

SEC. 3. This act shall take effect and be in force from and after its passage. When act to take effect.

Approved March 5, 1874.

CHAPTER LVI.

AN ACT TO CONFIRM AND ESTABLISH CERTAIN PUBLIC HIGHWAYS.

Be it enacted by the Legislature of the State of Minnesota :

SECTION 1. That all public roads and highways within this state which have been open and in use as such, and included in a road district in the town in which the same are respectively situated during five years next preceding the time when this act shall take effect are hereby declared to be public roads or highways, and confirmed and established as such whether the same have been lawfully laid out, established and opened or not. Public highways declared.

SEC. 2. If the right of way over the land included in any such road or highway has not been paid for or released, the owner of such land may at any time within two years after this act shall take effect, file in the office of the county auditor of the county in which such land is situate, a statement of his claim or demand for compensation for the right for such road or highway over and across such land. Such statement of such claim or demand shall be in writing and shall contain a description of the land for which such claim is made, with sufficient certainty to identify the same, and a statement of the amount claimed by the owner for the right of way for such road or highway over such land, and that such right of way over such land has not been paid for or released. Such statement shall be verified by the affidavit of the owner of such land or by the affidavit of some competent person in his behalf, and willful false swearing in such affidavit shall be perjury and punishable as such. When right of way not paid for, how to proceed.

SEC. 3. Whenever any such verified statement shall be filed in the office of the county auditor of any county, he shall communicate the same to the board of county com-

Damages assessed.

missioners at the next subsequent meeting. Such board shall thereupon proceed to assess and determine the amount which the claimant as owner of the land described in his statement is entitled to receive as a just compensation for the right of way for such road or highway over such land. In the proceedings to determine the amount to be paid for the right of way in any such case the board of county commissioners may in their discretion provide for and take a view of the premises, and the testimony of witnesses under oath, which any member of such board is hereby authorized to administer. In so determining the amount of compensation to be paid in any such case, the board of county commissioners shall first ascertain whether or not the claimant is the owner of the land for which he claims compensation, and whether or not the same is free for incumbrance, and in determining the amount of compensation to be paid to such claimant the board of county commissioners shall take into consideration the benefits of such road or highway to the property of the owner through or across whose land it runs, and such benefits shall be allowed against and deducted from the sum which such board shall fix as the value of such right of way over such land, and the balance only (if any) shall be allowed and paid to the claimant. In case the land so taken for such road shall be subject to incumbrance, the compensation shall not be paid to the claimant until the land included in roadway shall be in some effectual way relieved of such incumbrance. The county auditor shall keep a full and true record of the proceedings of the board of county commissioners in each and every claim so made and filed in his office.

Duty of county commissioners.

Right of appeal.

SEC. 4. In case the claimant in any such case shall deem himself aggrieved by the determination of the board of county commissioners therein, he may at any time within thirty days after the final determination of such board shall have been made and recorded, appeal therefrom to the district court of the same county. Such appeal may be taken by the service of a written notice thereof signed by the claimant or his attorney on the county attorney of same county, and by filing a copy of such notice of appeal and proof of the service thereof on the county attorney, in the office of the county auditor. Before such appeal shall become effectual the claimant shall file in the office of the county auditor a bond or undertaking in the sum of two hundred and fifty dollars,

signed by one or more sureties, to be approved by the county auditor, with the condition or to the effect that he will prosecute his said appeal with diligence, and pay all costs and disbursements that may be adjudged against him thereon. The claimant so appealing shall pay all costs and disbursements incurred on the part of the county in such appeal, and judgment may be rendered against him, and his sureties therefor, unless upon the trial of such appeal he recovers a sum greater than the amount assessed and determined in his favor by the board of county commissioners. In case he does recover a greater sum than the amount so awarded him by the board of county commissioners he shall have judgment against the county therefor and for his costs and disbursements on his appeal. Whenever the appeal papers in any such case shall have been perfected and filed in the office of the county auditor as herein before directed and required, the county auditor shall certify to the district court the whole record of the case, beginning with the claimants verified statement of his claim and ending with the appeal papers. Upon the filing of the appeal papers with the county auditor, the district court becomes possessed of jurisdiction over the case, and may compel the county auditor to make the return to such appeal required by law. Upon the filing of the county auditor's return to such appeal in the office of the clerk of the district court, he shall place the case in its proper order on the calender for the next term of the district court in the county. The case shall then be subject to the rules and provisions of statute applicable to and regulating appeals from courts of justices of the peace to the district court, and the same shall be tried by jury, and be subject to review in the district court and supreme court the same as cases originating in justices courts.

Costs, how paid.

SEC. 5. All sums determined under or by virtue of the provisions of this act to be due to claimants for right of way as hereinbefore specified shall be paid by the county in which the roads for which the same are to be paid, are located, in the same manner in which other liabilities of the county are paid.

Claim for damages, how paid.

SEC. 6. In case any claim which might be made under the provisions of this act, shall not be made in the way and manner hereinbefore provided within two years from the time when this act shall take effect, the same shall be forever barred and the right of way over all lands in the

When claim for damages to be made.

roads or highways herein before specified shall be deemed to have been compensated or released. But all roads or highways established by this act shall be subject to be altered or vacated the same as other roads.

Security for com-
pensation.

SEC. 7. The provisions of this act providing for the determination and payment of compensation to the owners of land for the right of way over the same shall be deemed, and are hereby declared to be good and sufficient security to such owners, their successors or assigns, for the payment of such compensation within the intent and meaning of section thirteen of article one of the constitution of this state.

When act to take
effect.

SEC. 8. This act shall take effect on the first day of April, eighteen hundred and seventy-four.

Approved March 9, 1874.

CHAPTER LVII.

AN ACT TO AUTHORIZE THE BOARD OF TOWN SUPERVISORS TO OPEN, LAY OUT AND CONSTRUCT DITCHES FOR THE PURPOSE OF DRAINING PUBLIC HIGHWAYS.

Be it enacted by the Legislature of the State of Minnesota :

Overseer of high-
ways to make
and file affidavit
when necessary
to ditch swampy
or low lands with
board of supervi-
sors.

SECTION 1. Whenever any overseer of highways shall file with the chairman of the board of supervisors of the town in which his road district is located, his affidavit stating that a certain road passing through or into the district of which he is overseer, runs into or through swamp, bog or meadow or other low land, and that it is necessary or expedient that a ditch or ditches should be opened through land belonging to any person, stating the probable length of such ditch or ditches, and the width and depth of the same, as near as possible, the point at which it is to commence, its general course, and the point near which it is to terminate, and the names of persons owning the land, if known, and a description of the land over which said ditch or ditches must pass, and that the road at that point cannot be made passable without extraordinary expense, unless such ditch or ditches are