

24-437. Order requiring railroad to elevate tracks; mandamus. If it shall be determined by the board of directors of any drainage district that it is necessary to construct any levee across the right of way, roadbed or tracks of any railroad or street-railway company or across any street or highway occupied by such tracks, and it shall be necessary to raise or elevate such tracks in order to make such levee continuous and of uniform height, such board of directors shall make an order requiring such railroad or street-railroad company to raise or elevate its tracks accordingly, specifying in such order the height to which such tracks shall be so raised or elevated and fixing a reasonable time within which it shall be done, and shall forthwith serve a copy of said order upon such company by delivering the same to any officer, agent or employee of such company found within the district, and it shall thereupon become and be the duty of such company to raise or elevate its tracks to conform to the requirements of such order; and upon failure of any such company to perform such duty within the time so fixed, the board of directors shall be entitled to a writ of mandamus to compel the performance of such duty, and may bring and maintain a suit in any court of competent jurisdiction to obtain such writ and remedy. The court granting a writ of peremptory mandamus under the provisions of this section shall award to the board of directors a reasonable attorney's fee for the services of its counsel in prosecuting the suit and such costs and damages as it may be entitled to by reason of the failure of any such company to perform its said duty.

History: L. 1905, ch. 215, § 38; Feb. 25; R.S. 1923, 24-437.