissioner.

In special districts containing fifteen or more landowners, the county court appoints three commissioners to serve initially. As soon as the district is organized, the county clerk posts notices and calls an election for the selection of three drainage commissioners. They serve for terms of three years, two years, and one year as determined by lot. An election for one commissioner is then held each year at the annual meeting on the third Tuesday in November. In special districts having fewer than fifteen landowners, the court appoints three commissioners for terms of three years, two years, and one year. The court determines by lot the term of each appointee. Thereafter one commissioner is appointed by the court on the first Monday of December.

In one- and two-town districts vacancies are filled at a special election called by the remaining commissioners. In special districts vacancies are filled by appointment made by the remaining commissioner or commissioners.

In mutual districts the first three commissioners may be designated in the agreement. Thereafter they are elected as in special districts.

In river and user districts commissioners are elected as in one-town

and union districts or as in special districts, depending upon how the district is constituted. For example, a river or user district in one or two towns would follow the procedure set up for one- and two-town districts; a river or user district in three or more towns would follow the procedure set up for special districts.

Powers and Duties of Commissioners

All commissioners must take an oath of office and at their first meeting organize for the conduct of business.

Commissioners must formulate a plan of drainage. As soon as a district is organized, they must examine the land and plan a drainage system. The law requires: (a) that the system contain main outlets of ample capacity; (b) that preference be given tile drains when they are suitable (according to court decisions, the commissioners make this determination); (c) that drainage ditches follow boundary lines, parallels, or right angles as closely as possible; (d) that a competent engineer be employed unless the district is small and the plans are easy to determine; (e) that maps and papers showing the final determination be filed in the clerk's office and recorded in the drainage record.

Commissioners must acquire rights of way. They must get these rights of way so far as possible through written releases from landowners. The releases are then filed with the town clerk and recorded in the drainage record. When a landowner will not voluntarily grant a right of way, the commissioners must file a statement with a justice of the peace requesting that a jury be selected and the damages assessed. If the commissioners are compelled to pay damages in this way, then they must allow damages equitably to all the owners who voluntarily released their rights of way without adequate compensation.

Commissioners must classify the land for assessment. They must classify the land in 40-acre tracts, more or less. Then they determine the relative benefits for each tract, basing the benefits on a one-hundred-percent benefit to those tracts that receive the maximum benefit. This classification, once established, becomes the basis for all future levies. The commissioners classify benefits to railroads and highways on a fractional basis without regard to acreage. Commissioners may allow an owner credit who has previously built at his own expense a ditch that can be used as part of the drainage plan.

The commissioners must hold a hearing at which objections to the classification may be made. Appeals are taken to the county court and heard before a special jury of experienced landowners.

Raising and handling money in one-town and union districts. In these two kinds of districts commissioners must next determine how

much money will be needed and must adopt a resolution ordering such amount raised. The amount is apportioned among the landowners in accordance with the final classification of land and is entered on a special-assessment tax list which contains each owner's name, a description of his land and its classification, the tax levied, credits, and columns for balance due the district or the owners.

Landowners in one-town and union districts have, however, the right to appeal assessments to the county court. They must make their appeal within ten days after the commissioners deposit the tax list with the clerk of the district and post bond in double the amount of the tax they are appealing. They can appeal only on the ground that the tax is greater than the benefits that will accrue. An appeal does not affect the collection of taxes from which no appeal has been made, nor does it delay the progress of the work.

Commissioners in one-town and union districts may order assessments made in installments, designating the amount and time of payment. Taxes are payable thirty days after the tax list is confirmed unless the commissioners order them paid in installments. After a copy of the tax list is filed with the county recorder such taxes become a lien on the property. They draw interest until paid. Interest and assessments are collected in the same way. Delinquent taxes are collected by sale of the property under the tax-sale procedure used in the collection of regular state and county taxes.

If any landowner contracts to do work for the district, he is entitled to a receipt which shall be received by the treasurer as payment on his tax. Also, if there is an excess for damages above the amount of tax levied, the commissioners must tender the difference to the owner.

The township supervisor is by law the treasurer in one-town and union districts. Before any funds are placed in his custody, he must furnish bond in twice the amount of taxes levied. He is also required to keep an accurate record of all receipts and disbursements. He may pay out money only on written order from a majority of the commissioners.

The county collector must also furnish bond before accepting any funds arising from the sale of land for delinquent assessments and before accepting payment of delinquent installments.

Raising and handling money in special districts. Commissioners in special districts must certify the district's need for funds to the county clerk after they have classified the land. The clerk then apportions the amount among the owners according to acreage and classification. An emergency fund, limited to 20 percent of the original cost of the drainage improvements may be maintained out of the levy for "annual amount of benefits." This latter assessment is authorized

for special drainage districts as a means of paying for repair, upkeep, and current expense.

The county treasurer of the county in which a special drainage district lies is collector and treasurer for the district. Assessments are extended on the collection books and are paid like other taxes by landowners. Assessments become a lien upon the land; and if they remain unpaid, the commissioners can institute foreclosure proceedings.

When an assessment has been delinquent for more than six months, the commissioners may apply to a court of competent jurisdiction for the appointment of a receiver to collect rents and income from the property until the delinquency is cleared. The law provides a rather elaborate and detailed procedure for accomplishing the receivership, including provisions for appeal to the higher courts.

The methods of collecting taxes provided by the Drainage Act are regarded as additional means and do not prevent the use of any methods appropriate under the general revenue laws of the state.

Commissioners are responsible for letting contracts. Commissioners may divide the proposed ditch or ditches into sections a quarter of a mile long and let each quarter separately, or they may let the entire work in one or more contracts. When the commissioners agree, landowners may do the work on their own land. In districts containing only two landowners, they may do so regardless of the commissioners' agreement. Any work let by the commissioners must be by bid after public notice and in compliance with provisions of the law on securing bids.

In decisions interpreting this section of the law, Illinois courts have held that these provisions on bids must be strictly followed by the commissioners to prevent favoritism and unfair dealing in the letting of contracts. Commissioners themselves cannot have any direct or indirect interest in a contract. If the cost of the entire work is not to be more than \$500, the commissioners may let the contract at the time and in the way that they think best.

Commissioners are responsible for physical upkeep of district. It is their responsibility to keep the works of the district in repair. Also if ditches need to be enlarged or extended, or if new outlets need to be obtained, they have the authority to get the necessary rights of way, by eminent domain if necessary, and to raise the needed additional funds by special assessment. If such additional work results in benefits to lower land, whether such land is in the district or not, the district is entitled to fair compensation for benefits which the lower owners or the lower district receive.

Commissioners can dissolve or abandon a district. Part or all the work in a district can be abandoned at any time before the commissioners have let contracts for it. A petition for abandonment must

be signed by at least three fourths of the adult landowners who own one-half of the area of the district and be presented to the commissioners. To meet obligations incurred at the time of abandonment, the commissioners can levy an assessment or they can take money from assessments previously levied.

One-town districts can be dissolved by petition. Two-thirds of the landowners who own two-thirds of the land must sign a petition for dissolution and direct the petition to the commissioners. If the commissioners find it to be in due form, they endorse on it the dissolution of the district. A district thus dissolved may be restored within a year by a similar petition.

Other powers and duties of commissioners. In all districts organized under the Farm Drainage Act there are a number of other matters besides those listed above, over which the commissioners have jurisdiction or for which they are responsible.

Can alter watercourses. They can widen, straighten, deepen, or enlarge any watercourse (see *Definition of Ditch*, page 38). When it is necessary to straighten a watercourse by cutting a channel on other lands, they can secure the necessary right of way by eminent domain.

Can cooperate with the federal government. Since 1937, commissioners can accept assistance from the federal government and can comply with its requirements. They can also convey property to and lease property from the federal government.

Can petition county court for abatement of an assessment when the assessment exceeds total amount of all indebtedness. The court sets a date for a hearing, and following the hearing, if the action is favorable, abates the assessment. In ordering such an abatement, no contracts based upon the assessment can be impaired.

Can refund assessments illegally levied and collected or that have not been spent for improvements for which they were made. The commissioners or any interested person can petition the court for such a refund. The county court then holds a hearing at which interested landowners may appear. If the court approves, the commissioners can order the money proportionately refunded. But before such a refund can be made, expenses of organization and service fees of engineers, attorneys, and others must be paid.

Can assess land that has been benefited by the works of the district and on which no legal assessment has been previously made. The commissioners can assess for the cost of the improvements that result in benefit. The assessment, cannot, however, exceed the amount of the benefit. The commissioners must prepare an assessment roll for such lands; a hearing must be held, and all the other procedures specified in the law must be carried out.

Additional powers and duties of commissioners in one-town and union districts. Besides the powers listed above, commissioners in one-town and union districts have the following powers and duties: (a) to sue and be sued, to compromise suits and to represent the district as a public corporation; (b) to employ services, including necessary attorneys and agents, purchase materials, supervise and do all things necessary to accomplish the objectives of the district; (c) to authorize their agents to go upon land in the district for the purpose of conducting the work of the district, whether the entry be for the purpose of inspecting or for bringing in equipment and tools; (any person willfully preventing such entry can be fined \$25 a day for his hindrance); (d) to use any part of a public highway so long as they do not seriously impair its use by the public or injure the highway; (e) to construct "all necessary bridges and culverts along or across any public highway or railroad"; (the cost of maintenance of such bridges and culverts may be charged against private or semipublic corporations but not against municipal corporations); (f) to make annual reports containing the information required by law and file these reports with the clerk of the district before November 1.

Upon complaint by a person who has paid an assessment to the district, commissioners who have failed to perform the duties imposed on them by law can be fined not more than \$100. (Commissioners receive not more than \$3 a day for their services.)

Additional powers and duties of commissioners in special districts. Besides the powers listed in the preceding sections, commissioners in special districts have also these powers and duties: (a) to hold within the boundaries of the district or at the county clerk's office all meetings which require notice to landowners (upon petition of the majority of the landowners, however, a voting place may be established outside the district; otherwise elections must also be held within the boundaries of the district); (b) to construct levees as part of the drainage work of the district; and (c) to build, enlarge, or replace any farm or highway bridge across its drains in districts that were organized before June 28, 1919. In these districts commissioners are liable for such bridges, but they have no such responsibility or liability in districts organized after June 28, 1919.

(Commissioners are entitled to \$3 a day and necessary traveling expenses.)

Organization of User, River, and Mutual Districts

User districts. User districts are organized when two or more owners of adjoining lands have constructed a combined system of drainage and cannot agree on repairs and improvements. When two or more parties own adjoining lands which require a combined system

of drainage, and they have voluntarily constructed ditches which form a continuous line, or line and branches, the several parties are liable for their just proportion of needed repairs and improvements. Assessments are to be determined on the same principles used in other districts. When the owners cannot reach a voluntary agreement, any one or more of them who owns a part of the ditch may petition to have the "user" lands included in a district. The petition must show that the petitioner's lands are being damaged through lack of repairs or improvements.

The principal doctrines laid down by court decisions construing the law on user districts are these:

1. All lands which will be benefited by the maintenance of the ditch must be included in the district.

2. Only ditches built by voluntary action and which can be definitely described and located may form the basis for a user district; a natural stream cannot be the basis.

3. Ditches must be connected, continuous, and have common outlet.

4. Highway commissioners are regarded as owners of land with respect to inclusion of the highway or its ditches in a user system.

5. The provisions concerning hearing and notice that were outlined for the other types of farm drainage districts apply here.

6. Benefited lands may be included and lands not benefited are excluded by the commissioners of the user district, regardless of whether they were included in the original petition.

River districts. These districts under the Farm Drainage Act resemble outlet districts under the Levee Act. They are not organized to provide systems of drainage. Their purpose is to straighten, enlarge, embank, or otherwise improve the channels of rivers or lesser streams for a more free flow of water and for protection from overflow, and to clear driftwood from the stream and remove drift material from the bank when the material is likely to become drift.

Railroads and public roads which are benefited may be included in the assessment list. Highway commissioners and the county board may appropriate funds to such a district when the benefits to roads, bridges, and the public health justifies the expenditure. The work of a river district may be done by any organized drainage district when such work is a necessary part of the system of drainage. It would seem that the real function of a river district is parallel to that of an outlet district; that is, to improve natural outlets which serve more than one drainage district and also lands not in a drainage district.

Mutual districts. These districts under the Farm Drainage Act are much like those under the Levee Act. The provisions for the appointment of commissioners differ. The remaining provisions are the same.

(For a discussion of these provisions, see page 23.) There is one section, however, that does not appear in the Levee Act; it is that at the annual meeting a majority of the landowners may, by written agreement, discontinue the voluntary district. Following such action, the district will assume the form that it would have had had it been organized by petition.

OTHER LEGAL PROVISIONS AFFECTING DRAINAGE DISTRICTS

New assessments. When an assessment for the support of a drainage district fails or is invalid because of a defect that does not affect its merits, a new assessment may be made.

Meaning of "ditch." By law "ditch" means any drain or watercourse. When the word is used in the petition for a district, it means any side, lateral, spur or branch ditch or drain, whether open, covered or tiled, and any natural watercourse into which such drains or ditches may enter for the purpose of outlet, whether such watercourse is situated in or outside the district.

Pumping plants. Levee districts and special farm drainage districts are by law authorized to maintain pumping plants. They are also authorized to make special assessments for the maintenance of these plants. Established districts can install pumping plants only upon petition of a majority of the owners who own one-third of the land. Districts being organized can include the erection of pumping plants in the original petition.

Connecting with facilities of adjoining districts. Any drainage district organized under law in Illinois can connect its levees, ditches, or drains with the levees, ditches, or drains of any adjoining district. Commissioners must enter a contract apportioning the costs, and petition the county court for approval of the contract. The court then holds a hearing at which interested parties can appear. In the absence of such a contract, the court can still determine the amount of annual benefit which any adjoining district receives from the work of another district, and may order the district receiving the benefit to collect the proper amount and pay it to the other district.

Issuing bonds. Commissioners may issue bonds for their districts. They are authorized to borrow up to 90 percent of an unpaid levy or assessment and secure the payment of the loan by notes or bonds bearing not more than 6 percent interest. The law contains specific provisions on the issuance, recording, and registration of bonds. Bonds may be refunded and the payment of assessments extended by the

commissioners. Also, if a majority of the adult landowners who own one-third of the land petition for an extension, the commissioners shall make such an order. The extension cannot run beyond ten years from the time the levy or assessment was confirmed. The petition must be in proper order and must contain certain statements required by law.

Reorganizing districts that include land in a city, town, or village.

When the voting power in a district is not in the hands of bona fide farmers because of many small ownerships, the owners of three-fourths of the farm land may petition for reorganization of the district, leaving the land in a city, town, or village out of it. A hearing must be held before the county judge, the indebtedness divided, and other steps taken to perfect the reorganization.

Adding territory to a district. Lands that lie outside a district but are benefited by the district may be included in the district and be assessed. Another district that is benefited may also be added. The commissioners or the owners initiate action for inclusion by directing a petition to the county court.

Owners of land outside a district, who voluntarily connect their drains to those of the district, may have their lands included in the district. By the act of connecting their drains to those of the district, these owners are deemed to have applied for admission to the district and their land becomes subject to assessment.

Willful injury to drains. Any person who wrongfully or purposely fills up, cuts, injures, or destroys any drainage work may be fined not more than \$200. Also, a livestock owner is required to repair or pay damages for any injury his animals cause to an open ditch running through his property.

SUBDISTRICTS ARE ADMINISTRATIVE UNITS

Under both the Levee Act and the Farm Drainage Act subdistricts are merely administrative units or subdivisions of a main district. They are not independent corporations. Their function is to provide for a drainage district within a drainage district. They are a means of securing minute and particular drainage for particular areas within a district, using main ditches constructed by entire district as outlets.

The Levee Act provides that if any drainage district contains lands in particular localities in need of more minute and complete drainage, such localities can be organized into subdistricts either on petition of the same majorities required for the organization of main districts or on petition of the commissioners of the main district to the county court. The petition is followed by three weeks' notice to all landowners in the proposed subdistrict and a hearing in the county court similar to the hearing for a district. After a subdistrict is or-

ganized, assessments are levied as in the main district. Subdistricts have the power to annex lands which connect with its ditches or which are benefited by the work of the subdistrict.

Under the Farm Drainage Act subdistricts may be formed, either by the owners of land in the main district (no majority requirement being stated) or by the commissioners, without any notice; these subdistricts may be formed in any case where it is necessary to provide for the drainage of separate areas within the main district by lateral drains or drains which are independent of each other except as to the main drain or outlet. Under the Farm Drainage Act assessments in these subdistricts are made as in the main district. Under this act, provision is also made for a subdistrict within a subdistrict. A subdistrict within a subdistrict is called a minor subdistrict and drains a particular independent area within the subdistrict.

Under the Farm Drainage Act, when subdistricts contain not less than five sections of land, they may have their own commissioners if a majority of the landowners sign a petition requesting them. These commissioners are elected at the same time as the drainage commissioners in the main district. The commissioners of the main district are always ex-officio commissioners of the subdistrict.

The accounts and records of assessments of subdistricts are kept separate from the records and accounts of main districts, and as administrative units they are entirely independent of the main district. Both the Levee Act and the Farm Drainage Act make these provisions.

SOME DATA ON DRAINAGE-DISTRICT FINANCE

To help those who may be charged with planning drainage-district financing, the following data are given. They are taken from the Illinois Tax Commission's survey entitled *Drainage District Organization and Finance 1879-1937*, published in 1941.

Drainage districts in Illinois are not regarded as taxing units since they lack the essential power of such units, namely authority to levy taxes. Their areas seldom, if ever, coincide with those of other governmental units. They derive their revenue from special assessments levied with the approval of the county or circuit court to whose jurisdiction they are subject in all their actions.

The plight of drainage districts in Illinois has been so acute since the depression following 1929 as to bring their financial problems well to the front. Almost one-third of all district bonds outstanding in 1937 were in default. Since 1930 many of these districts have found their landowners unable to meet annual assessments. Necessary repairs have long been neglected. . . . in the seven year period, 1930-1937, the total financing by drainage districts was only slightly more than the total for the single year 1929.

It is significant that more than half of all drainage districts in Illinois contain 2,000 acres or less. Only one-fifth contain as many as 5,000 acres and only 22 districts, or less than 2 percent, are as large as a congressional township.

The variation in cost between types of districts and between districts of the same kind in the same locality is illustrated to some extent in Tables 1 and 2. Expenditures for maintaining districts, particularly one-town, union, user, and mutual districts have probably been inadequate, as Table 2 indicates.

Table 1.—Drainage Costs in Adjoining Districts in Selected Illinois Counties^a

County	Number of acres	Number of years covered	Total construction costs and annual benefit assessments	Cost per acre per year
Champaign				
District A.....	8 945	20	\$ 70 810	\$.396
District B.....	19 848	20	57 668	.145
Fayette				
District A.....	5 735	32	27 281	.149
District B.....	4 023	32	30 730	.238
Fulton				
District A.....	3 115	24	376 701	5.05
District B.....	5 307	24	691 914	5.43
Lee				
District A.....	1 593	15	7 020	.294
District B.....	2 124	15	20 300	.637
Monroe				
District A.....	13 500	57	282 050	.367
District B.....	19 700	57	96 221	.086
State (all districts).....	5 454 000	70	72 760 000	.191

^a Data taken from *Drainage District Organization and Finance 1879-1937*, Vol. 7 of SURVEY OF LOCAL FINANCE IN ILLINOIS. Prepared by the Illinois Tax Commission in cooperation with the Work Projects Administration, 1941.

Table 2.—Drainage Costs of Different Types of Districts, and Proportion of Assessments Levied as Annual Benefits, 1879-1937^a

Types of districts	Number of districts	Multiply dollars and acres by 1000				Cost per acre	Percent that annual benefit levies are of total levies
		Number of acres	Construction levies	Annual benefit levies	Total levies		
Levee and outlet.....	526	2 714	\$45 521	\$10 602	\$56 123	\$20.68	18.9
Special drainage.....	78	637	7 231	1 751	8 982	14.10	19.5
Union.....	327	815	2 798	171	2 969	3.64	5.8
Township and user....	515	1 082	4 001	205	4 206	3.89	4.9
Mutual.....	95	206	448	32	480	2.33	6.7
State (all districts)....	1 541	5 454	59 999	12 761	72 760	13.34	17.5

^a For source of data see footnote to Table 1.

Part III

NEED FOR NEW DRAINAGE CODE

WHAT'S WRONG WITH PRESENT LAWS

In its survey entitled *Drainage District Organization and Finance 1879-1937* the Illinois Tax Commission considered the problem of what is wrong with our present drainage laws. It reported as follows:

The confusion in legal provisions resulting from this original division of drainage law into two major and several minor sets of procedure [two Acts each of which contains several procedures] has grown with each passing year. In spite of the original difference in the type of drainage intended to be provided by the districts organized under each act there is little or no legal distinction in purpose. Districts without levees or pumping plants but providing a combined system of drainage ditches may be organized and proceed under either the Farm Drainage Act or the Drainage and Levee Act, although several provisions of the Drainage and Levee Act are applicable only to those districts constructing or maintaining levees or pumping plants. Districts providing pumping plants may be organized and proceed under the Drainage and Levee Act or as special districts under the Farm Drainage Act, and probably also as one- or two-township districts under the Farm Drainage Act.

Amendments to the statutes have been numerous and complicated, sometimes involving enactment, repeal, and re-enactment in addition to various changes. Much of the legislation and many of the amendments were passed for a particular drainage district which desired to perform a certain act or had already performed it and needed validating legislation. Because of the court decisions declaring drainage districts unconstitutional prior to the amendment of 1878 and several subsequent decisions interpreting the law and invalidating prior assessments and operations, the statutes are cluttered with validating clauses of no present significance.

Much of the drainage legal code is now found in court cases rather than in the statutory provisions themselves. In interpreting this court law, continual reference must be made to the statute, since subsequent amendments may have rendered particular court decisions meaningless. Moreover, because of the numerous procedures depending upon the type of organization of the district involved in a given case, it is not always clear to which type or types of districts a particular interpretation applies. The ruling of the court in one case might not hold for other types of districts.

Because of this legal confusion, drainage district procedure is unnecessarily complicated and expensive. This has hampered the real function of the laws, which is to make possible the drainage and flood protection of farm lands by cooperative effort. Codification and clarification are imperative.

The meticulous process through which the law has attempted to balance the rights of the property owner, on the one hand, and the

authority of the district to make assessments, on the other, has added other difficulties and confusions. The perpetuation and extension of such a cumbersome and costly system cannot be laid to vested interests in the legal profession or elsewhere. The system continues primarily because of the magnitude and complexity of the task of writing a new law that would cure all the defects of the old law and at the same time give protection to interests vested under the old law.

One-third of all Illinois farms have artificial drainage of some kind, according to the 1930 U.S. Census. Illinois contains more than 1,500 drainage districts covering about 5½ million acres, or nearly one-fifth of the total farm land in the state. Another 4 million acres has been drained by private enterprise.

SOME SUGGESTIONS FOR IMPROVEMENT

The Illinois Tax Commission in 1941 concluded that "many ambiguities could be removed, some litigation alleviated, and economical administration promoted by enactment of a single simplified drainage law superseding the existing acts and embodying the substance of the court decisions."

F. B. Leonard,¹ as long ago as 1929, offered this comment:

The practice of drainage law in the State of Illinois has become almost the work of a specialist. There is so much confusion in the decisions; there have been so many changes in the statute law and there are so many intricate, involved forms of procedure that unquestionably the drainage of lands in this state has been impeded by the legal difficulties. In one of the late revisions of our statutes, 396 sections of law are included in the Chapter on Drainage.² Even though this includes sanitary districts it ought not to be difficult to condense and consolidate these provisions into two or three compact drainage codes in which the various steps in the formation and functioning of districts could be set forth in logical order and in simpler language than that employed at present.

Leonard makes many suggestions for improving drainage law, among them the following:

1. Substitute a unified code for the present law — or at least abolish the distinction between one-town, union, and special districts under the Farm Drainage Act.

2. Repeal the sections providing for justice of the peace jurisdiction.

3. Shift the present sections so they provide a more logical arrangement.

4. Make assessments and classification for issuing bonds uniform in all districts.

¹ *Engineering and Legal Aspects of Land Drainage in Illinois*, Illinois State Geological Survey Bulletin, No. 42 (1929).

² There are now 443, not counting the many lettered sections that bear the same numerical section number.

It is significant that drainage districts, though they have many identical problems and though many uniform procedures could be introduced to save time and funds, have no state agency to which they may turn for authoritative assistance and are guided by no administrative and policy-forming body at the state level. The experience gained through successful organization and operation in one district is seldom passed on to another except as the same legal or professional personnel are involved in both. Each new district must, to a degree, approach its problems as though it were completely isolated from other areas having identical problems. This could have been remedied by the early creation of an appropriate agency. Even now such an agency is greatly needed.

In view of the foregoing and of the feeling shared by all who have had to work with the drainage acts in Illinois, improvement of the law is long past due. It is to be hoped that agencies now at work on the problem — the Illinois Legislative Council, the State Bar Association, and other interested organizations — will succeed in their efforts to procure appropriate legislative action. But to reiterate the theme of this manual, until a change is made the present law must be studied, interpreted, used, and understood as fully as possible by all concerned to the end that needed drainage works may be established with as little delay and cost as possible.

APPENDIX



GUIDE TO DRAINAGE CODE

Levee Act

(Numbers in parentheses refer to sections of Chapter 42, Illinois Revised Statutes, 1949)

(Initial Action — Court's Finding)

Petition is signed by landowners. No time limit. (2)

Petition is presented to county court or county board. No time limit. (2)

County clerk gives notice of a hearing by posting notices at the court house, in ten public places, and by publishing in a newspaper. This notice must be given three weeks before the hearing. (3)

To landowners residing outside the county, county clerk gives personal notice of hearing. This notice must be given within three days of first publication of notice. (3)

County court holds a hearing on the petition on day designated in the notice. (4)

Proceedings to organize a district and to make assessments may be had before a justice of the peace when the costs of construction do not exceed \$2,000. Justice must give notices in same manner as county clerk does. Within ten days after confirmation of assessment roll, the justice or the commissioners must file the roll in the county court. (49)

(Initial Commissioners — Organization Confirmed)

Court appoints three commissioners after it approves the petition. (5)

Commissioners take an oath and elect a chairman before they enter upon their duties. (7, 8)

Commissioners examine the land to be drained. They make this examina-

tion immediately after their appointment. (10)

Commissioners have a survey made, draw a plan, and make a report to the court. They make this report on the date the court set at the time it appointed the commissioners. (12)

Court fixes date for hearing on commissioners' report. Such date must be ten days to four weeks from date report was filed. (14)

Court holds hearing on commissioners' report on date set by court. If additional land is to be included in the district, notice must be given as in Section 3. (14)

Court confirms order declaring district organized, after all objections are in and hearing is completed. (17) Court's order of confirmation may be appealed to Supreme Court, as are ordinary appeals. (17)

Any two or more contiguous drainage districts may consolidate. A petition for consolidation must be filed in the county court. Notice must be given as in Section 3, followed by a hearing as in Section 4. (17a)

Upon consolidation, court appoints new commissioners, who serve until first Monday of the following September. (17c)

Commissioners may make contracts, sue, and be sued, and perform all necessary acts upon organization of the district. (26)

(Completion of Organization)

Commissioners acquire rights of way and releases of damages after

the court confirms the organization order. No time limit. (18)

Commissioners make out an assessment roll. No time limit. (18)

Commissioners fix time for hearing on benefits. Notice must be published in a newspaper and posted. (19)

Commissioners hold hearing before a jury on the designated date. (19)

Court renders a verdict on all cases heard before the jury. (20)

Commissioners assess annual benefits for repair and maintenance. (20, 21)

Commissioners may create an emergency fund but fund is not to exceed 20 percent of the original cost. No time limit. (21)

Commissioners may order the tax paid in installments at such times as are convenient to accomplish the proposed work. (23)

Owners must pay tax assessments within thirty days unless payments are deferred or commissioners allow payment by installments. (23)

Tax assessment is a lien on the land until paid. Commissioners must file tax list with recorder of deeds before lien is effective. (23)

Benefits must be paid each year on or before September 1. They are a lien on the land until paid. (24)

Commissioners may borrow money on the annual benefits becoming due, to the extent of two-thirds of such benefits, when it is necessary to protect drains, ditches, or levees. (24)

Commissioners make annual report to court on condition of ditches and on the estimate of expense for the next year by July 1. If proceedings are before a justice of the peace, this must be done the first Monday in July. (24)

Court clerk makes a copy of assessment roll and certifies it to com-

missioners immediately after commissioners' report is filed. (25)

Commissioners appoint a treasurer before any collections are made. (27)

Commissioners give bond for term of their appointments before collecting any money. (30)

Commissioners immediately give notice that payment is due. Notice must be published for three weeks or sent direct to landowners. (31)

Treasurer makes out certified list of delinquent assessments and returns it to county collector before September 8. Collector handles as ordinary delinquent collection of the state and county taxes. (32)

Commissioners file bill in circuit court to enforce payment by foreclosure of lien if assessment is not paid or collected on or before the annual tax sale. (33)

Landowners may redeem property from any sale due to foreclosure of the tax lien, within two years from date of sale. The purchaser at a foreclosure sale must notify owner of the fact of sale not less than three months before expiration of period of redemption. (33)

Commissioners may purchase land at a foreclosure or tax sale. No time limit. (33b)

Commissioners file a petition in county or circuit court for appointment of a receiver to collect annual benefits or maintenance tax if assessment is due and unpaid for six months. (33b1)

Owners or commissioners may appeal tax receivership suit to Supreme Court within thirty days. (33b1)

Commissioners report on tax receivership suits to board of county commissioners or board of supervisors on May 1 each year. (33b1)

Commissioners designate a bank for deposit of funds collected by

treasurer when he requests them to designate it. A new depository may be named at any time, but money must remain in a designated bank until ten days after a new depository is named. Five days before the funds are transferred, the sureties of the treasurer must be notified that a new depository has been designated. (33d)

(Other Provisions)

Commissioners make contracts for construction, repair, and altering. If cost of construction is to be over \$500, commissioners must advertise for bids. No time limit. (36)

Commissioners may petition county court for additional assessment to repair, enlarge, or strengthen any levee. Landowners may petition commissioners for such additional assessment. Notice must be given and a hearing held as required in Sections 3 and 4 except that only two weeks' notice is required. (37)

Commissioners may borrow up to 90 percent of the unpaid assessments. They may borrow over 90 percent only after a hearing and court order. (38)

Court may extend time for payment of assessments or installments, or increase the number of installments whenever it determines that such action is for the best interest of all parties concerned. Court action is initiated by petition to commissioners or by commissioners' motion to the court. Court clerk gives ten days' notice of a hearing. (38a)

Commissioners may obtain a loan from the federal government, or any other agency, or may mortgage the realty of the district if the court approves their action. No time limit. (38a, b)

Commissioners must pay landowners damages for right of way when

damages amount to more than benefits assessed against the land. The damages must be paid before the commissioners enter upon the land. (39)

Commissioners report to court the amount of money collected and expended. They report annually after their appointment. (41)

Court sets time for hearing on commissioners' report. The time must be within three weeks from time commissioners' report is filed and commissioners must give ten days' notice. (41)

Court holds hearing on commissioners' report on designated date. (41)

Commissioners publish court's approval in a newspaper within ten days after court approves report. (41)

Commissioners may hold meetings whenever necessary, in county where district is located. (42)

Commissioners submit to court an itemized account of amounts due. This account is submitted annually; the court audits it and certifies it to the treasurer. (42)

Petition for relief from an assessment for construction of a levee may be made to county court by landowners. Petition must be filed within one year after confirmation of assessment. Court gives commissioners ten days' notice of hearing on the petition. (43)

Petition to abandon a district may be made to the court by a majority of the landowners who own one-third of the land in the area. They must petition before any contract is made for construction. (44)

Court holds hearing on petition. Notice must be given as in Section 3. (44)

Petition to abandon a district may be made to the court by the majority of landowners who own half the land in the area. If no contract has been

let, the court must approve the petition on condition that all costs and expenses are paid within thirty days. (44)

Commissioners may petition court for change in plans at any time. (45)

Court sets date for a hearing on petition for change of plans. Hearing must be two to four weeks from date petition was filed. (45)

Court clerk gives notice of hearing as specified in Section 3. (45)

Commissioners may enter upon lands at any time for construction, maintenance, and repair of drainage works. Only restriction is that their purposes be proper ones. (46)

Commissioners may enter upon lands outside district to construct drains when such drains are necessary to protect the district against flooding. No time limit. (47)

Commissioners must hold meetings on the first Tuesday of March, May, July, and September. (48)

Commissioners assess corporations for benefits or damages at the time they make other assessments. (53)

Commissioners notify a railroad that a drain or bridge is necessary. The railroad must construct such a drain or bridge within twenty days after it receives the notice. (54)

Commissioners file complaint with court for assessment of lands that lie outside district but are benefited. No time limit. (56)

Court sets date for a hearing on the complaint. Hearing must not be less than fifteen days from date complaint was filed. (56)

Commissioners give notice to owners affected by complaint ten days before the hearing. (56)

Landowners outside the district may connect to district drains and thereby become included in the district. No time limit. (57)

Commissioners may enlarge the district. Lands must be classified, assessed, notice given, and other procedures followed in same way as if lands had been included in original district. (57)

Commissioners may petition court to detach lands from district when such lands are not benefited. Court must fix date for a hearing two to four weeks from date petition was filed. Clerk gives notice to landowners as required by Section 3. (57a)

Landowners may petition court to detach lands from a drainage district and add them to a sanitary district. If there are more than two hundred owners in the district, one hundred must sign the petition. Court sets time for hearing thirty to sixty days from date petition was filed. Clerk gives three weeks' notice to owners by posting and by publication. (57b)

Majority of landowners affected may petition commissioners to form a subdistrict. Commissioners make a special report to court and the clerk gives notice of a hearing as required by Section 3. (58)

Commissioners may petition court to validate an assessment made void by improper notice or other defects in the procedure. No time limit. (59, 60)

Commissioners make a new assessment upon court's annulment of original assessment. Procedure required is same as that for original assessment. (60)

Court appoints commissioners on first Monday in September unless those who own a majority of the land in the district petition the court before September 1 for appointment of a particular individual or individuals. (61)

When district was organized under other laws, one-fifth of landowners may petition commissioners to accept

provisions of this act. Town clerk sets time for an election. No time limit. (64)

An outlet district may be organized. Procedure is same as for regular district. (65)

Landowners may pay their assessments in labor. (70)

Commissioners may sell or lease lands acquired. (71)

By mutual agreement in writing, landowners may form drainage districts and levee districts. No time limit. (74)

All lands protected may be included in a district when district includes a levee and a pumping plant. No time limit. (75)

A district may own and operate dredge boats. (76)

Farm Drainage Act — One-Town and Union Districts¹

(Numbers in parentheses refer to sections of Chapter 42, Illinois Revised Statutes, 1949)

Petition is signed by landowners. No time limit. (92)

Petition is presented to town clerk. No time limit. (83, 92)

Town clerk files petition and within five days gives notice of filing to highway commissioner, who acts as the drainage commissioner. (93)

Commissioner decides on place and time of meeting. No time limit. (93)

Town clerk gives notice of drainage commissioner's meeting to interested landowners. The meeting must not be less than eight days or more than fifteen days from date of notice. If only two landowners are affected, the clerk must give them personal notice; if more than two are affected, clerk must post three notices in public places in or near the proposed district. (93)

Drainage commissioner holds meeting to receive petition and to ascertain if required number of qualified landowners have signed the petition. Meeting is held at time and place designated in notice. (94)

Landowners who did not sign the petition may controvert any statement in petition at the meeting of the drainage commissioner. (94)

Commissioner adjourns meeting and publicly announces time of meeting for organization. Organization meeting must be not less than eight days or more than fifteen days from time of first meeting. Commissioner goes on the land to make a survey and estimates; he may hire an engineer. (95)

Commissioner holds meeting for organization on the date publicly announced. (96)

Commissioner may adjourn this meeting to a future date in order to make necessary examinations and findings. Adjournments may not be for less than five days each and may not be more than fifteen days in all. (96)

Commissioner may hold the meeting near the land when only two landowners are included in a district. The meeting may be adjourned, but total time of adjournment may not be more than ten days. (98)

¹ Union districts differ from one-town districts in only two ways: (1) petition is filed with clerk of town in which greater part of district lies; and (2) clerk calls first meeting. The duties of the clerk and the highway commissioners in one-town and union districts are the same.

Commissioner has a map made of district. (96)

Town clerk calls for election of three new commissioners. He must give ten days' notice of the election by posting notices in three public places. Thereafter one commissioner is replaced each year at an election held on second Saturday in March. (97)

New commissioners determine a system of drainage after they have organized for business. No other time limit. (99)

Commissioners get right of ways, by agreement if possible, and file releases of right of ways in town clerk's office. No time limit. (100)

When commissioners cannot get right of ways by agreement, they must file a statement with a justice of the peace requesting a jury to assess damages and give landowners notice of the hearing. The jury is called five to fifteen days after a statement is filed with the justice. (101)

Commissioners classify the land in forty-acre tracts, and in accordance with the classification of each tract, levy a special assessment against it for benefits. They do these things as soon as plans for the work have been determined. (103)

Commissioners may use an old classification of lands when they make a special assessment for benefits if they think the old classification is fair and just. (103)

Former ditches may be used whenever they can be used advantageously. (104)

Commissioners call meeting to hear objections to classification. Clerk must give two weeks' notice of this meeting by posting and publishing notices and must give landowners residing outside the county personal notice. (105)

Commissioners affirm or correct their classification after all objections are in, and file an order of confirmation or correction in clerk's office within five days from entry of order. (106)

Landowners may appeal classification to county court within ten days from time commissioners' order of confirmation was filed. The appeal is heard by a special jury. (106, 107)

Commissioners make out tax list and order necessary special assessment. No time limit. (108)

Work may be abandoned by petition of three-fourths of landowners who own one-half the land, at any time before commissioners enter into a contract for construction. (109)

Landowners may appeal tax levy to county court within ten days after tax list is filed and may request a jury trial. The case may be heard any time after ten days from date of the appeal. (110)

Landowners pay tax within thirty days. The tax becomes a lien on the land after assessment roll is filed with recorder. (112)

Commissioners may order tax paid in installments at times that will be convenient for the accomplishment of the proposed work. (112)

Clerk certifies a copy of the tax list to the treasurer immediately after the commissioners file the tax list. The treasurer executes a bond. (113)

Treasurer forwards to the county collector a list of delinquent taxes on or before September 8. (115)

Commissioners may purchase land sold at a tax sale. No time limit. (115)

Treasurer may receive payment of any delinquent assessment at any time before sale of land even though he has returned a delinquent list to the county collector. (116)

Commissioners let the contract for the work after they procure right

of ways. If the cost of the work is to exceed \$500, three weeks' notice of the time and place contracts are to be let must be given. Contracts may be let either in sections or as a whole. Sealed bids must be used if the work is to cost more than \$500. (117, 118)

A landowner may perform services in payment of his assessment at any time before the tax is due. (119)

Commissioners must pay a landowner damages before construction begins if damages exceed tax due. Commissioners have no authority to enter the land until such payment is made. (120)

Commissioners may use the money of the district for any proper purpose, such as compromising suits and paying employees. (121)

Commissioners or their agents may enter the land at any reasonable time for any proper purpose. (122)

Commissioners assess corporations for benefits or damages. No time limit. (123)

Public highways may be used as necessary for the work to be done. (123)

Commissioners make necessary bridges and culverts across any highway or railroad whenever they deem them necessary. (124)

When lands outside the district are

benefited, commissioners may file a petition with the county court for assessing them. The court fixes a date for a hearing on the petition. Commissioners must give interested landowners ten days' notice of the hearing. (126)

Landowners outside the district may connect with the ditches of the district by paying assessments. (126)

Landowners may form subdistricts. A majority of the landowners in the proposed subdistrict must sign a petition. If there are more than five sections of land in the proposed subdistrict, the subdistrict may have a separate board. No time limit. (127)

A landowner must promptly repair any drain his animals have damaged or pay damages within ten days. (129)

Commissioners make a report of their activities annually and file it with clerk of court on or before November 1. (131)

Treasurer makes a report to the commissioners on or before October 30 each year. (131)

Landowners may dissolve a district. Dissolution requires a petition signed by two-thirds of the landowners who own at least two-thirds of the land. (132)

District may be reactivated by a petition a year after its dissolution. (132)

Farm Drainage Act — Special Districts

(Numbers in parentheses refer to section of Chapter 42, Illinois Revised Statutes, 1949)

Petition is signed by landowners. No time limit. (134)

Petition is presented to county court of the county in which most of the proposed district lies. No time limit. (134)

Court clerk gives notice of a hear-

ing on the petition by posting and publishing. He mails a notice to each landowner in the district who has not signed the petition. The hearing must not be less than twenty days from date petition was filed. (135)

Court holds a hearing on the desig-

nated day to determine whether petition is properly signed and whether proper notice has been given. (136)

Court appoints three drainage commissioners after it finds that the petition is signed by a sufficient number and is correct. The commissioners go upon the land to make surveys and estimates. They may hire an engineer. (137)

Commissioners file a report with clerk of court not more than thirty days after their appointment and on or before the time set by the court for a hearing to complete the organization of the district. Report includes maps, surveys, and estimates. (137)

Any landowner may file objections, and produce any competent testimony to support his objections, at the organization hearing before the county court. Court must fix time for organization hearing within thirty days from date commissioners were appointed. (137)

Landowners who own over half the land in the proposed district may form a district immediately after the hearing even though court finds that costs will exceed benefits. (137)

Drainage commissioners are elected in districts containing at least fifteen landowners. County clerk gives ten days' notice of this first election; thereafter one commissioner is elected annually on third Tuesday in November. (138)

In districts containing less than fifteen landowners, court appoints commissioners after organization of the district is completed. Thereafter they are appointed each year on first Monday of December. (140)

Commissioners may meet beyond boundaries of district but must meet within the county. Notice of such a meeting place must be published for three weeks. (138)

Landowners may petition court for establishment of a voting place outside the district. Notice must be given as court directs. (138)

Judges of election deliver poll books to county clerk within fifteen days after every election. Judges of first election are the appointed (or initial) commissioners. (139)

New commissioners take oath within ten days after their election. (139)

New commissioners go upon the land immediately after their election and determine a system of drainage. (141)

Commissioners procure right of ways, by agreement if possible — no time limit. Otherwise they obtain them by a hearing before a jury to assess damages. The hearing before a jury must be at least fifteen days from time commissioners' petition is filed. Clerk of the court must give personal notice to landowners at least five days before the hearing. (142)

Commissioners make a special assessment of benefits. Procedure is same as for one-town districts. (144)

Commissioners file classification of lands with the county clerk. Classification and procedure are same as for one-town districts. (145)

Any landowner may appeal the classification or a tax levied against his land, to the county court in which the district is situated. See Sections 106 and 107. (146, 147)

Commissioners determine amount of money needed, make out tax list, and file it with clerk of court as soon as classification has been corrected and confirmed. (147)

Commissioners may accumulate an emergency fund limited to 20 percent of the original cost of construction. This fund must be deposited with county treasurer. No time limit. (147)

Commissioners extend the tax levy, which becomes a lien on the land until it is paid. Whole amount is due within thirty days unless commissioners defer it or permit it to be paid in installments. Additional levies may be made as necessary. (148)

Commissioners may order tax paid in installments after levy is made. (148)

Commissioners may postpone payment of tax or of any installment. But installments cannot be deferred longer than fifteen years from date of levy. (148)

Commissioners may borrow up to 90 percent of any assessment or unpaid levy to construct, continue, or complete proposed work. (148)

Commissioners may fund bonds and notes and issue new ones whenever an assessment becomes an unreasonable burden on the landowners. Maximum rate of interest is 6 percent. New notes must become due not more than one year after time fixed for payment of assessment or installment. (149)

Commissioners may extend time for paying an assessment or a tax up to ten years if a majority of landowners who own one-third of the land petition for extension. Commissioners may issue bonds to cover extension. Bonds must mature within eleven years. (150)

Commissioners must keep a separate bound book for records of bonds issued and payments made. They must have such a book before they issue any bonds. (151)

Bonds issued may be registered with auditor of public accounts. No time limit. (152)

If bonds are registered, interest and a specified amount of principal are collected with state taxes and paid

to bond holders. Auditor of public accounts ascertains each year the amount due and transmits it to county clerk. (153)

Commissioners have power to provide for special assessments and taxes when they are needed for costs, expenses, fees, commissions, or other expenses. (154a)

Commissioners file with county clerk on December 1 each year a statement of the date, number, and amount of notes and bonds issued and unpaid, and amount necessary to be levied in order to pay interest, to make repairs, and to meet other necessary expenses. (155)

Treasurer of the county in which district is organized is the collector and treasurer of the district after it is organized. (156)

Clerk computes pro-rata share which must be assessed against each tract of land after commissioners' statement is filed, and extends it on collector's books, as for other taxes. (155)

Commissioners foreclose liens against land on which assessments are unpaid at time of annual sale of lands for nonpayment of taxes. This way of enforcing payment is in addition to that provided by revenue laws. (157)

After a tax is delinquent for six months, commissioners may have a receiver appointed to collect rents. (157a)

Commissioners report to county board on May 1 each year concerning number of receivership suits and unpaid assessments. (157a)

Either party may appeal a receivership suit to the Supreme Court within thirty days from date of a judgment in a lower court. (157a)

Commissioners and other officers are entitled to pay. (158)

LEVEE DISTRICT DATE CHART

(Numbers in parentheses refer to sections of Chapter 42,
Illinois Revised Statutes, 1949)

- First Tuesday in March, May, July, and September.** Commissioners hold meetings. (48)
- May 1.** Commissioners report to board of county commissioners or to board of supervisors on: (a) tax receivership suits; (b) total taxes to be collected; (c) total amount collected. (33bl)
- July 1.** Commissioners report to court on condition of levee or ditch and give estimate of amount needed to keep it in repair. (24)
- First Monday in July.** Commissioners report to justice of peace, *when proceeding is before a justice of the peace*, on condition of levee or ditch and give an estimate of amount needed to keep it in repair. (24)
- Before September 1.** Commissioners may borrow up to two-thirds of annual amount of benefits becoming due on September 1. (24)
- September 1.** Annual benefits for repairs are payable. (24)
- First Monday in September.** Three commissioners are appointed, for consolidated district, serving till first Monday in September following their appointment. (17c)
- Court appoints commissioners. (61)
- Terms of commissioners in mutual districts terminate (may be modified by contract). (74)
- September 8 or before.** Treasurer makes a certified list of delinquent lands (that is, of unpaid assessments) and returns it to the county collector. (32)

FARM DRAINAGE DISTRICT DATE CHART

(Numbers in parentheses refer to sections of Chapter 42,
Illinois Revised Statutes, 1949)

One-Town and Union Districts

- Second Saturday in March.** Commissioners are elected. (97)
- September 8 or before.** Treasurer makes a certified list of delinquent lands (that is, of unpaid assessments) and returns it to the county collector. (115)
- October 30 or before.** Treasurer reports to commissioners on monies received, paid out, and other items. (131)
- November 1 or before.** Commissioners report annually to clerk of district on character of the work performed, the cost, and other items. (131)

Special Districts

- May 1.** Commissioners report to board of county commissioners on:
(a) number of assessment or receivership suits filed; (b) total amount sought to be collected in such suits; (c) total amount collected; (d) suits disposed of. (157a)
- Third Tuesday in November.** Commissioners are elected. (139)
- December 1 or before.** File certificate of levy. Commissioners also file with county clerk a statement of notes, orders, or bonds issued that remain unpaid. (155)
- First Monday in December.** Court appoints commissioners in special districts having less than fifteen landowners. (140)

Mutual Districts

- Third Tuesday in November.** Commissioners are elected. (162)

Adjoining Districts When One Benefits the Other

- July.** Commissioners report to county court on amount of annual benefits they estimate will be required for the next year and what portion each district should bear. (228)

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DEFINITIONS

- Abatement** — as used in the drainage acts, a reduction in assessments. An abatement is caused by a change in plans or by some other condition which makes the total original assessment unnecessary.
- Annulment** — a cancellation of some previous action or a declaration that it is of no legal effect.
- Basin** — a natural depression which holds water, and out of which water cannot flow without artificial aid.
- Canvass** — to examine officially, count, and determine the vote at an election.
- Civil law** — a written code of laws that originated in Rome and that is used in many countries. It is to be distinguished from English common law, which is based on statutes and court decisions. (Louisiana is the only state under civil law, though Illinois and some other states have adopted natural drainage rules like those in the civil code.)
- Codification** — the rearrangement under one general title and in one place of all the law on a particular subject.
- Condemnation** — a legal proceeding to secure land for a public purpose upon payment of the land's reasonable value. Condemnation proceedings are used when the owner will not voluntarily convey title. Eminent domain proceedings are condemnation proceedings.
- Contiguous** — adjacent or touching.
- Continuance** — legal action by a court or other legal body to keep a cause open until a future date.
- Dominant land or tenement** — property so situated that its owners have rights on adjacent property, such as a right of way or a right of natural drainage. The adjacent land is called the servient land or tenement.
- Easement** — any acquired right to cross or to use another's property.
- Eminent domain** — see condemnation.

- Ex-officio** — by virtue of an office. An ex-officio member of a board or a commission is a member because he holds a given office, not because he was regularly appointed or elected to the board or commission. For instance, the Governor of Illinois is an ex-officio member of a number of boards and commissions.
- Injunction** — a legal writ or command issued by a court and directed to a particular person or corporation, requiring that the person or corporation stop certain actions.
- Lien** — a legal claim against particular property for services rendered the property. A drainage assessment is a legal claim against the assessed property.
- Mutual drainage** — drainage agreed to and of benefit to all persons involved. See Mutual Districts, pp. 23, 37-38, and Drains by Mutual License, pp. 10-12.
- Quorum** — a majority of those entitled to act; an official board cannot do business unless a quorum is present.
- Receiver** — a person designated by law to take charge of a business or property and make accountings pending settlement of the unpaid obligations which brought about the receivership.
- Riparian owner** — one who owns land adjacent to a stream.
- Riparian rights** — rights growing out of the ownership of land adjacent to a stream.
- Servient land or tenement** — see dominant land or tenement.
- Spite walls and spite fences** — structures erected to interfere with the vision and air of an adjacent property owner. Such an owner may sometimes enjoin the erection of these structures if he can prove a malicious state of mind on the part of the builder.
- Tenement** — land, real estate; generally used, however, to describe real estate having permanent improvements.
- Termini** — end points or outlets; in a drainage plan, the place where the proposed ditches or drains end.
- User** — a term denoting that a particular person or persons have made continuous use of a roadway, drain, or other artificial structure for some minimum period of time. A *user drainage district* is one organized to contain land drained by connected artificial drains that have been so used.

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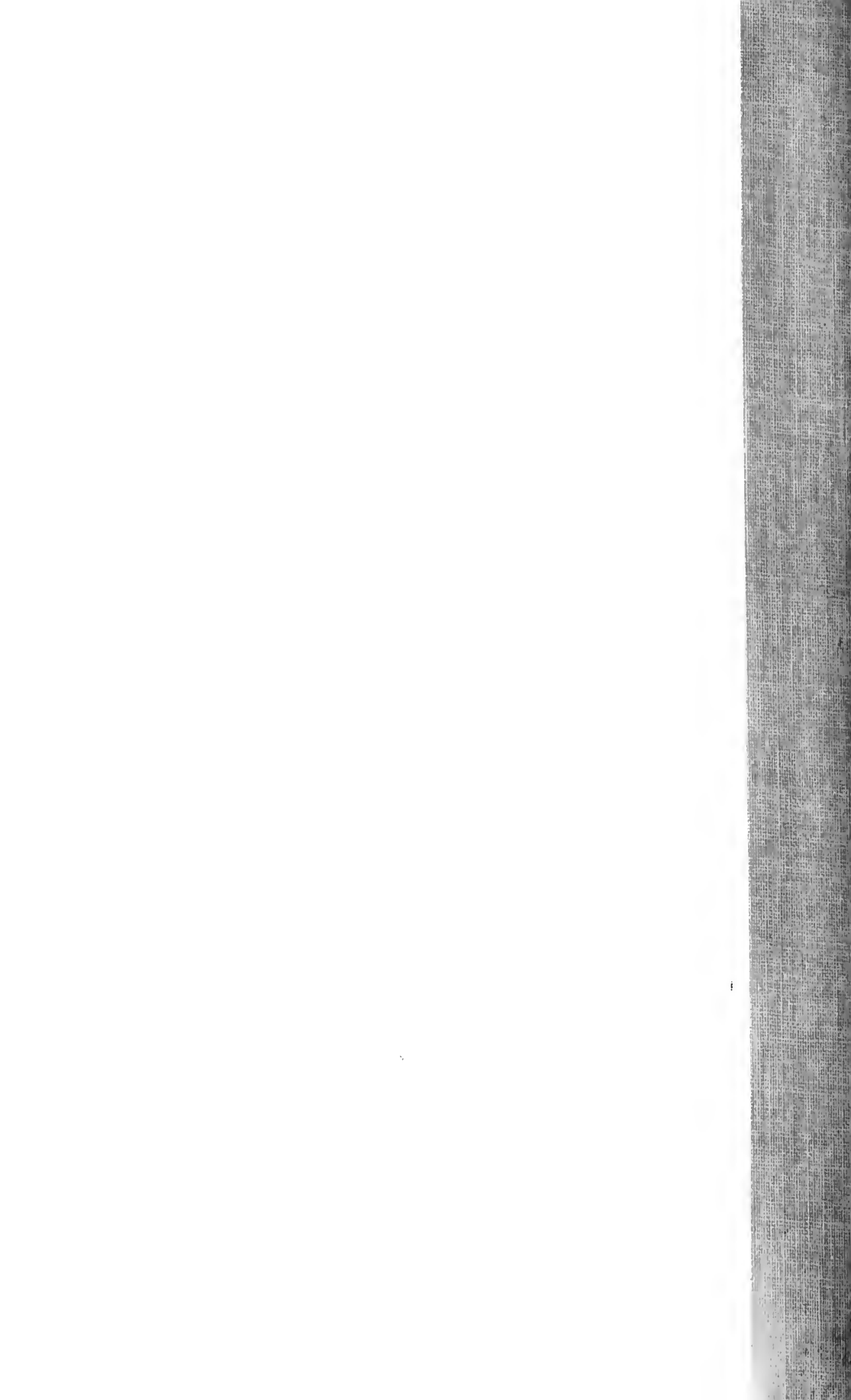
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