

*James C. Child*  
35  
THE

PUBLIC STATUTES

OF THE

STATE OF MINNESOTA.

(1849—1858.)

---

COMPILED BY  
MOSES SHERBURNE and WILLIAM HOLLINSHEAD, Esqrs.,  
COMMISSIONERS.

---

---

PUBLISHED BY STATE AUTHORITY.

---

SAINT PAUL:  
THE PIONEER PRINTING COMPANY.

1859.

## CHAPTER 8.

## TOWNSHIP ORGANIZATION.

- | SECTION  | ARTICLE I.    | SECTION   |
|--|---------------|---|
| 1. Governor to appoint commissioners to divide counties.   |               | 52. Chairman to bring suits.  |
| 2. Boundaries to be designated; officers, when to qualify.   |               | 53. Chairman to keep accounts.  |
| 3. Townships, how attached or divided.   |               | 54. When to settle.   |
| 4. Towns may be named by the people or commissioners.  |               | 55. Accounts to be certified.   |
| 5. Commissioners to report to register of deeds.   |               | 56. Chairman to attend meetings of board.   |
| 6. Register to name place for first town meeting.  |               | 57. To receive accounts against town.   |
| 7. Descriptions of towns to be recorded by register.   |               | 58. His duties concerning moneys to be raised.                                      |
| 8. No two towns to have same name.   |               | 59. Penalty for neglect of duty.  |
| 9. Auditor of state to make record of towns.   |               |   |
|  | ARTICLE II.   | ARTICLE IX.   |
| 10. Towns can sue and be sued, purchase and hold lands, make contracts, and regulate corporate property. |               | 60. Town clerk to have custody of records.  |
| 11. The exercise of certain powers prohibited  |               | 61. To transcribe proceedings of town meetings.                                     |
| 12. Provision as to conveyance of land.  |               | 62. To deliver to chairman copies of entries of votes for raising money.            |
|  | ARTICLE III.  | 63. To return names of justices and constables elected.                             |
| 13. Town meetings; when and where held; notice.  |               | 64. Penalty for neglect.  |
| 14. Town officers to be elected.   |               | 65. Certified copies of records by clerk to be evidence.                            |
| 15. Who shall be fence-viewers.  |               |   |
| 16. Powers of electors at town meetings.   |               | ARTICLE X.  |
| 17. Special town meetings; when to be held; notice.  |               | 66. Board of auditors, how constituted.   |
|  | ARTICLE IV.   | 67. When to meet, and their duties.   |
| 18. Town meetings, how conducted.  |               | 68. Accounts audited to be subject to inspection.                                   |
| 19. Questions, how determined.   |               | 69. Shall audit compensation of town officers for county services.                  |
| 20. Persons challenged to take oath.   |               | 70. Accounts audited, how paid.   |
| 21. Qualification of voters.   |               |   |
| 22. Clerk to keep minutes.   |               | ARTICLE XI.   |
|  | ARTICLE V.    | 71. Compensation to town officers.  |
| 23. Proclamation at opening and closing polls.   |               | 72. Fees of town clerk in certain cases.  |
| 24. Manner of voting.  |               | 73. Pound-master's fees.  |
| 25. Ballots, how folded.   |               |   |
| 26. Poll-list shall be kept.   |               | ARTICLE XII.  |
| 27. Judges to deposit ballots in box.  |               | 74. Suits between towns, how conducted.   |
| 28. Votes to be canvassed without adjournment.   |               | 75. How brought.  |
| 29. Double votes to be destroyed.  |               | 76. Process, when returnable.   |
| 30. Clerk to read publicly result of election.   |               | 77. Suits against towns, duty of supervisors.                                       |
| 31. Clerk to notify persons elected.   |               | 78. Competency of citizens of towns suing or being sued, as witnesses and jurors.   |
|  | ARTICLE VI.   | 79. Suits by towns before justice of the peace.                                     |
| 32. Eligibility to office.   |               | 80. Trespass on town lands, measure of damages.                                     |
| 33. Officers to take oath.   |               | 81. Power of courts to partition lands.   |
| 34. Officers to file certificate.  |               | 82. Costs and judgments, how recovered.   |
| 35. Effect of neglect.   |               |   |
| 36. Notice of acceptance to be filed with town clerk.  |               | ARTICLE XIII.   |
| 37. Collector to give bond to supervisor.  |               | 83. Pounds may be erected, when.  |
| 38. Supervisor to file such bond with register of deeds.   |               | 84. When discontinued.  |
| 39. Constables and justices to take oath and file bond.  |               | 85. What deemed town charges.   |
| 40. Chairman of board or clerk to approve bond.  |               | 86. Money, how raised.  |
| 41. Actions against constables; limitation.  |               | 87. Successors of town officers to demand books and papers of predecessors.         |
| 42. Effect of neglect to take oath.  |               | 88. Same as to persons chosen to fill vacancies.                                    |
| 43. Penalty for refusing to serve.   |               | 89. Duty of officers going out of office.   |
| 44. Same.  |               | 90. Duty of executors of officers deceased.   |
| 45. Penalty for acting before filing oath.   |               |   |
| 46. Tenure of offices.   |               | ARTICLE XIV.  |
|  | ARTICLE VII.  | 91. Powers of counties defined.   |
| 47. Vacancies, how filled.   |               | 92. Limitation of powers.   |
| 48. Vacancies in appointing board, how filled.   |               | 93. Proceedings by or against county; in whose name; conveyances of land.           |
| 49. Organization in case of neglect.   |               | 94. Execution of county powers.   |
| 50. Resignations.  |               |   |
|  | ARTICLE VIII. | ARTICLE XV.   |
| 51. Chairman of board to give bond; when suit may be brought.  |               | 95. Board of supervisors, how constituted; special meetings; power of adjournment.  |
|  |               | 96. Time for holding annual meetings.   |
|  |               | 97. Organization, how effected.   |
|  |               | 98. Powers of board of supervisors defined.   |
|  |               | 99. A majority to constitute a quorum.  |
|  |               | 100. Board to sit with open doors.  |
|  |               | 101. Chairman to administer oaths.  |
|  |               | 102. Board may appoint clerk; his qualifications.                                   |
|  |               | 103. Clerk to give bond and take oath; his duties; to be styled county auditor.     |
|  |               | 104. Records and accounts to be deposited with register of deeds.                   |
|  |               | 105. Clerk to designate upon accounts amount allowed, and deliver certified copies. |

## SECTION

106. How taxes may be raised for county buildings.  
 107. Electors to vote for or against tax.  
 108. Election for levying tax, how conducted.  
 109. Tax, how assessed and collected.  
 110. Supervisors to take care of poor and poor-house; board to audit compensation of overseer.  
 111. Compensation of supervisors.  
 112. Penalty for neglect of duty.

## ARTICLE XVI.

113. County treasurer; when to be elected; qualification for office; to file acceptance, give bond, and render account.  
 114. Treasurer's bond to be recorded; certified copy sent to auditor of state, and to be a lien against real estate.  
 115. Treasurer to receive and disburse moneys.  
 116. To keep accounts of receipts and expenditures.  
 117. To collect delinquent tax, and settle with auditor.  
 118. To exhibit books and accounts to county board.  
 119. When treasurer's books to be surrendered.  
 120. Penalty for refusal.  
 121. Treasurer's fees.  
 122. To be prosecuted for failure to pay over.  
 123. Appropriation of moneys recovered.

## ARTICLE XVII.

124. Assessment of lands.  
 125. Assessment of personal property.  
 126. Assessment of real and personal estate of corporations.

## ARTICLE XVIII.

127. Auditor's books; list of taxable property.  
 128. Time and manner of making assessments.  
 129. Persons aggrieved, how relieved.  
 130. Form of assessor's certificate.  
 131. Assessors to use forms prescribed by state auditor.  
 132. Manner of assessing lands and town lots.  
 133. Duty of clerk regarding assessments.  
 134. Penalty for neglect of assessor.

## ARTICLE XIX.

135. County supervisors to equalize and adjust town assessment rolls.  
 136. To fix rate of assessment and correct roll.  
 137. To fix separate taxes and aggregate valuations.  
 138. To have town assessment roll delivered to collector.  
 139. Manner of making collector's warrant; collector's compensation.  
 140. Collector to distrain for unpaid taxes.  
 141. Chairman and clerk of supervisors to account to treasurer.

## ARTICLE XX.

142. Collector how to collect tax; to distrain if refused.  
 143. Sale for taxes, how notified; by auction.  
 144. Surplus at sale, how disposed of.  
 145. Tax how collected in case of removal.  
 146. Collector's payments to town and county officers; receipts.  
 147. His duty as to taxes remaining due and unpaid.  
 148. Vacancy in office of collector, how filled.  
 149. Warrant of appointee to vacancy; extension of time under it.  
 150. County treasurer's duty if collector fails to pay over.  
 151. Sheriff's duty in executing warrant in same case.  
 152. Sheriff's return on same; collector's bonds, when to be sued.  
 153. Proceedings against sheriff if delinquent.  
 154. Refusal of town or county officer to pay over moneys a felony; penalty.  
 155. County treasurer's receipt of and certificate for taxes.

## ARTICLE XXI.

156. Supervisors' duties as to roads, bridges, road districts and labor.  
 157. Their annual account to town auditors.

## SECTION

158. Overseers of highways, duties of respecting same.  
 159. Overseer's office, if vacant, supervisors to fill.  
 160. Town clerk to notify person so appointed.  
 161. Overseer's neglect of duty, penalty of.  
 162. Town supervisors, meetings of.  
 163. To assess highway labor and road tax.  
 164. Assessment, how made on persons and real estate; lists thereof.  
 165. Town clerk, how to copy lists for overseers.  
 166. Overseers to add names of persons omitted.

## ARTICLE XXII.

167. Overseer, how to notify those liable to work on roads.  
 168. Commutation of road tax; how same expended.  
 169. Commutation not made until money paid.  
 170. Teams, &c., how and at what rate may be required.  
 171. Substitutes permitted; length of day's work; penalty of default.  
 172. Fines for neglecting to work or to commute.  
 173. Overseer's complaint for not working on highways.  
 174. Justice's summons thereon, contents and service of.  
 175. Return of summons; fine under it how levied.  
 176. Fine to be paid to overseer for roads and bridges.  
 177. Fine, how applied on assessment.  
 178. Excuse not to free from furnishing road labor.  
 179. Overseers, how and by whom paid.  
 180. Land road tax, how warned, paid, or worked out.  
 181. Payment of same, how noted.  
 182. Overseers' certificate of paid and unpaid land road tax.  
 183. Penalty for neglecting to make such certificate.  
 184. Duty of supervisors on arrears of road tax.  
 185. Road labor, when to be done.  
 186. Overseer's annual return, order and contents of.  
 187. Overseer then to pay over unexpended balance.  
 188. Penalty for not so paying over.

## ARTICLE XXIII.

189. Town supervisors, to lay out, &c., roads; on whose petition; its contents.  
 190. Notice of petition for laying out, &c., roads; how posted.  
 191. Supervisors, personal examination of roads petitioned about.  
 192. Survey of road, how made; plat; where filed.  
 193. Town clerk to file supervisors' orders on roads.  
 194. Road damages, how agreed on or assessed.  
 195. Appeals from supervisors' action on roads; contents; when made; to whom.  
 196. Form and substance of appeal; with whom to be lodged.  
 197. Supervisors appealed to, when to meet on appeal.  
 198. Notice of hearing served on whom, and when.  
 199. Hearing on appeal; damages how fixed; re-assessment when to be had.  
 200. Compensation for hearing appeal; how paid.  
 201. Appeal from supervisors' refusal to act as to road.  
 202. County supervisors' action on such appeal; town supervisors how to comply with their decision.  
 203. Supervisor unable to act on appeal, substitute for; to act after end of term.  
 204. Road damages, as finally settled, account stated and lodged.  
 205. Proceedings for relief against decision on appeal, causing oppressive tax.  
 206. Proceedings on disagreement of supervisors of two towns on road.  
 207. Road on town line to be acted on by supervisors of both towns.  
 208. Road districts how laid out on such road.  
 209. Allotment to the towns of such road districts.  
 210. All roads between towns to be so allotted.

- SECTION
- 211. Fences, how removed from highway laid out through improved land.
  - 212. Notice to remove fences when highway decision appealed from.
  - 213. Public roads now existing, town highways.
  - 214. Public roads to be not less than four rods wide.
  - 215. Supervisors not to alter state roads.

ARTICLE XXIV.

- 216. Towns to be election precincts; judges of election.
- 217. Secretary of state to cause this act to be printed.
- 218. Road tax for 1858, to be assessed on assessment of same year.
- 219. Towns may raise money at any town meeting.
- 220. Act of March 20, 1858, repealed.
- 221. City supervisors; when senior councilmen of wards are supervisors.
- 222. Additional supervisors for inhabitants over eight hundred.
- 223. County commissioners abolished; supervisors substituted.
- 224. County supervisors, power of as to roads.
- 225. Acts inconsistent with this, repealed.
- 226. This act when to take effect.

ACT RELATING TO JUSTICES OF THE PEACE AND CONSTABLES.

- 227. Who may be justices of the peace.
- 228. Justice's oath; bond, how made and filed.
- 229. Jurisdiction of justice; where to keep his office.
- 230. Justice's docket and papers, where to go in case of vacancy.
- 231. To retain office if county divided.
- 232. Constable's bond; form of same.
- 233. Constable's duties.

ACT RELATING TO FENCES, FENCE-VIEWERS AND POUNDS.

- SECTION
- 234. What to constitute a legal fence.
  - 235. Partition fences, how maintained.
  - 236. Proceedings on neglect to maintain partition fence.
  - 237. Double value of repairs recoverable of delinquent.
  - 238. Fence viewers to decide controversies on partition fences.
  - 239. Remedy for non-compliance with their directions.
  - 240. Divisions of fences, how made valid.
  - 241. Party erecting more than his share of partition fence to recover same of other.
  - 242. Partition fences to be kept in good repair.
  - 243. Partition fences where land divided by river, &c.
  - 244. Fence viewers how to decide in such case; fence how built if either party refuse to build it.
  - 245. Partition fence how divided between persons occupying in common.
  - 246. Fence how made, if one party neglect to do his portion.
  - 247. Fence may be purchased by one party, if other desires to open his inclosure.
  - 248. Partition fence made round uninclosed land, how paid for.
  - 249. Fence viewers, how chosen for partition fence on county line.
  - 250. Partition fence running into water.
  - 251. Partition fences between unimproved lands, how maintained.
  - 252. Partition fences how removable from unimproved land.
  - 253. Penalty for neglect of duty by fence viewers.
  - 254. Fence viewers, fees of.
  - 255. County to maintain pound.
  - 256. Penalty for injuring pound.

An Act to provide for Township Organization. (a)

[Passed August 13, 1858.]

ARTICLE I. 16 67. 1860

*Handwritten notes:*  
 This act practically repealed by Ch. of 4 & 3 8 1860 &  
 locally repealed by Ch. 3

Governor to appoint commissioners to divide counties.

(1.) SEC. I. *Be it enacted by the legislature of the state of Minnesota:* That the governor is hereby authorized and required to appoint three persons to act as commissioners, in each of the organized counties in this state, who shall be residents thereof, to divide such counties into towns under the provisions of this act: *provided*, that where the county commissioners of any county have divided their county into towns, by making a record, and filed the same in the office of register of deeds, of the bounds and name of each town (according to an act approved March 20th and June 21st, 1858,) the governor shall not make such appointment.

Boundaries to be designated; officers when to qualify.

(2.) SEC. II. In all cases in counties where the county commissioners have failed to divide their counties into towns, it shall be the duty of the commissioners appointed by the governor, to make a record of the bounds and name of each town, in townships where the legal voters have organized by the election of township officers, on the 11th day of May and 5th day of July, 1858: *provided*, that said township officers, so elected, shall qualify according to the provisions of this act, within ten days after the making of a record as herein required; and the election in all such towns is hereby declared to be legal and binding.

Fractional townships or whole townships how attached or divided.

(3.) SEC. III. The commissioners so appointed in each county, shall, within twenty days after notice of their appointment, proceed to divide

(a) The Township Organization Act is published with practical forms and notes, and with references to decisions of other states upon questions growing out of like statutes, carefully prepared and arranged for this compilation. Following this act are such parts of the revised statutes as remain in force relating to town offices, taxes, roads, fences, &c., with references to the township act, where that act treats of the same subjects.

such county into towns by making as many towns as there are townships, according to government survey. Fractions of townships or whole townships, or either of them, may be attached to an adjoining town, or may be divided between two or more towns, or organize separately, according to the wishes of a majority of the legal voters to be affected thereby; and when rivers or creeks so divide a township as to be inconvenient for doing town business, the fraction so formed may be disposed of as other fractions; and any township having two or more villages or cities, may be divided for township purposes, whenever a majority of the legal voters of any village or city shall petition the county supervisors for such division, and whenever the county supervisors are so petitioned, they shall proceed to divide such township in such manner as will best suit the convenience of the people: *provided*, that no town shall contain less than one hundred inhabitants.

(4.) SEC. IV. Towns thus formed shall be named in accordance with the expressed wish of the inhabitants of the town; but if there shall not be a degree of unanimity as to the name, the commissioners may designate a name.

Towns to be named by the people or commissioners.

(5.) SEC. V. The commissioners shall make a written report of their proceedings, giving the names and bounds of each town, and present such report to the register of deeds of the county.

Commissioners to report to register of deeds.

(6.) SEC. VI. The register of deeds shall thereupon make out notices for each town, designating a suitable place for holding the first town meeting in such town, which shall be holden within twenty days after the register of deeds receives the report of said commissioners; and he shall deliver such notices to the sheriff of the county, who shall cause the same to be posted in not less than three of the most public places in such township, and not less than ten days before the day set for such town meeting. If any register of deeds or sheriff, shall fail to perform their duties under this act, they, or either of them, shall forfeit not less than one, nor more than five hundred dollars to the county injured.

Register of deeds to designate place for first town meeting.

(7.) SEC. VII. Each register of deeds shall, within thirty days after receiving such report of the commissioners, transmit by mail, to the auditor of state, an abstract of such report, giving the bounds of each town and the names designated; and said register shall record in a book for that purpose, a description of each town, as fully as the report of said commissioners.

Description of each town to be recorded by register.

(8.) SEC. VIII. If the auditor, on comparing the abstract of the reports from the several counties, shall find that any two or more townships have names alike, he shall transmit to the register of the county or counties, the name or names of such town or towns to be altered, and the board of supervisors of such county shall, at its next meeting thereafter, adopt for such town some name different from those heretofore named, so that no two towns organized under this act shall be named alike; and when such name shall be adopted, the register of the county shall inform the auditor, as before directed.

No two towns to have same name.

(9.) SEC. IX. The auditor of the state shall make a record of the names and boundaries of the several towns organized under this act.

Auditor of state to make record.

## ARTICLE II.

(10.) SEC. I. Each town as a body corporate has capacity—  
*First*—To sue and be sued, in the manner prescribed in the laws of this State. (a, b)

Power to sue, &c.

(a.) A town in its corporate capacity cannot maintain an action to vindicate the tax payers from an illegal tax.—[*Town of Guilford against the Supervisors of Chenango County*: 3 Kernan, 143.]

(b.) It seems that a person can recover from a county, money collected from him for a tax illegally

To purchase and hold lands.

*Second*—To purchase and hold lands within its own limits and for the use of its inhabitants, subject to the power of the legislature.

Make contracts.

*Third*—To make such contracts, purchase and hold such personal property as may be necessary to the exercise of its corporate or administrative powers.

Regulate property.

*Fourth*—To make such orders for the disposition, regulation, or use of its corporate property as may be deemed conducive to the interests of its own inhabitants.

Exercise of certain powers prohibited.

(11.) SEC. II. No town shall possess or exercise any corporate powers except such as are enumerated in this act, or shall be specially given by law, or shall be necessary to the exercise of the powers so enumerated or granted.

Conveyance of land.

(12.) SEC. III. All acts or proceedings by or against a town in its corporate capacity, shall be in the name of such town; but every conveyance of lands within the limits of such town, made in any manner, for the use or benefit of its inhabitants, shall have the same effect as if made to the town by name.

ARTICLE III.

Town meetings, when and where held; notice to be given.

(13.) SEC. I. The citizens of the several towns of this state, qualified by the constitution to vote at general elections, shall annually assemble and hold town meetings in their respective towns, on the first Tuesday of April, at such place in each town as the electors thereof, at their annual town meetings shall, from time to time, appoint, and notice of the time and place of holding such meeting shall be given by the town clerk, by posting up written or printed notices in three of the most public places in said town, at least ten days prior to said meeting. (*a, b, c*)

Officers to be elected.

(14.) SEC. II. There shall be chosen at the annual town meeting in each town, three supervisors, one to be designated as chairman, one town clerk, one assessor, one collector, one overseer of the poor, two constables, two justices of the peace, as many overseers of the highways as there are road districts in the town, and as many pound masters as the

levied, and caused to be collected by the board of supervisors and paid to the county treasurer, as money had and received by the county to his use.—[*Hill v. Board of Supervisors of Livingston Co., 2 Kernan, 52.*]

(a) Form of notice for annual town meeting.

ANNUAL TOWN MEETING.

The voters of the town of \_\_\_\_\_ are hereby notified that the annual town meeting of said town will be held at [*insert name of place*] in said town, being the place appointed by the electors of said town for said meeting, on the first Tuesday of April, A. D. 18 \_\_\_\_\_, being the \_\_\_\_\_ of said April, for the following purposes:

1st. To elect three supervisors, one to be designated as chairman, one town clerk, one assessor, one collector, one overseer of the poor, two constables, two justices of the peace, [*omitting the two latter offices in alternate years, or saying "one," if one of either is to be chosen,*] as many overseers of the highways as there are road districts in the town, and as many pound masters as the electors may determine.

2d. To [*here name any further items of business, if any.*] And to transact any further business which may legally come before said meeting.

Which meeting will be called to order between the hours of nine and ten o'clock in the forenoon, and will be open until \_\_\_\_\_ o'clock P. M., unless sooner legally closed.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_.

A. B., Town Clerk.

(b) A more general form of notice for annual town meeting.

ANNUAL TOWN MEETING.

The voters of the town of \_\_\_\_\_ are hereby notified that the annual town meeting of said town will be held at [*name of place*] in said town, being the place appointed by the electors of said town for said meeting, on the first Tuesday of April, A. D. 18 \_\_\_\_\_, being the \_\_\_\_\_ day of said April, to transact any business legally brought before said meeting; and said meeting will be called to order between the hours of nine and ten in the forenoon, and will be open until \_\_\_\_\_ o'clock P. M., unless sooner legally closed.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_.

A. B., Town Clerk.

(c) A town meeting may be opened for business at any time between sunrise and sunset.—[*Goodell v. Baker, 8 Cow., 286.*]

electors may determine: *provided*, that justices of the peace and constables shall be elected only once in two years, except to fill vacancies, and such justices and constables shall be successors to precinct justices and constables as soon as they are duly elected and qualified. (*d*)

(15.) SEC. III. The assessors and supervisors elected in every town, shall, by virtue of their office, be fence viewers of such towns.

Who shall be fence viewers.

(16.) SEC. IV. The electors of each town shall have power at their annual town meetings:

Powers of electors at town meetings.

1st. To determine the number of pound masters and the locality of pounds.

2d. To select such town officers as may be required to be chosen.

3d. To direct the institution or defense of suits at law or in equity, in all controversies where such town shall be interested.

4th. To direct such sum to be raised in such town for prosecuting or defending such suit, as they may deem necessary.

5th. To make all rules and regulations for ascertaining the sufficiency of all fences in such towns, and for impounding animals.

6th. To determine the time and manner in which cattle, horses, mules, asses, hogs, sheep, goats, or dogs, shall be permitted to go at large.

7th. To impose such penalties on persons offending against any rule or regulation established by such town, except such as relate to the keeping and maintaining of fences, as they may think proper, not exceeding ten dollars for each offense.

8th. To apply such penalties when collected, in such manner as they may deem most conducive to the interest of such town. (*e, f, g, h, i, j, k*)

(17.) SEC. V. Special town meetings shall be held to supply vacancies in the several cases hereinafter provided for. They shall be held when the supervisors, town clerk and justices of the peace, or any two of them, together with at least twelve other freeholders of the town, shall, in writing, file in the office of the town clerk, a statement that a special meeting is necessary to the interests of the town, and the town clerk, or in case of his absence the supervisor shall post up notices in five of the most public places in the town, giving at least ten days' notice of such special town meeting, and such meeting shall act on no subject that shall not be specified in the notice calling such meeting. (*l, m*)

Special town meetings; when to be held; notice of, &c.

(*d*) Where there are several town officers of the same kind, if the electors, at their annual meeting, choose one or more officers of the particular class, although less than the whole number authorized by law, all the incumbents of the office for the previous year are superseded. If all are not superseded, none of them are; for it is impossible to say whose place in particular the person newly elected is to take.—[*Platner v. Jones*, 17 *Wend.* 81.]

(*e*) The powers of the electors to bind the town are conferred by statute, and are limited to such acts as are prescribed by law.—[*Cornell v. Guilford*, 1, *Den.* 515.]

(*f*) No action lies against a town for an injury to horses occasioned by the suffering of a public highway to become out of repair, and in a ruinous and unsafe condition; and the electors at town meeting have no authority, and cannot, by a majority vote, bind the town by agreeing to pay the owner the damages he has sustained by such injuries. The town could not be made liable, it seems, without some express statute to that effect. In most of the New England States such a statute exists.—[*See Morey v. Neufane*, 8 *Barb.* 645; also, 17 *Johns.* 452.]

(*g*) In order to maintain an action of trespass for damage done by cattle or other animals, the owner of the close must show that it was protected by a good and substantial fence.—[*Seeley v. Peters*, 5 *Gil.* 130; *Miscer v. Lightnel*, XIII. *Ills.* 74; *Act of Territory of Minnesota*, 1857, *Chap.* 8.]

(*h*) Where, in a field occupied by several persons, there is an inner fence, one of the occupants of the field cannot remove such inner fence at pleasure, although he may be the owner thereof, without rendering himself liable to his co-occupant for any damages resulting therefrom.

(*i*) Nor is it any defense to an action of trespass, growing out of the removal of the inner fence, to show that the complaining party was bound to keep the outer fence in repair, or that he might have repaired the same at small expense.—[*Buckmaster v. Cool*, XII. *Ills.* 74.]

(*j*) A vote of a town to restrain cattle or other animals from going at large within the limits of the town is binding upon persons not inhabitants, whose animals are found going at large.—[*Gilmore v. Holt*, 4 *Pick.* 258.]

(*k*) Any by-law of a town declaring that all hogs should be kept up, only extends to prevent hogs from going at large on the highway; and it seems that a town has no power to prevent the inhabitants from allowing their own hogs to go at large upon their own lands.—[*Shepard v. Hees*, 12 *Johns.* 433. See 4 *Barb.* 56, *id.* 7, 297.]

(*l*) Form of statement to be filed with town clerk to call a special town meeting.

The undersigned, town officers and other freeholders of the town of \_\_\_\_\_, do hereby state that a

ARTICLE IV.

Town meetings;  
how conducted;  
who to be clerk;  
clerk *pro tem.*

(18.) SEC. I. The electors present at any time between nine and ten o'clock in the forenoon of the day of the annual town meeting, or special town meeting, shall be called to order by the town clerk, if there be one present; in case there is none present, then the voters may elect, by acclamation, one of their number chairman. They shall then proceed to choose one of their number to preside as moderator of such meeting. The town clerk last before elected, shall be clerk of the meeting, and shall keep faithful minutes of its proceedings, in which he shall enter at length every order or direction, and all rules and regulations made by such meeting. If the town clerk be absent, then such person as shall be elected for that purpose, shall act as clerk of the meeting. (*a, b, c*)

Questions how  
determined.

(19.) SEC. II. All questions upon motions made at town meetings, shall be determined by the majority of the electors voting, and the moderator presiding at said meeting, shall ascertain and declare the result of the votes on each question.

Persons chal-  
lenged to take  
oath.

(20.) SEC. III. If any person offering to vote at any election, or upon any question arising at such town meeting, shall be challenged as an unqualified voter, the judges of the town meeting, shall proceed thereupon, in like manner as the judges at the general election are required, adapting the oath to the circumstances of the town meeting. (*d*.)

Qualification of  
voters.

(21.) SEC. IV. No person shall be a voter at any town meeting, unless he shall be qualified to vote at general elections, and has been for the last ten days, an actual resident of the town wherein he shall offer to vote.

special town meeting is necessary to the interests of said town; and the purposes of said meeting being [specify the objects of the meeting]. And we therefore request that notice for such meeting be forthwith given, and that said meeting be held on the \_\_\_\_\_ day of \_\_\_\_\_, A. D., 18\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, A. D., 18\_\_\_\_.

\_\_\_\_\_, Supervisor.  
\_\_\_\_\_, Town Clerk.  
\_\_\_\_\_, Justice of the Peace.

[or as the case may be; and names of the twelve other freeholders.]

(m) Form of notice for special town meeting.

SPECIAL TOWN MEETING.

Whereas a written statement has been filed in my office, signed by the supervisors, town clerk and justices of the peace [or state the number of them who signed], and by twelve other freeholders, all of the town of \_\_\_\_\_, that a special town meeting is necessary to the interests of said town:

The voters of said town of \_\_\_\_\_, are therefore hereby notified, that a special town meeting will be held at \_\_\_\_\_ in said town, on the \_\_\_\_\_ day of \_\_\_\_\_, A. D., 18\_\_\_\_, at nine o'clock in the forenoon, for the following purposes, described in said written statement, namely: [here add the description of the business to be transacted, in full, as described in the filed statement.]

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D., 18\_\_\_\_.

A. B., Town Clerk.

(a) Form of oath to be administered to moderator of town meeting.

You do solemnly swear [or affirm] that you will support the constitution of the United States and of the state of Minnesota, and faithfully and impartially discharge the duties of moderator at this town meeting. So help you God.

Where the oath of office is administered to a town officer in open town meeting, in presence of the town clerk, the clerk's record of that fact is competent evidence of the administration of the oath.—*Briggs v. Mirlock*, 13 Pick., 305.

(b) One who was formerly a town clerk, but is no longer in the office, cannot amend a town record made by him when town clerk; but if he continue in office he may amend the record of a previous term; the intervening election is held to be substantially a continuance of the clerk in the same office.—[*Hartnell v. Littleton*, 13 Pick., 229.

(c) When it becomes necessary to choose a clerk *pro tem.*, it is proper that he should be sworn, using the form of the oath of moderator; adapting it to the case.

(d) Form of oath to be administered to person offering to vote.

You do solemnly swear [or affirm] that you are twenty-one years of age, that you are a citizen of the United States, (or, that you have declared your intention to become a citizen according to the naturalization laws of the United States,) that you have resided in the United States one year, and in this state four months, next preceding this election, that you have been for the last ten days a resident in this election district (or of this town,) and that you have not voted at this election.

(22.) SEC. V. The minutes of the proceedings of every town meeting, subscribed by the clerk of said meeting, and by the judges, shall be filed in the office of the town clerk, within two days after such town meeting. Clerk to keep minutes.

ARTICLE V.

(23.) SEC. I. Before the electors shall proceed to elect any town officer, proclamation shall be made of the opening of the polls, by the moderator, and proclamation shall in like manner be made at each adjournment, and of the opening and closing of the polls, until the election is ended. Proclamation at opening and closing of the polls.

(24.) SEC. II. The supervisors, town clerk, assessor, overseer of the poor, collector, constables and justices of the peace, shall be chosen by ballot; all other officers shall be chosen either by yeas and nays, or by dividing the electors, as the electors of the meeting may determine. Manner of voting.

(25.) SEC. III. When the electors vote by ballot, all the officers voted for shall be named in one ballot, which shall contain, written or printed, or partly written and partly printed, the names of the persons voted for, and the offices to which such persons are intended to be chosen, and shall be delivered to one of the judges so folded as to conceal the contents. Ballots how folded.

(26.) SEC. IV. When the election is by ballot, a poll list shall be kept by the clerk of the meeting, on which shall be entered the name of each person whose vote shall be received. (a) Poll list.

(27.) SEC. V. When the election is by ballot, one of the judges shall deposit the ballots in a box provided for that purpose. Ballot box.

(28.) SEC. VI. At the close of every election by ballot, the judges shall proceed publicly to canvass the votes, which canvass, when commenced, shall be continued without adjournment or interruption, until the same be completed. Canvass of votes without adjournment.

(29.) SEC. VII. The canvass shall be conducted by taking a ballot at a time from the ballot box, and continue counting until the number of ballots are equal to the number of names on the poll list, and if there shall be any left in the box, they shall be immediately destroyed, and such person as shall have the greatest number of votes, shall be declared to be elected. If, on the opening the ballots, two or more ballots shall be found to be so folded, that it shall be apparent that the same person voted them, the board shall destroy such votes immediately. Double votes to be destroyed.

(30.) SEC. VIII. The canvass being completed, a statement of the result shall be entered at length by the clerk of the meeting, in the minutes of its proceedings, to be kept by him as before required, which shall be publicly read by him to the meeting, and such reading shall be deemed notice of the result of the election to every person whose name shall have been entered on the poll list as a voter. (b, c) Clerk to read publicly the result of the election.

(31.) SEC. IX. The clerk of every town meeting, within ten days thereafter, shall transmit to each person elected to any town office, whose Clerk to notify persons elected.

(a) Form of poll list at town meeting.

Poll list of names of all persons who voted at the town meeting held at \_\_\_\_\_, in the town of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_

NO.	NAMES.	NO.	NAMES.
1	A. B.	3	E. F.
2	C. D.	4	G. H.
Total number of votes,		4	

J. K. Clerk of Meeting.

(b) It is competent for one chosen town clerk to make a record of his own election and qualification. — *Briggs v. Murdock*, 13 Pick. 316.

(c) And it seems that the clerk's record of the proceedings of a town meeting will be considered official evidence of the facts therein set forth, as transpiring at that meeting.—[*Id.*]

name shall not have been entered on the poll list as a voter, a notice of his election. (d)

ARTICLE VI.

Qualified voters eligible to office.

(32.) SEC. I. Any qualified voter at town meetings shall be eligible to any town office.

Officers to take oath.

(33.) SEC. II. Every person chosen to the office of supervisor, town clerk, assessor, overseer of the poor, and collector, before he enters upon the duties of his office, and within ten days after he shall be notified of his election or appointment, shall take and subscribe before any justice of the peace, such oath or affirmation of office as is prescribed by law. (a)

To file acceptance.

(34.) SEC. III. Such person shall, within eight days thereafter, cause such certificate to be filed in the office of the town clerk.

Effect of neglect.

(35.) SEC. IV. If any person chosen or appointed to either or any of the town offices above enumerated, shall neglect to take and subscribe such oath, and cause the certificate thereof to be filed as above required, such neglect shall be deemed a refusal to serve.

Notice of acceptance to be filed with town clerk.

(36.) SEC. V. Every person chosen or appointed to the office of overseer of highways or pound master, before he enters on the duties of his office, and within ten days after he shall have been notified of his election or appointment, shall cause to be filed in the office of the town clerk, a notice signifying his acceptance of such office. A neglect to cause such notice to be filed, shall be deemed a refusal to serve. (b)

Collector to file bond.

(37.) SEC. VI. Every person chosen or appointed to the office of collector, before he enters upon the duties of his office, and within eight days after he receives notice of the amount of taxes to be collected by him, shall execute to the supervisor of the town, and their [his] successor to office, and lodge with him (c) a bond, with one or more sureties to be approved by such supervisor, in double the amount of such taxes, conditioned for the faithful execution of his duties as such collector. (d)

(d) Form of notice of election to be sent by clerk.

To A. B., Esq. You are hereby notified that at a town meeting held in and for the town of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_, you were legally elected to the office of \_\_\_\_\_ of said town.  
Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_.

A. B. Clerk of said meeting.

(a) Form of oath to be administered to town officers.

State of Minnesota, }  
County, } ss.

I do solemnly swear that I will support the constitution of the United States and of the state of Minnesota, and that I will faithfully execute the duties of the office of \_\_\_\_\_, within and for the town of \_\_\_\_\_, according to law, and to the best of my ability and understanding.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_.

A. B.

Taken and subscribed before me, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_.

C. D., Justice of the Peace.

(b) Form of notice of acceptance by overseer of highways or pound master.

To A. B., town clerk of the town of \_\_\_\_\_  
I hereby notify you that I accept the office of [naming the office] in the town of \_\_\_\_\_, to which office I was elected (or appointed) on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_.  
Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_.

C. D.

(c) The supervisor here named should be chairman of the board.

(d) Form of collector's bond.

Know all men by these presents, that we, A. B., of the town of \_\_\_\_\_, in the county of \_\_\_\_\_, and state of Minnesota, as principal, and C. D., of the town of \_\_\_\_\_, and county of \_\_\_\_\_, [and here name other sureties, if any, and their residences], in said state, as sureties, are held and firmly bound unto E. F., supervisor of said town of \_\_\_\_\_, and to his successor in office, in the penal sum of [naming double the amount of taxes], for the payment of which well and truly to be made, we hereby bind ourselves, and each of our heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_.

The condition of the above obligation is such, that if the above bounden A. B., who has been chosen [or appointed] to the office of collector of and for the above named town of \_\_\_\_\_, for and during the year 18\_\_\_\_, shall faithfully execute his duties as such collector, then the said obligation shall become void; otherwise to be and remain in full force and virtue.

A. B., [seal.]

C. D., [seal.]

(38.) SEC. VII. The chairman of [the] town board shall, within six days thereafter, file such bond, with said approval endorsed thereon, in the office of the register of deeds, who shall make an entry thereof in a book to be provided for that purpose, and every such bond shall be a lien on all the real estate, severally, of such collector within the county, at the time of the filing thereof, and shall continue to be such lien until its conditions, together with all costs and charges which may accrue to the prosecution thereof, shall be fully satisfied. (e)

Bond to be filed with register of deeds; its effect.

(39.) SEC. VIII. Every person chosen to the office of constable, before he enters upon the duties of his office, and within eight days after he shall be notified of his election or appointment, shall take and subscribe the oath of office prescribed by law, and shall execute in the presence of the supervisor or town clerk of the town, with one or more sureties, to be approved by such supervisor or town clerk, an instrument in writing, [by] which such constable and his sureties shall jointly and severally agree to pay to each and every person who may be entitled thereto, all such sums of money as the said constable may become liable to pay on account of any execution or other process which shall be delivered to him for collection, by virtue of his office. Justices of the peace, before entering on the duties of their office, shall take and subscribe an oath, and file a bond, (to be approved by the supervisor), with the clerk of the district, in the penal sum of not less than five hundred dollars, nor more than one thousand dollars, conditioned for the faithful discharge of all his official duties, as justice of the peace. (f, g)

Constables to take oath and file bond.

(40.) SEC. IX. The chairman of the board of supervisors, or town clerk, shall, if approved, endorse such approval of such instrument, which shall be his approval of the sureties therein named, and then shall cause the same to be filed in the office of the town clerk, [and] a copy of such instrument, certified by the town clerk, shall be presumptive evidence in all courts of the execution thereof by such constable or justice and his sureties. (h.)

Supervisor or town clerk to approve of bond.

(41.) SEC. X. All actions against a constable or his sureties, upon such instrument, shall be prosecuted within one year after the expiration

Actions against constables, limitations of.

(e) Form of supervisor's approval, to endorse upon collector's bond.

Approved by me, this      day of      , A. D. 18      .  
A. B. Chairman Board of Supervisors  
of the town of

(f) Form of instrument to secure performance of duties of constable.

Know all men by these presents, that we, A. B., of the town of      , and state of Minnesota, as principal, and C. D., of the town of      , and county of      , in said state, [and name other sureties, and their residences, if any,] do hereby jointly and severally agree to pay to each and every person who may be entitled thereto, all such sums of money as the said A. B. may become liable to pay on account of any execution or other process which shall be delivered to him for collection, by virtue of his office of constable of said town of

Signed with our names, and sealed with our seals, at      , this      day of      , A. D. 18      .  
A. B. [scal.]  
C. D. [scal.]

Executed before me,  
 E. F., Supervisor of the town of

(g) Form of oath to be taken by Constable and Justice of the Peace.

See note (a) Art. VI. The form there given may be used, inserting the name of the office, and substituting for the words "town of," these: "county of      , and state of Minnesota."

Form of Justices' bond.

See note (d) Art. VI. "Form of Collector's Bond;" inserting, instead of the description of the collector's duties, the words "shall well and faithfully discharge his official duties as justice of the peace within and for the county of      , and state of Minnesota, during the current year."

(h) Form of approval of justices' or constable's bond.

See note (e) Art. VI, which form can be used as it stands.

of the year for which the constable named therein shall have been elected or appointed.

Effect of neglect to take oath.

(42.) SEC. XI. If any person chosen or elected to the office of collector or constable, shall not give such security and take such oath as is required above, within the time limited for that purpose, such neglect shall be deemed a refusal to serve.

Penalty for refusing to serve.

(43.) SEC. XII. If any person chosen or appointed to the office of supervisor, town clerk, assessor, or overseer of the poor, shall refuse to serve, he shall forfeit to the town five dollars. (i)

Same.

(44.) SEC. XIII. If any person chosen or appointed to the office of overseers of highways or pound-master, shall refuse to serve, he shall forfeit to the town five dollars. (j)

Penalty for acting before oath filed.

(45.) SEC. XIV. If any town officer who is required by law to take the oath of office, shall enter upon the duties of his office before he shall have taken such oath, he shall forfeit to such town the sum of fifty dollars.

Tenure of offices.

(46.) SEC. XV. Town officers, except justices of the peace and constables, shall hold their office for one year, and until others are chosen or appointed in their places and are qualified. The justices of the peace and constables, shall hold their offices for two years, or until others are chosen and qualified.

ARTICLE VII.

Vacancies in town offices and the manner of filling them.

(47.) SEC. I. Whenever any town shall fail to elect a proper number of town officers to which such town may be entitled by law, or when any person elected to a town office shall fail to qualify as such, or whenever any vacancy shall happen in any town offices, from death, resignation, removal from the town, or other cause, it shall be lawful for the justice of the peace of the town, together with the supervisor and town clerk, to fill the vacancy or vacancies occasioned or occurring in consequence of any or either of the causes above specified, by appointment by warrant under their hands and seals, and the persons so appointed shall hold their offices until others are chosen or appointed in their places, and shall have the same powers, and be subject to the same duties and penalties, as if they had been duly chosen by the electors. (a, b)

Vacancies in appointing board, how filled.

(48.) SEC. II. Whenever a vacancy shall occur from any cause, in any or either of the offices enumerated in the foregoing section, compos-

(i) Where a person has been appointed an overseer of the highways under the New York act, and neglects or refuses to serve, whereby he incurs the penalty imposed by the act, he cannot be again appointed an overseer, or made liable to a second penalty for a second refusal to act.—[Haywood v. Wheeler, 11 Johns., 432.

(j) Debt against an overseer of highways for the penalty under the act for refusal to accept the office, does not lie except where the town proceed to a new election. Merely neglecting to file notice of acceptance with the town clerk is not enough. The object of the statute was to enforce performance of his duties; and if the town proceed to a new election, then to exact the penalty.—[Winnegar and Cook v. Rae, 1 Cow., 258.

(a) Where there is a failure to elect a supervisor at an annual town meeting, it is competent for three justices of the town to appoint a suitable person to the office, who, and not a person subsequently elected at a special town meeting, is entitled to hold the office.—People v. Van Horne and Hinrod, 18 Wend., 515.

(b) Form of warrant of appointment to vacant town office.

To A. B. Esq., of the town of \_\_\_\_\_, in the county of \_\_\_\_\_, and state of Minnesota; Greeting: Whereas the office of [insert name of vacant office] within and for the town of \_\_\_\_\_, in the county of \_\_\_\_\_, and state of Minnesota, is now vacant, now therefore, we the undersigned do hereby appoint you [insert name of office] for said town, to hold said office until some other person shall be chosen or appointed in your place; and you shall have the same powers, and be subject to the same duties and penalties as if duly chosen by the electors of said town.

In witness whereof we have hereunto affixed our names and seals, at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_.

A. D. 18—

C. D. [seal.]  
E. F. [seal.]  
G. H. [seal.]  
J. K. [seal.]

ing the board of appointment for the appointing of town officers, in case of vacancy, it shall be lawful for the remaining officers of such appointing board, to fill any vacancy or vacancies thus occurring.

(49.) SEC. III. In case any town in any county shall refuse or neglect to organize and elect town officers at the time fixed by law for the time of holding annual town meetings, it shall be lawful for twelve freeholders of the town to call a town meeting for the purpose aforesaid, by posting up notices in six public places in such town, giving at least ten days notice of such meeting, which notice shall set forth the time, place and object of such meeting. And the electors when assembled by virtue of such notice, shall have and possess all the powers conferred upon them at the annual town meeting. In case no such notice shall be given, as aforesaid, within thirty days after the time for holding the annual town meeting, the board of supervisors of the county shall, on the affidavit of any freeholder of said town, filed in the office of the clerk of the board, setting forth the facts, proceed, at any regular or special meeting of the board, and appoint the necessary town officers of such town, and the persons so appointed shall hold their respective offices until others are chosen or appointed in their places, and shall have the same powers and be subject to the same duties and penalties as if they had been duly chosen by the electors of the town. (c)

In case of town falling or refusing to organize, how organization to be effected.

(50.) SEC. IV. The justices of the peace of a town may, for sufficient cause shown to them, accept the resignation of any town officer in their town, and whenever they shall accept any such resignation, they shall forthwith give such notice thereof to the town clerk of the town. (d)

Justices of the peace to accept resignations and notify town clerk.

ARTICLE VIII.

(51.) SEC. I. The chairman of the board of supervisors of each town shall receive and pay over all moneys raised therein for defraying town charges, except those [raised] for the support of highways and bridges. Said supervisor shall give bond, with one or more sureties, conditioned for the faithful discharge of his duties in relation to the town revenue, such bond to be approved by the town clerk, and to be filed in his office, with such approval endorsed thereon. Whenever the town clerk shall ascertain that such bond has been forfeited, he shall institute suit in the name and for the use of the inhabitants of the town, against such supervisor. (a)

Chairman board of supervisors to receive and pay over moneys; supervisors to execute bonds; in case of forfeit town clerk to institute suit.

(c) Form of notice of town meeting, by twelve freeholders.

TOWN MEETING.

Whereas no town officers were appointed by the town of \_\_\_\_\_, at the time fixed by law for the annual town meeting for the year 18\_\_\_\_, we the undersigned, freeholders of said town, do hereby notify the voters of said town, that a town meeting will be held for the purpose of appointing such town officers, at \_\_\_\_\_, within said town, on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_, which meeting will be called to order at the hour of nine o'clock, A. M. and will 'be open until four o'clock P. M., unless sooner legally closed. [Names of the twelve freeholders.]

(d) Form of resignation of town officer.

To A. B. and C. D., justices of the peace of the town of \_\_\_\_\_, in the county of \_\_\_\_\_ and state of Minnesota: You are hereby respectfully requested to accept my resignation, which I hereby offer, of the office of [state name of office] in said town; for the reason that [state cause of resignation.]

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_.

E. F.

Form of acceptance of resignation.

We the subscribers, justices of the peace of the town of \_\_\_\_\_, do hereby, for sufficient cause shown to us by E. F., accept his resignation of the office of \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_.

A. B., } Justices of the Peace.  
C. D., }

(a) Form of bond of chairman of board of supervisors.

Know all men by these presents, that we, A. B., of the town of \_\_\_\_\_, in the county of \_\_\_\_\_, and state of Minnesota, as principal, and C. D., of the town of \_\_\_\_\_, and county of \_\_\_\_\_, [and insert name and residence of other sureties, if any] in said state, as sureties, are held and firmly bound unto the said town of \_\_\_\_\_, for the use of the inhabitants of said town, in the penal sum of [insert such

# MINNESOTA STATUTES 1858

To sue for penalties, &c.

(52.) SEC. II. The said chairman shall prosecute in the name of his town or otherwise, as may be necessary, for all penalties for fifty dollars and under, given by law to such town, or for its use, and for which no other officer is specially directed to prosecute; and no person shall be disqualified from being a witness or juror in such suit by reason of his being an inhabitant of said town. (b)

Receipts and expenditures.

(53.) SEC. III. He shall keep a just and true account of the receipts and expenditures of all moneys which shall come into his hands by virtue of his office, in a book to be provided for that purpose, at the expense of the town, and said books to be delivered to his successors in office. (c)

Chairman when to settle.

(54.) SEC. IV. On Tuesday preceding the annual town meeting, he shall account with the justices of the peace and town clerk of the town, or a majority of them, for the disbursement of all moneys received by him in his official capacity.

Certificate of state of accounts.

(55.) SEC. V. At every such accounting, the justices and town clerk, or a majority of them, shall enter a certificate in the supervisor's office book of accounts, showing the state of his accounts at the date of the certificate. (d)

Chairman to attend meeting of board.

(56.) SEC. VI. The chairman of the supervisors of each town shall attend the annual meeting of the board of supervisors of the county, and every adjourned or special meeting of said board of which he shall have notice.

Accounts against the town.

(57.) SEC. VII. He shall receive all accounts which may be presented to him against the town, and shall lay them before the board of town auditors at or before their annual meeting.

*sum as the town clerk shall determine*], for the payment whereof well and truly to be made, we hereby bind ourselves, and our heirs, executors and administrators, jointly and severally, firmly by these presents.

Scaled with our seals, and dated this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_. The condition of the above obligation is such, that if the said A. B. shall well and faithfully discharge all his official duties as chairman of the board of supervisors for the said town of \_\_\_\_\_, during the current year, in relation to the town revenue, then the above obligation to be void, otherwise to remain in full force and effect.

A. B. [seal.]  
C. D. [seal.]

*Form of endorsement of approval on above.*

Approved, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_.

E. F., Town Clerk.

(b) A supervisor of a town, in discharging his duties as such, acts not in his natural, but in his official capacity; and is *pro tanto* a corporation. He has capacity of suing and being sued, so far as his trust is concerned. The right to sue is incident to his office, and passes to his successor.

If in a suit brought by or against a supervisor as such, he fails in his action, execution goes against him personally, and his remedy is against the town. So held in New York.—*Jansen v. Ostrander*, 1 Cow., 670.

*(c) Form for keeping supervisor's book.*

Dr. A. B., chairman board of supervisors, in account with town of _____				Cr.			
Date.		\$	cts.	Date.		\$	cts.
1859. Jan'y 1.	To cash rec'd of C. D., town collector,	100	00	1859. Jan'y 1.	By cash p'd for stationery, " cash p'd on execution, E. F. vs. town of _____,	1	50
						30	75

*(d) Form of certificate of state of supervisor's book.*

[To be entered in said book, immediately below the account examined.]  
We the undersigned, justices of the peace and town clerk of the town of \_\_\_\_\_, do hereby certify that we have this day examined the above account, and that the same is correct; [and if any balance of cash, add,] and that the balance of cash appearing at this date to be remaining in the hands of the above A. B., as chairman of the board of supervisors of the town of \_\_\_\_\_, is \_\_\_\_\_ dollars \_\_\_\_\_ cents.  
Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_.

C. D., } Justices of the Peace.  
E. F., }  
G. H., Town Clerk.

(58.) SEC. VIII. He shall lay before the board of supervisors such copies of entries concerning moneys to be raised in his town, as shall be delivered to him by the town clerk. Concerning money.

(59.) SEC. IX. If any supervisor shall refuse, or shall willfully neglect to perform any of the duties of the office contained in the preceding section, he shall forfeit to the town the sum of fifty dollars, and be disqualified to act as the supervisor of said town. Penalty for neglect.

ARTICLE IX.

(60.) SEC. I. The town clerk of each town in this state shall have the custody of all records, books and papers of the town, and he shall duly file all certificates of oaths and other papers required by law to be filed in his office. Town clerk to file papers.

(61.) SEC. II. He shall transcribe in the books of record of his town, the minutes of the proceedings of every town meeting held therein, and he shall enter in his book every order of direction, and all rules and regulations of any such town meeting. Town clerk to transcribe proceedings of town meetings.

(62.) SEC. III. He shall deliver to the chairman of the board of supervisors, before the annual meeting of the board of supervisors of the county, in each year, certified copies of all entries of votes for raising money made since the last meeting of the board of supervisors, and recorded in the town book. (a) Certified copies of all entries of votes for raising money.

(63.) SEC. IV. The town clerk immediately after the election or appointment of any justice of the peace, or the qualifying of any constables [elected] or appointed in their respective towns, shall return to the clerk of the district court of their respective counties, the names of such justices and constables. To return names of justices and constables elected.

(64.) SEC. V. If any town clerk shall willfully neglect to make such return, such omission is hereby declared a misdemeanor, and on conviction thereof, the person so offending shall be adjudged to pay a fine not exceeding ten dollars. Penalty for neglect.

(65.) SEC. VI. Copies of all articles duly filed in the office of town clerk, and transcripts from the book of records, certified by him, shall be evidence in all courts in like manner as if the originals were produced. Copies of records certified by town clerk.

ARTICLE X.

(66.) SEC. I. In each town, the town clerk and the justices of the town shall constitute a board of Auditors, to examine the accounts of the overseers of the poor, and the supervisors of such town, for moneys received and disbursed by them. (a) Board of auditors how constituted.

(67.) SEC. II. The board of auditors of town accounts shall meet at the town clerk's office for the purpose of examining and auditing the town accounts, semi-annually, in their respective towns, on the Tuesday next preceding the annual meeting of the board of supervisors, and on the Tuesday next preceding the annual town meeting in April, and [at] such other times as the interest of the town may require. When to meet; duties of.

(a) Form of town clerk's certificate of copies of entries of votes for raising money.

The above are true copies of all entries of votes for raising money made since the last meeting of the board of supervisors of the town of \_\_\_\_\_, and recorded in the town book.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_.

Attest, A. B., Town Clerk.

(a) When all the officers constituting the board of town auditors have met, a majority of them may decide upon questions coming before them, and their certificate will be valid, although the supervisor has refused to sign it.—*Onderdonk v. Supervisors, 1 Hill, 195.*

Subject to inspection; to be produced when.

(68.) SEC. III. The accounts so audited, [shall] be delivered, with the certificate of the auditors, or a majority of them, to the town clerk, to be by him kept on file for the inspection of any of the inhabitants of the town; they shall also be produced by the town clerk at the next annual meeting, and shall be there read by him. (b)

To audit compensation of town officers, except supervisors.

(69.) SEC. IV. The board of auditors, composed of the same officers then in office, shall at the same time and place as in section two, examine and audit all charges and claims against their respective towns, and the compensation of all the town officers, except supervisors, for county services.

How paid.

(70.) SEC. V. The said board shall make a certificate to be signed by a majority of said board, specifying the nature of the claim or demand, and to whom the demand is allowed, and shall cause said certificate to be delivered to the town clerk of said town, to be by him kept on file for the inspection of any of the inhabitants of said town, and the aggregate amount shall be delivered to the supervisor, to be by him laid before the board of supervisors at their annual meeting. The board of supervisors shall cause the amount of said charges to be levied upon the property of said town, and collected as other taxes are levied and collected. The claims and compensation audited and allowed, shall be read to the electors at the next annual meeting, as directed in section three. (c, d)

ARTICLE XI.

Compensation to town officers.

(71.) SEC. I. The following town officers shall be entitled to compensation at the following rates, for each day necessarily devoted by them to the service of the town in the duties of their respective offices:

Fees of town clerk in certain cases; per diem; electors may increase compensation.

(72.) SEC. II. The town clerk, assessor, overseer of the poor, and supervisors, shall receive for their services, one dollar and fifty cents per day, when attending to business out of town, and one dollar for business in their town: *provided*, that the town clerk shall be paid fees for the following, and not a per diem: for serving notices of election upon town officers, as required by law, twenty-five cents each; for filing any paper required by law to be filed in his office, ten cents each; for posting up notices required by law, twenty-five cents each; for recording any order,

(b) Form of town auditors' certificate of town accounts.

We the board of town auditors of the town of \_\_\_\_\_, hereby certify that we have this day examined the accounts of A. B., overseer of the poor of said town, and that we have audited and allowed to him the sum of \_\_\_\_\_ dollars and \_\_\_\_\_ cents for services and payments by him up to this date, and that a balance of \_\_\_\_\_ dollars and \_\_\_\_\_ cents is due him from (or from him to) said town.  
Also that we have this day examined the accounts of [name other officers, if any, and state result of audit as above:].

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_.

B. C., Town Clerk.  
D. E., } Justices of the Peace.  
F. G., }

(c) Form of auditors' certificate of claims and charges against town.

We the undersigned, town auditors of the town of \_\_\_\_\_, have examined and audited, and do hereby allow to the persons following, their several claims and charges against the said town, to the following amounts, to wit:

To A. B., supervisor of said town, for his services as per account rendered, . . . \$3.00  
To C. D., assessor of said town, for ten days' services, as per his account rendered, . . . 15.00  
To E. F., his damages allowed in highway case, . . . 30.00  
[And add the names of all other claimants, and nature of demands or services, and amounts.]

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_.

G. H., Town Clerk.  
J. K., } Justices of the Peace.  
L. M., }

(d) The certificate of town auditors allowing accounts, regular on its face, is a sufficient authority for the board of supervisors to proceed and cause the amount certified to be levied on the town. It seems that such a certificate precludes the supervisors from inquiring into items, but that they must act upon it without modifying its amount. If such certificate purported in the body of it to have been made by "the board of auditors of the town of N. H." it is sufficient, though the officers have merely signed their names without adding their official titles. Nor need it appear on the face of the certificate that the auditors met at the proper time and place; it will suffice if in point of fact their meeting was regular in those respects.—[People v. Supervisors of Queens County, et al., 1 Hill, 195.]

any instrument of writing authorized by law, six cents for each one hundred words; for copying any record in his office and certifying the same, six cents for every one hundred words, to be paid by the person applying for the same: *provided further*, that at any town meeting before the electors commence balloting for officers, they may by resolution, increase the compensation of officers.

(73.) SEC. III. The pound master shall be allowed the following fees, to wit: for taking into the pound and discharging therefrom, every horse, ass or mule, and all neat cattle, ten cents each; for every sheep or lamb, three cents each; and for every hog, large or small, five [cents,] and twenty cents for keeping each head twenty-four hours in pound. Pound master's fees.

ARTICLE XII.

(74.) SEC. I. Whenever any controversy or cause of action shall exist between any towns of this state, and between any town and individual or corporation, such proceedings shall be had either at law or equity, for the purpose of trying and settling such controversy, and the same shall be conducted in the same manner, and the judgment or decree therein shall have the like effect as in other suits or proceedings of a similar kind between individuals and corporations. Suits between towns, &c.; how conducted.

(75.) SEC. II. In all such suits and proceedings, the town shall sue and be sued by its name, except where town officers shall be authorized by law to sue in their name of office for the benefit of the town. How brought.

(76.) SEC. III. But no towns or their officers, shall be required to appear, answer or plead to any such suit or action at the first term of the court after the commencement thereof; (when the same shall be commenced in the district court,) unless the process aforesaid shall be served as herein directed, at least thirty days before the commencement of the term. Summons when returnable.

(77.) SEC. IV. In all legal proceedings against the town by name, the first process and all other proceedings required to be served, shall be served on the supervisor of the town, and whenever any suit or proceeding shall be commenced, it shall be the duty of the supervisor to attend to the defense thereof, and to lay before the electors of the town at the first town meeting, a full statement of such suit or proceedings, for their direction in regard to the defense thereof. Duty of supervisor.

(78.) SEC. V. On the trial of every action in which a town will be a party or interested, the electors and inhabitants of such town, shall be competent witnesses and jurors, except that in suits and proceedings by and against towns, no inhabitant of either town shall be a juror. (a) Competency of citizens of towns suing or sued as witnesses and jurors.

(79.) SEC. VI. Any action in favor of a town, which if brought by an individual, could be prosecuted before a justice of the peace, may be prosecuted in such town in like manner before any such justices; but no action to recover shall be brought before any of the justices of the peace residing in the town for the benefit of which the same is prosecuted, but all such actions may be brought before any one of the justices of the peace residing in any other town in the same county. Suits by town before justice of the peace.

(80.) SEC. VII. Whenever any action shall be brought to recover a penalty imposed for any trespass committed on the lands belonging to the town, if it shall appear on the trial thereof, that the actual amount of injury to such town lands in consequence of such trespass, exceeds the sum of twelve dollars and fifty cents, then the amount of actual damage Trespass on town lands; measure of damages.

(a) A town is authorized to indemnify its officers against a liability which they may incur in the bona fide discharge of their duties, although it turn out that they have exceeded their legal rights and authority.—(Bancroft v. Lynnfield, 18 Pick., 566.

with costs of suit, shall be recovered in said action, instead of any penalty for said trespass imposed by the town meeting, and such recovery shall be a bar to every other suit for the same trespass.

Power of courts to partition lands.

(81.) SEC. VIII. Whenever, by any decree or decision in any suit or proceeding brought to settle any controversy in relation to town commons or other lands, the common property of a town, or for the partition thereof, the right of any town shall be settled and confirmed, the court in which such proceedings shall be had, may partition such lands according to right of parties.

Costs how recovered; judgments how recovered.

(82.) SEC. IX. In all suits or proceedings prosecuted by or against towns, or by or against town officers in their name of office, costs shall be recovered as in like cases between individuals; judgments recovered against a town, or against town officers, in actions prosecuted by or against them in their name of office, shall be a town charge, and when levied and collected, shall be paid to the person or persons to whom the same shall have been adjudged.

ARTICLE XIII.

Pounds may be erected when.

(83.) SEC. I. Whenever the inhabitants of any town shall determine at an annual town meeting, to erect one or more pounds therein, the same shall be under the care and direction of such pound masters as shall be chosen or appointed for that purpose.

May be discontinued.

(84.) SEC. II. The inhabitants of any town may at any annual town meeting, discontinue any pounds therein.

What constitute town charges.

(85.) SEC. III. The following shall be deemed town charges:

- 1st. The compensation of town officers for services rendered their respective towns:
- 2d. Contingent expenses necessarily incurred for the use and benefit of the town:

3d. The moneys authorized to be raised by the vote of the town meeting for any town purpose: and

4th. Every sum directed by law to be raised for any town purpose.

Moneys for town charges, how raised.

(86.) SEC. IV. The moneys necessary to defray the town charges of each town shall be levied on the taxable property in such town, in the manner prescribed in the act for raising revenue and other money for state and county purposes and expenses.

Successors of town officers to demand all books and papers of their predecessors.

(87.) SEC. V. Whenever the term of any supervisor, town clerk, or overseer of the poor shall expire, and other persons shall be appointed or elected to such offices, it shall be the duty of such successor or successors, immediately after he or they shall have entered on the duties of the offices, to demand of his or their predecessors, all the books and papers under his or their control belonging to such office.

Persons elected or appointed to fill vacancy to demand all books and papers.

(88.) SEC. VI. Whenever either of the officers above named shall resign, or the office become vacant in any way, and another person shall be elected or appointed in his stead, the person so elected or appointed shall make such demand of his predecessors, or of any person having charge of such books and papers.

The duty of town officers going out of office.

(89.) SEC. VII. It shall be the duty of every person so going out of office, whenever thereto required, pursuant to the foregoing provisions, to deliver upon oath, all the records, books and papers in his possession, or in his control, belonging to the office held by him; which oath may be administered by the officer to whom such delivery shall be made. It also shall be the duty of every supervisor, and overseer of the poor, so going out of office, at the same time, to pay over to such successor the

balance of moneys remaining in his hands, as ascertained by the auditors of town accounts. (a)

(90.) SEC. VIII. Upon the death of any of the officers enumerated, the successor of such officer shall make such demand as above provided, of the executors or administrators of such deceased officer, and it shall be the duty of such executors or administrators to deliver upon the like oath, all records, books and papers in their possession, or under their control, belonging to the office held by their testator or intestate.

Duty of, with regard to books and papers.

ARTICLE XIV.

(91.) SEC. I. Each county as a body corporate, has capacity—

1. To sue and be sued in the manner provided by law.
2. To purchase and hold lands within its own limits, and for the use of said county, to the power of the legislature over the same.
3. To make such contracts, and to purchase and hold such personal property as may be necessary to the exercise of its corporate and administrative powers; and
4. To make such orders for the disposition, regulation or use of its corporate property as may be deemed conducive to the interests of its inhabitants.

Powers of counties defined.

(92.) SEC. II. No county, under this organization, shall possess or exercise any corporate powers, except such as are enumerated under this act, or shall be specially given by law, or shall be necessary to the exercise of the powers so enumerated or given.

Limitation of power.

(93.) SEC. III. All acts or proceedings by or against a county in its corporate capacity, shall be in the name of the board of supervisors of such county, but every conveyance of land within the limits of such county made in any manner for the use and benefit of its inhabitants, shall have the same effect as if made to the board of supervisors. (a, b)

Proceedings by or against a county, in whose name; conveyances of land.

(94.) SEC. IV. The powers of a county as a body politic can only be exercised by the board of supervisors thereof, or in pursuance of a resolution by them adopted.

Powers of county, how executed.

ARTICLE XV.

(95.) SEC. I. The chairman of the board of supervisors of the several towns of the counties of this state, shall meet annually in their respective counties, for the dispatch of business, as a board of supervisors. They may also hold special meetings, at such times and places as they may find convenient, and shall have power to adjourn from time to time as they may deem necessary.

Board of supervisors how constituted; special meetings; power to adjourn.

(96.) SEC. II. The annual meetings of the board of supervisors shall be holden on the second Tuesday in September, in each and every year, at the county seat, and if the court house be deemed convenient, to be held therein.

Annual meetings when held.

(97.) SEC. III. The board of supervisors at their first meeting in

Organization, how effected.

(a) Form of oath for town officers at leaving office, and delivering over books, &c.

You do solemnly swear [or affirm] that you have delivered over to me, A. B., all the records, books and papers in your possession or under your control, belonging to the office of \_\_\_\_\_, for the town of \_\_\_\_\_, so help you God.

(a) In a suit against a county, the board of supervisors should be named as defendant; the individual supervisors should not be named.—[Hill v. Board of Supervisors of Livingston Co., 2 Kernan, 52.

(b) Supervisors of a county are a corporation with special powers and for special purposes only; and before a special act empowering them, it was very questionable whether in New York they could receive a grant of land for any purpose.—[Jackson v. Hartwell, 8 Johns., 330.

every year, shall organize by choosing one of their number as chairman, who shall preside at all meetings of the board during the year. In case of his absence at any meeting, the members present shall choose one of their number as temporary chairman. (a)

Powers of board of supervisors defined.

(98.) SEC. IV. The board of supervisors of each county in the state, shall have power at their annual meetings, or at any other meetings—

1. To make all such orders concerning the corporate property of the county, as they may deem expedient.

2. To audit all accounts chargeable against such county, and to direct the raising of such sums as may be necessary to defray the same. (b)

3. To audit the accounts of town officers and other persons, against their respective towns, as are not otherwise provided for, and to direct the raising of such sums as may be necessary to defray the same. (c)

4. To appropriate funds to aid in the construction of roads and bridges in any part of their respective counties, whenever a majority of the whole board of the county may deem it proper and expedient. (d)

A majority to constitute a quorum.

(99.) SEC. V. A majority of the supervisors of any county shall constitute a quorum for the transaction of business, and all questions which shall arise at meetings, shall be determined by the votes of the majority of the supervisors present, except in such cases as are otherwise provided.

To sit with open doors.

(100.) SEC. VI. The board of supervisors shall sit with open doors, and all persons may attend their meetings.

Chairman to administer oaths.

(101.) SEC. VII. Every chairman of the board of supervisors shall have power to administer an oath to any person concerning any matter submitted to the board, or connected with their powers and duties. (e)

Board of supervisors have power to appoint clerk; qualifications.

(102.) SEC. VIII. The several boards of county supervisors in this state, shall have power to appoint the clerk of their board, who shall hold their office until the next general election, and until their successors are elected and qualified: *provided*, that it shall be optional with the board of supervisors in any county, to appoint as such clerk, some persons other than the register of deeds, who shall have the qualifications of an elector, and be a resident of the county.

Clerk to give bond and take oath.

(103.) SEC. IX. Such clerk, when elected, shall hold his office for two years, and shall give such bond as the county board shall demand, and take such oath of office as they may require. (f, g)

(a) The board of supervisors may elect a temporary chairman, whether there is a regular chairman in existence or not, and any meeting of the board at which a quorum is present, must be regarded as valid.—*Town of Ottawa v. Co. of LaSalle*, 11 Ill., 654.

(b) The power granted to supervisors of a county to examine, settle, and allow all accounts chargeable against a county, involves the right to reject, if sufficient reason, in the opinion of the supervisors, not presented for the allowance.—*People v. Supervisors Dutchess Co.*, 9 Wend., 508.

(c) A board of supervisors, by auditing and paying part of a claim presented, is not thereby precluded from contesting the residue, even upon a principle which would show the former allowance to have been improper.

A mandamus will not lie to a board of supervisors to control them in the exercise of their discretion as to the amount at which an account presented shall be audited.—*People v. Supervisors*, 1 Hill, 362. Mandamus is the proper remedy to compel a board of supervisors to perform a clear legal duty, and an action will not lie.—*Boyer v. Supervisors of Cayuga*, 20 Barb., 294.

Boards of Supervisors cannot bind their counties by an act not within the limits of the express powers conferred upon them by statute. They cannot allow a claim on any notions of their own as to its equity.—*Chemung Canal Bank v. Supervisors of Chemung*, 5 Denio, 517.

(d) Where the supervisors of a county have neglected to perform any duty required of them at their annual meeting, they may be compelled by mandamus to meet again and perform it. They cannot, by their neglect, nullify a statute imposing duties upon them.

The board of supervisors of Chenango county, in the state of New York, at their annual meeting in 1851, neglected to issue warrants for the military commutation. The supreme court issued a mandamus, requiring them to meet and issue the warrants. *Held*, that the mandamus was properly issued.—*People v. Supervisors of Chenango*, 4 Seld., 317.

(e) *Form of oath to be administered by chairman of supervisors.*

You solemnly swear that in relation to the matters before this board respecting which you shall be here questioned, you will tell the truth, the whole truth and nothing but the truth. So help you God.

(f) *Form of bond of County Auditor.*

See note (a), Art. VIII. But instead of taking the bond to a town, take it "to the board of super-

Said clerks so appointed and elected, shall hereafter perform all of the duties heretofore required of the register of deeds, as clerks of the board of county supervisors, and they shall be subject to the same liabilities, and for failure to perform said duties and for malfeasance in office.

His liabilities.

All clerks of the county board shall keep accounts current with the treasurers of their several counties. They shall charge the treasurers with all moneys paid into the treasury, and credit them with all moneys paid out of the treasury. All payments into and out of the treasury shall be made on the warrant of said clerk, who shall keep a duplicate copy thereof. (h) The clerk may audit and give his warrant for demands against the county, the amount of which is fixed by law, and shall draw his warrant for all claims audited and allowed by the county board. All clerks of the several county boards hereafter elected, shall be styled "county auditors;" provided, that it shall be the duty of the register of deeds, after the passage of this act, in all cases, on demand, to deliver over to the board of supervisors, all books, records, documents, tax rolls, tax lists, reports, and papers, in his office, in any way pertaining or relating to taxes or tax sales of his county, together with all moneys by him collected for or on account of taxes; and the same shall be delivered under oath and certified by the register of deeds.

To keep account current with treasurer.

To be styled county auditor.

Register of deeds to deliver to board of supervisors all books, records, &c., under oath.

(104.) SEC. X. The books, records and accounts of the board of supervisors, shall be deposited with the register of deeds, and shall be open without reward, to the examination of all persons.

Records and accounts, to be deposited with register of deeds.

(105.) SEC. XI. It shall be the duty of the clerk to designate upon every account upon which any sum shall be audited and allowed by the board, [the amount allowed] and the charges for which the same was allowed, and he shall deliver to any person who may demand it, a certified copy of any account on file in his office, on receiving from such person five cents for every one hundred words contained in said copy.

Clerk to designate upon accounts amount allowed by board.

Clerk to deliver certified copies.

(106.) SEC. XII. Whenever a majority of the board of county supervisors in each or any of the organized counties of the state of Minnesota shall deem it expedient for the convenience and interest of their respective counties, that a tax should be levied upon the real and personal property of said county for the purpose of erecting a court house, jail, or other and all county buildings, within or at the county seat of said county, they shall issue a proclamation of the same by publishing in the county paper, if there be one, if not, by posting up notices in three of the most public places in each organized town of said county, at least sixty days before the time of holding any general election or annual town meeting in said county. (i)

How taxes to be raised for county buildings.

visors of the county of \_\_\_\_\_ in the state of Minnesota, for the use of the inhabitants of said county." And let the condition be that the principal shall discharge his duties "as county auditor of the said county of \_\_\_\_\_."

(g) Form of oath to be administered to Auditor.

You solemnly swear that you will support the Constitution of the United States and of the State of Minnesota, and will well and faithfully discharge all your duties as county auditor of the county of \_\_\_\_\_, for the two years next ensuing. So help you God.

(h) Form of County Auditor's warrant.

To A. B., Treasurer of county of \_\_\_\_\_ and state of Minnesota.  
 Pay to C. D. or order, \_\_\_\_\_ dollars \_\_\_\_\_ cents, amount of bill of said C. D., dated the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_, duly audited and allowed.  
 Dated at \_\_\_\_\_ in said county, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_.

G. H., County Auditor.

(i) Form of County Supervisors' proclamation for county tax.

All male inhabitants of the county of \_\_\_\_\_, being electors of the state of Minnesota, are hereby notified that the board of supervisors of the said county deem it expedient for the convenience and interest of said county, that the amount of \_\_\_\_\_ dollars \_\_\_\_\_ cents shall be assessed upon the real and personal property of said county, for the purpose of erecting within or at the county seat of said county, a court house [or as the case may be.]

Electors to vote for or against tax.

(107.) SEC. XIII. Said proclamation shall distinctly specify the amount to be raised by tax, the purposes for which such tax is assessed, and shall also specify the particular building or buildings to be built, for which such appropriation is to be made. It shall also authorize all the male inhabitants of the county thereof, having the qualifications of electors of the state of Minnesota, to meet at the next general election or annual town meeting thereafter, and by ballot, to vote for or against the levying [a] tax for the erection of county buildings in their respective counties.

Election for levying tax—how conducted.

(108.) SEC. XIV. Said election shall be conducted in the same manner and at the same time, as the election for town and county officers, and the form of ballot shall be, "For tax to build county buildings, yes;" or "For tax to build county buildings, no;" which ballot shall be canvassed in the same manner as the ballots for the election of town and county officers, and a return thereof, certified by the board of election in each town, shall be made within ten days thereafter to the register of deeds in and for said county, or at the expiration of ten days from the time of holding said election, [who shall] proceed to canvass said returns in a manner as prescribed by law for the canvass of returns of other elections, and shall make a report of the results thereof to the chairman of the board of county supervisors. (j)

Return.

Tax, how assessed and collected.

(109.) SEC. XV. If a majority of all the votes cast shall be found to be against the levying a tax for the erection of county buildings, no tax shall be levied, nor shall the question again be submitted to a vote for the period of one year; but if a majority of all votes cast shall be found to be in favor of the levying a tax for the erection of county buildings, the board of county supervisors shall proceed to levy a tax upon all the real and personal property of said county, in the manner prescribed by law, for the purposes described in the before mentioned proclamation: *provided*, said tax shall not exceed the amount specified in said proclamation. Said tax to be assessed and collected in the same manner as the tax for county and state purposes.

Supervisors to take care of the poor and poor house—compensation of overseer. Board to audit.

(110.) SEC. XVI. It shall be the duty of the board of supervisors to take charge of the poor, and the management of the poor house, in their respective counties that is given to the county supervisor's court, and the overseers of the poor of the several towns shall be accountable to, and their compensation shall be audited by the board of supervisors, and paid by the county.

Compensation of supervisors.

(111.) SEC. XVII. Each member of the board of supervisors shall be allowed a compensation for his services and expenses in attending the meeting of the board, or for attending to any other business for the benefit of the town or county, at the rate of one dollar and fifty cents per day, to be audited by the board, and paid by the county.

Penalty for neglect of duty.

(112.) SEC. XVIII. If any supervisor shall willfully refuse or neglect to perform any of the duties which are or shall be required of him by law, as a member of the board of supervisors, he shall, for every such offense, forfeit the sum of two hundred dollars.

And said voters are hereby notified to meet at the next general election (or annual town meeting) which will be on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_, and to vote by ballot for or against the levying of said tax.

Dated at \_\_\_\_\_ within said county, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_.

By order of the board of county supervisors.

County Auditor.

(j) Form of return of vote on tax levy for county buildings.

To A. B., register of deeds in and for the county of \_\_\_\_\_ and state of Minnesota. The undersigned, constituting the board of election of the town of \_\_\_\_\_ in said county, hereby certify that at the election for levying a tax to build county buildings for said county, holden within and for this town on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_, there were cast for the levy of said tax votes [writing the numbers in words], and against the levy of said tax, \_\_\_\_\_ votes.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_.

[Signed by the members as] Board of Election.

ARTICLE XVI.

(113.) SEC. I. That there shall be elected on the second Tuesday in October, one thousand eight hundred and fifty-nine, and thereafter biennially by the qualified voters of each county, some suitable person being a resident and qualified voter of the same county, to be county treasurer from the first-day of February next succeeding his election, to continue in office two years, and until his successor is elected and qualified; the present county treasurers shall remain in office until their successors are elected and qualified, but each treasurer thus holding over under an election had in eighteen hundred and fifty-seven, or under appointment, shall, on the first Monday of January, eighteen hundred and fifty-nine, renew his oath of office, and execute a new bond to the county board of his county, subject to the approval of said board, and every person elected or appointed to the office of county treasurer, shall, within ten days after he is notified of his election or appointment, file [his written acceptance thereof] in the office of register of deeds, and before he enters upon the duties of his office shall give bond to the board of supervisors of the county, with two or more sufficient sureties, to be approved by the board of supervisors, and in such sum as they shall direct, conditioned that such person shall faithfully execute the duties of his office, and shall pay, according to law, all moneys which shall come to his hands as treasurer, and render a just and true account thereof to the board of supervisors, or to the auditor of public accounts of this state, when thereupon required. (a)

County treasurer when elected; qualification; to file acceptance and give bond; to render account.

(114.) SEC. II. Such bond, when approved by the board of supervisors, shall be entered upon the records and filed in the office of the register of deeds. Said register of deeds shall forward a certified copy thereof to the state auditor, who shall file the same in his office, and such copy shall have the same force and effect as the original bond. County treasurers' bonds shall be a lien against their real estate.

Bond to be recorded; certified copy of bond to be sent to auditor; to be lien on real estate.

(115.) SEC. III. It shall be the duty of the county treasurer to receive all moneys belonging to the county, from whatever source they may be derived, and all moneys belonging to the state, which by law are directed to be paid to him, and to pay and apply such moneys in the manner required by law.

To receive and disburse moneys

(116.) SEC. IV. The county treasurer shall keep a just and true account of the receipts and expenditures of all moneys, in a book or books

To keep account of receipts and expenditures.

(a) Form of acceptance of office of county treasurer.

To A. B., register of deeds of the county of \_\_\_\_\_, and state of Minnesota. You are hereby respectfully notified that I accept the office of county treasurer of the county of \_\_\_\_\_, to which I was elected (or appointed) on the \_\_\_\_\_ day of \_\_\_\_\_, A. D., Dated at \_\_\_\_\_, in the county of \_\_\_\_\_, and state of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D., 18 \_\_\_\_ C. D.

Form of county treasurer's bond.

Know all men by these presents, that we, A. B., of the town of \_\_\_\_\_, in the county of \_\_\_\_\_, and state of Minnesota, as principal, and [naming sureties and their residences] as sureties, are held and firmly bound unto the board of supervisors of said county, for the use of the inhabitants of said county, in the sum of [as the board of supervisors may appoint], for the payment of which well and truly to be made, we hereby bind ourselves, our, and each of our, heirs, executors and administrators, firmly by these presents.

Sealed with our seals, and dated this \_\_\_\_\_ day of \_\_\_\_\_, A. D., 18 \_\_\_\_ The condition of the above obligation is such, that, provided the said A. B. shall well and faithfully discharge the duties of his office as county treasurer of the said county of \_\_\_\_\_, and shall duly receive and pay all moneys which shall be under his care as such treasurer, and shall justly and truly account therefor to the said board of supervisors or to the auditor of state of Minnesota, when thereto legally required, then this obligation to be void, otherwise to remain in full force and effect.

A. B. (seal.)  
C. D. (seal.)  
E. F. (seal.)

to be kept for that purpose, which books shall be provided at the expense of the county.

Treasurer how to collect delinquent taxes and settle with the auditor.

(117.) SEC. V. The county treasurer, on receiving the delinquent tax lists from the several town collectors, shall proceed in all respects as was required by the state [territorial] statutes of the register of deeds in the manner of collecting said taxes, advertising the land and making sale thereof, and shall account for and pay over the state tax in like manner as herein before required of the sheriff or collector, and for said services the treasurer shall receive the like compensation as has been allowed to said sheriff or collector. And within twenty days after the close of any sale of lands for unpaid taxes, said treasurer shall deliver to the auditor of his county, attested under oath, a full statement of the lands sold, and the amount for which said lands were sold, together with all assessment rolls, or tax books, or delinquent lists returned by the town collectors.

Treasurer to exhibit his books and accounts to board of supervisors.

(118.) SEC. VI. At the annual meeting of the board of supervisors, or such other times as they shall direct, the county treasurer shall exhibit to them all his books and accounts, and all vouchers relating to the same to be credited and allowed.

When treasurer's books to be surrendered.

(119.) SEC. VII. Upon the death, resignation or removal from office of any county treasurer, all the books and papers belonging to his office shall be delivered to his successor in office, upon his oath, or in case of his death upon the oath of his executors or administrators. In case such treasurer shall have left the county, a demand may be made of any one having charge of the books or papers belonging to said office, [who] shall surrender them up, and on oath if required.

Penalty for refusal.

(120.) SEC. VIII. If any such preceding county treasurer, or in case of his death, if his executors or administrators shall refuse or neglect to deliver such books, papers and moneys upon oath, when lawfully required or demanded, every such person shall forfeit for the use of the county, the sum of one thousand dollars.

Treasurer to receive commission.

(121.) SEC. IX. The county treasurers shall be allowed in their settlement with the auditor, for receiving the state tax from the town collectors and paying the same into the state treasury, adjusting the accounts of said town collectors, correcting non-resident lists, [to] charge a commission of one per cent. when the amount does not exceed ten thousand dollars, and a half of one per cent. on all received from town collectors over that amount.

To be prosecuted for failure to pay over.

(122.) SEC. X. Whenever any county treasurer shall fail or refuse to pay over the county revenue, the board of supervisors shall cause suit to be prosecuted on his bond, and the auditor shall have the same power to prosecute suit against the county treasurers, on the copy of the bonds, as is allowed by law for prosecuting suits against county collectors.

Moneys recovered, how appropriated.

(123.) SEC. XI. All moneys recovered in any such actions shall be paid or appropriated for the use contemplated or directed by law.

#### ARTICLE XVII.

Assessment of lands.

(124.) SEC. I. Every person shall be assessed in the town where he resides for all lands owned by him in such town. All lands owned by any person which are not situated in the town where such owner may reside, shall be taxed as non-resident as hereinafter provided.

Personal property, how assessed.

(125.) SEC. II. Every person shall be assessed in the town where he resides, where the assessment is made, for all personal estate owned by him, including all such personal estate in his possession or under his control as trustee, guardian, executor or administrator, and in no case shall property held under either of these trusts be assessed to any other person.

(126.) SEC. III. The real estate of all incorporated companies liable to taxation, shall be assessed in the town where the same shall lie, in the same manner as the real estate of individuals. All the capital stock of any incorporated company liable to taxation, shall be assessed in the town where the principal office of said company is located or business transacted. In case of toll bridges, the company owning such bridge shall be assessed in the town where the tolls are collected. The horses and stages of stage companies shall be taxed in the town where they are usually kept. (a)

Real estate of corporations how assessed; companies to be taxed; stage companies.

ARTICLE XVIII.

(127.) SEC. I. It shall be the duty of the clerk of the county board in each county to procure or prepare, in conformity with the instructions he may from time to time receive from the state auditor, blanks or books properly ruled, with suitable heading, for the use of the assessors of the several towns in his county, a suitable number of which shall always be ready for the assessors throughout the county, and each assessor shall be supplied with the same before the first day of June in each year. The expense of purchasing the same shall be audited by the county board and paid by the county. He shall also present each assessor with a list of all taxable lands within their respective towns, that have not been before furnished.

Clerk of county board to procure blanks or books for assessors; expense of such books paid by county; clerk to present assessors with list of taxable property.

(128.) SEC. II. Between the first days of June and July in each year, the assessor shall proceed to ascertain by diligent inquiry, the names of all the taxable inhabitants in his town, and also the taxable property, real or personal, within the same, and he shall set down in separate columns, as headed, the number or quantity and value of each article of taxable property, according to the best of his information and judgment. (a)

Time and manner of making assessments.

(a) The assessors and collector are not in any legal sense the agents of the town, in its corporate capacity, in the assessment and collection of taxes; and the town is not responsible for any mistakes or misfeasance by them in the performance of their duties. Accordingly, where land was erroneously assessed by the assessors, and payment of the tax by the owner enforced by the collector of the town, held, that the town was not liable in an action by the owner to recover the amount of the tax.—*Lorillard, v. Town of Monroe, Kernan, 392.*

(a) The following forms, though superseded by the provisions of the township act, are inserted, as likely to be useful for reference, in determining the regularity of proceedings in assessments, &c., under the old law.

Form of assessment roll.

Assessment roll for district No. \_\_\_\_\_, in the county of \_\_\_\_\_, and state of Minnesota, for the year 18\_\_\_\_; containing all the taxable property, real and personal, in said district.

Names of persons taxed.	Description of Lands.	Section.	Township.	Range. (E. or W.)	No. of acres.	Valuation of real estate.	Valuation of personal estate.	Total valuation of all property.	Amount of taxes.	Remarks.
A. B.,	E. hf. of N. E. qr.,	23	3	18	80	\$300.00	\$5000.00	\$5300.00	\$	cts.
C. D.,	Land bounded,	42	2	18	100	400.00	100.00	500.00		
E. F., guardian of G. H.,	(describing it.) S. hf. of S. W. qr.,	8	3	18	80	200.00		200.00		

Form of assessment roll for town lots.

Lots in the village (or town or city) of \_\_\_\_\_, in the county of \_\_\_\_\_, described according to the map thereof, on record in the office of the register of deeds in said county.

Names of persons taxed.	Number of Lots.	Block.	Valuation for each lot.	Valuation of all lots.	Valuation of personal property.	Total valuation.	Amount of tax.	Remarks.
A. B.,	3 and 4.	8	\$100.00	\$200.00	\$50.00	\$250.00	\$	cts.
C. D.,	6.	10	300.00	300.00	200.00	500.00		
E. F.,	8.	20	50.00	50.00				

Persons aggrieved: how relieved. (129.) SEC. III. The assessor shall complete the assessment on or before the first Tuesday in July in each year, and shall on that day meet with the town clerk and supervisors at the [office] of the town clerk, and, on the application of any person aggrieved, they shall review the assessment, and if the board, or a majority of them, think it advisable, they may reduce the assessment of such person, and in such case the assessor shall correct his list: *provided*, that in counties not yet assessed by township assessors, assessments may be made in any month under the direction of the clerk of the board of supervisors during the year, and when so made, shall be legal and binding as in other cases.

Form of assessor's certificate. (130.) SEC. IV. After the assessment roll is corrected, according to section three of this article, the assessor shall attach thereto and sign a certificate in the following form:

"I hereby certify that I have set down in the above assessment roll, all the real and personal estate situated in the town (or district as the case may be) according to my best information, and that I have estimated the true value thereof, according to the best of my judgment and belief."

Forms to be used by assessors. (131.) SEC. V. The assessors, in the execution of their duties, shall use forms and pursue the instructions which shall from time to time be transmitted to them by the state auditor, or clerk of the county board.

Manner of assessing lands and town lots. (132.) SEC. VI. In assessing lands and town lots, the assessor shall assess each lot and each section, and as far as practicable, each government subdivision of a section by itself, and shall return the assessment roll certified, to the clerk of the county supervisors, on or before the first day of September in each year.

Time of return. (133.) SEC. VII. The clerk upon the receipt of the several assessment rolls, shall compare the same with the list of taxable lands on file in his office, correcting all errors that he may discover, and add to the roll of the proper town the name of the owner, if known, and the description of all such lands as have been omitted by the assessors which are liable to taxation. He shall then make a fair copy of the several assessment rolls; which copy, with the original, shall be laid before the county board at their annual meeting in each year; for which services the clerk shall be allowed one cent for each tract of land, and one cent for each person's name, and valuation of personal property contained in said rolls.

Clerk to correct errors; clerk to copy assessment roll for county board; compensation for such copy. (134.) SEC. VIII. If any assessor shall willfully neglect or refuse to perform any of the duties required of him by this act, he shall forfeit to the county the sum of twenty-five dollars.

Penalty for neglect of assessor.

ARTICLE XIX.

Board of supervisors to equalize assessment; make alterations in description of lands of non-residents. (135.) SEC. I. The board of supervisors of each county, at their annual meeting, shall examine the assessment rolls of the several towns in their county, for the purpose of ascertaining whether the valuations in one town or district bear a just relation to all the towns or districts in the county, and they may increase or diminish the aggregate valuation of real estate in any town or district, by adding or deducting such sums as may in their opinion, be necessary to produce a just relation between the valuation of real estate in the county; but they shall in no instance, reduce the aggregate valuations of all the towns and districts below the aggregate valuation thereof as made by the assessor. They may make such alterations in the descriptions of lands of non-residents as they may deem necessary, and they shall assess the value of all such lands as have been omitted by the assessor, and listed by the clerk, and cause the same to be placed opposite the description of said lands in a column for that purpose.

Board of supervisors to fix a (136.) SEC. II. They shall, at their annual meeting, fix upon a cer-

tain rate on the hundred dollars, to be levied upon the taxable property, both real and personal, in their respective counties for county purposes, which they shall cause to be entered on their record. They shall carefully compare the copy made by the clerk with the original assessment roll; and when so compared and corrected, they shall cause taxes to be extended on the copy. They shall also cause to be endorsed on the original assessment roll the amount per cent. levied on each hundred dollars of valuation, as taxes thereon, under the hand of their chairman, attested by the clerk and the seal of the county; which roll shall remain in the county clerk's office until the month of March thereafter. The town clerk shall call on the county clerk during the month of March, in each year, for said roll of the previous year, of their [respective towns, which rolls they shall file in their] respective offices for the use of the town.

rate of assessment; correct the assessment roll and endorse it; town clerk to call on county clerk for roll.

(137.) SEC. III. They shall cause to be estimated and set down in a separate column for that purpose, in a copied assessment roll, opposite the several sums set down as valuations of real and personal estate, the respective sums in dollars and cents, to be paid as a tax thereon. They shall also cause to be added up and set down, the aggregate valuation of the real and personal estate, in the several towns and districts, as corrected by them, and the county clerk shall transmit to the state auditor, by mail, a certificate of such aggregate valuation, showing separately the aggregate valuation of real and personal estate, and the amount of state and county tax.

Separate taxes; aggregate valuations; certificate to be sent to auditor of state.

(138.) SEC. IV. The board of county supervisors shall cause the copied and corrected assessment roll of each town or district in their respective counties, with the taxes extended thereon, to be delivered to the collector of such town or district, on or before the fifteenth day of November in each year.

When assessment roll delivered to collector.

(139.) SEC. V. To each assessment roll so delivered to a collector, a warrant, attested by the county clerk, shall be annexed, commanding such collector to collect from the several persons named in the assessment roll, the several sums mentioned in the last column of such roll, opposite their respective names. The warrant directed to the collector of a town shall direct the collector, out of the moneys to be collected, after deducting the compensation which he may be legally entitled to, which compensation shall be three per cent. on the hundred dollars of tax, to pay over to the chairman of the board of supervisors the amount of tax collected for the support of highways and bridges, and to the county treasury, the state and county tax collected by them. The county treasurer shall pay over to the proper officers, the amount of tax collected by them on delinquent and non-residents estate. (b)

Warrant for collection of tax; collector's compensation; tax how to be paid over.

(b) Form of warrant to tax collector.

State of Minnesota, } ss.  
County of

The people of the state of Minnesota, to A. B., collector of the town of , in said county, greeting:

You are hereby commanded to levy and collect from each of the persons named in the assessment roll hereto annexed, the sums of money set opposite their respective names, being the tax assessed upon the property in said town during the current year. In collecting said taxes, you will call at least once on each of said persons, or at his or her place of residence, and demand payment of such tax. In case any person so named shall refuse or neglect to pay such tax, you shall levy the same by distress and sale of the goods and chattels of such person. If any of said persons shall have removed out of said town after said assessment and before payment of said tax, you shall levy and collect said tax of the goods and chattels of such person, in any town or district in this state to which such person may have removed, or in which he may reside. In case of any distress and sale as above for said tax, you are to give public notice of the time and place of sale and of the property to be sold, at least ten days previous to the sale, by advertisement, to be posted in at least three public places in the town where such sale is to be made; and if the taxes of the owner of such property shall not, at the time set for such sale, have been paid, you shall then and there sell the same at public auction, the surplus over the taxes and your fees, if any, to be returned to the person in whose possession the property was when such distress was made. Your legal fees are three per cent. on the hundred dollars of tax; and having deducted the same, you will pay over to the chairman of the board of supervisors the

Collector; how to proceed in case of neglect or refusal to pay tax.

(140.) SEC. VI. In all cases, the warrant shall authorize the collector, in case any person named in such assessment roll shall neglect or refuse to pay his tax, to levy the same by distress and sale of the goods [and] chattels of such person, and it shall require payment thereon specified to be made by such collector, before the fifteenth day of February next, in gold or silver coin. (c, d)

Chairman of board and clerk to account to treasurer.

(141.) SEC. VII. The chairman of the board of supervisors, and clerk, as soon as the assessment rolls have been delivered to the several collectors, with such warrant annexed, shall transmit, under their hands and seals, to the treasurer of the county, an account thereof, stating the names of the several collectors, the amount they are respectively to collect, the purpose for which the same are to be collected, and the person to whom, and the times when, the same are to be paid, and the county treasurer on receiving such accounts, shall charge to such collector the sum to be collected by him.

ARTICLE XX.

Mode of collection, in case of refusal to pay; distress.

(142.) SEC. I. Every collector, on receiving the tax list and warrant, shall proceed to collect the taxes therein named, and for that purpose, shall call at least once on the person taxed, or at his or her place of residence, and demand payment of the taxes charged to him on his property. In case any person shall refuse or neglect to pay the tax imposed on him, the collector shall levy the same by distress and sale of goods and chattels of the person who ought to pay the same.

Notice of sale for taxes.

(143.) SEC. II. The collector shall give public notice of the time and place of sale, and of the property to be sold, at least ten days previous to the sale, by advertisement, to be posted up in at least three public places in the town where such sale is to be made. The sale shall be by public auction. (a)

Surplus at tax sale; how disposed of.

(144.) SEC. III. If the property distrained shall be sold for more than the amount of taxes, the surplus shall be returned to the person in whose possession such property was when the distress was made.

amount of tax collected for the support of highways and bridges, and to the county treasury, the state and county tax. All said payments you are to make on or before the fifteenth day of February next, and all taxes collected by distress and sale as above specified, must be paid by you in gold and silver coin.

Hereof fail not, and due return make of your doings hereon, under penalty of the law.

Signed and sealed by me, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_  
 C. D., chairman board of supervisors } [seal.]  
 of the county of \_\_\_\_\_

Attest, E. F., county clerk of said county.

(c) Where a collector levies on goods before the return day specified in his warrant, he may, under the statute (in New York,) sell at any time within a week after such return day.—[Sheldon v. Van Buskirk, 2 Comst., 473.]

(d) The intent of the legislature in this section, is by no means clear. It is directory as to requisites of the warrant, in all cases, and standing by itself, would seem to require "all payments on the assessment roll specified, to be made by such collector, in gold and silver coin." Of course this would authorize him to receive no other money in payment of taxes. But it is hardly probable that such was the intent. By the act of January 29, 1858, known as "an act for the relief of the creditors of the state," sec. 7, it is provided that state scrip "shall always be received by the state for taxes, assessments, fines and dues of every nature whatever," and again, in "an act providing for the election and prescribing the duties of treasurer of state," approved August 12th, 1858, sec. 7, "the treasurer shall receive in payment of public dues the warrants of the auditor of state." Also counties, and by local acts, some towns are authorized to anticipate their revenue, and to issue evidences of debt, receivable in payment of town and county taxes. To take nothing but gold and silver in payment of taxes, would in all these cases, and for other reasons, work much harm. Therefore, this requirement has been construed in the nature of a penalty for delinquency, and only applicable in such cases.

(a) Form of notice of collector's sale.

Will be sold at public auction to the highest bidder, at \_\_\_\_\_ [naming the place] in the town<sup>d</sup> of \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ noon, [enumerate the property] to pay the taxes on the same; said articles being the property of A. B., a delinquent tax-payer of said town, and having been seized and taken by me by virtue of a collector's warrant to me directed and dated the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_

Dated at \_\_\_\_\_ in the county of \_\_\_\_\_ and state of Minnesota, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_  
 C. D., Collector.

The above notice to be posted in at least three public places in the town where the sale is to be made, and at least ten days before the day of sale.

(145.) SEC. IV. In case any person upon whom any tax shall be assessed, under the provisions of this act, in any town or district, shall have removed out of such town or district, after such assessment and before payment of such tax, it shall be lawful for the collector of the town where such tax was assessed, to levy and collect such tax of the goods and chattels of the person assessed, in any town or district in this State to which [the] person may have removed, or in which he may reside.

Tax how collected in case of removal.

(146.) SEC. V. Every collector shall pay over, within one week after the time mentioned in his warrant for paying the moneys directed to be paid to the town officer of his town, and to the county treasurer, the sums required in such warrant to be paid to them respectively, retaining the compensation to which he may be legally entitled. The town officers to whom any moneys shall be paid, shall deliver to the collector duplicate receipts therefor, one of which shall be filed by the collector with the county treasurer, which shall be to the credit of the collector, and no other evidence of such payment shall [be required] by the treasurer.

Collector to pay over to treasurer, retaining compensation; duplicate receipts for moneys paid over.

(147.) SEC. VI. If any of the taxes entered in his tax bill shall remain unpaid, and the collector shall not be able to collect the same in the time required by his warrant, he shall then deliver to the county treasurer his tax book, and a list of such taxes due and unpaid, and on making oath before the county treasurer, or in his absence, before a justice of the peace, that the sums named in said list remaining unpaid, and that he has not, upon diligent inquiry, been able to find any goods or chattels belonging to the person liable to pay such taxes, whereon he could levy the same, he shall be credited by the treasurer the amount thereof, and the treasurer shall give the collector a receipt thereof. (b)

Duty of collector as to taxes remaining unpaid.

(148.) SEC. VII. If any person chosen or appointed to the office of collector of any town or district, shall refuse to serve or shall die or resign, or the office become vacated in any other way, before he shall have entered on or completed the duties of his office, or shall be in any way disabled from completing the same, the supervisors and justices of such town or district, or any two of them, shall forthwith appoint a collector for the remainder of the year, who shall be subject to like penalties, and have the same powers and compensation as the collector in whose place he was appointed, and the town clerk shall forthwith give notice of such appointment to the county treasurer. But such appointment shall not relieve the former collector from any liability incurred by him.

Vacancy in office of collector, how filled.

(149.) SEC. VIII. If any warrant shall have been issued, as by law provided, prior to any appointment under the last section, the original warrant, if it can be obtained, shall be delivered to the collector so appointed, and shall be considered as giving him the same powers as if

Warrant in case of appointment to vacancy, and extension of time under same.

(b) The following form is inserted for the same reason as those in note (a) p. 199; being superseded by the present Township Act, but useful for reference.

*Sheriff's return of taxes unpaid.*

Return of A. B., sheriff of the county of \_\_\_\_\_, and territory of Minnesota, containing a description of the lands and the taxes thereon, and the valuation of personal property, and the taxes thereon, (if any) assessed in said county in the year 18\_\_\_\_, which taxes remain due and unpaid, for the year herein specified, to wit:

Names of Persons Taxed.	Description of Lands and statement of Personal Property.	Section.	Township.	Range.	No. of Acres.	Amount of Tax.	Years for which Taxes are due.	Remarks.
A. B.	W. half of N. E. quarter.	23	2	18	80	\$4.50	1857	
C. D.	Land, bounded, ( <i>describe it.</i> )	32	3	18	100	5.00	1857	
A. B.	Personal prop'ty, val., \$250.00					\$3.00		

A. B., Sheriff

County.

originally issued to him. But if such warrant cannot be obtained, a new one shall be made out in the same manner as the original was, and upon every such appointment, the supervisor of such town may extend the time for collection, not exceeding thirty days, if he shall think it necessary, of which extension, he shall forthwith give notice to the county treasurer. The collector so appointed, shall keep an account of all collections made by the former collector, so far as he can ascertain the same, and when any one shall present a receipt for taxes paid to the former collector, he shall mark against the amount of taxes so paid, to whom paid, and the time when paid.

Duties of treasurer in case of neglect or refusal of collector to pay over money.

(150.) SEC. IX. If any collector shall refuse or neglect to pay over the sums required by his warrant, to the proper person, or account for the same as unpaid, the county treasurer shall, within twenty days after the time when such payments ought to have been made, issue a warrant under his hand and seal, directed to the sheriff of the county, commanding him to levy such sums as shall remain unpaid and unaccounted for by such collector, of the goods, chattels, lands and tenements of such collector, and pay the same to the county treasurer, and to return such warrant within forty days after the date thereof, which warrant the treasurer shall immediately deliver to the sheriff of the county. (c)

Sheriff to execute warrant against delinquent collector.

(151.) SEC. X. The sheriff to whom such warrant is directed, shall immediately cause the same to be executed, and shall make return thereof to the treasurer within the time specified, and shall pay to him the money received in virtue thereof, deducting therefrom as his fees, the same compensation as the collector would have been entitled to retain. Such part of the moneys, if any, as ought to have been paid by the collector, to the town officers, shall be paid by the treasurer to the officers to whom the collector was directed to pay the same, but if the whole amount of moneys due from the collector, shall not be collected in such warrant, the county treasurer shall first retain the amount which ought to have been paid to him, before making any payment to the town officers.

Sheriff's return.

(152.) SEC. XI. If the whole sum due from said collector shall be collected, the sheriff shall so state in his return; but if any part only, or if no part of such sum shall be collected, the sheriff shall state in his return the amount levied, if any, exclusive of his fees, and shall also certify that such collector has no goods or chattels, lands or tenements in his county, from which the moneys, or the residue thereof, as the case may be, could be levied, and in either case, the treasurer shall immediately give notice to the supervisor of the town or district, of the amount due from such collector, and the supervisor shall forthwith cause the bond of such collector to be put in suit, and shall be entitled to recover thereon the sum due from such collector, with costs of suit, and the moneys recovered shall be applied and paid to the supervisor, in the same manner in which it was the duty of the collector to have applied and paid the same.

Supervisor to cause suit on bonds.

County treasurer to sue delinquent sheriff.

(153.) SEC. XII. If any sheriff shall neglect to return any such warrant, or to pay the money collected thereon, within the time limited for the return of said warrant, or shall make any false returns thereon, the

(c) Form of warrant against delinquent collector.

State of Minnesota, }  
County of                    } ss.

The people of the State of Minnesota to the sheriff of the county of \_\_\_\_\_, greeting:  
You are hereby commanded to levy the sum of \_\_\_\_\_ dollars \_\_\_\_\_ cents, now remaining unpaid and unaccounted for by A. B., collector of the town of \_\_\_\_\_, of the goods, chattels, lands and tenements of said collector, and to pay the same over to the treasury of said county. And you shall return this warrant within forty days after the date thereof.

Hereof fail not under penalty of the law.  
Dated at \_\_\_\_\_, in the county of \_\_\_\_\_, and state of Minnesota, this \_\_\_\_\_ day of \_\_\_\_\_,

A. D. 18 \_\_\_\_\_

C. D., Treasurer of the county  
of \_\_\_\_\_ (Seal.)

county treasurer shall forthwith proceed to collect the whole sum directed to be levied by such warrant, by a proper suit therefor, and he may proceed in the first instance, by a writ of attachment against the goods and chattels, lands and tenements, rights and credits, of such sheriff, and the same proceeding may be had thereon in the proper court, as provided by law in ordinary cases of attachment.

(154.) SEC. XIII. The neglect or refusal of any collector, constable or other town or county officer, who shall have collected or received any sums of money in his capacity as such officer, to pay over such money or any part thereof, to the person or persons to whom such money shall be due or belonging, or for the purpose for which such money was collected or received, when the same shall be due or demanded by the proper person or authority, shall be deemed a felony, and shall be punished by imprisonment in the county jail or state penitentiary, for the term of one year for each and every one thousand dollars so neglected or refused to be paid over, and in the same proportion of time for any less sum. And the person so offending shall be forever thereafter incapable of holding any office in this state.

Town or county officer's refusal to pay over a felony; penalty.

(155.) SEC. XIV. Upon the settlement of the amount of taxes directed to be collected by any collector in any of the towns or districts of this state, the county treasurer shall give to such collector a certificate of the settlement, which shall be his discharge in full.

County treasurer's receipt of and certificate for taxes.

#### ARTICLE XXI.

(156.) SEC. I. The supervisors in the several towns in this state, shall have the care and superintendence of roads and bridges therein; and it shall be their duty to give directions for the repairing of the roads and bridges in their respective towns; to regulate the roads already laid out, and to alter each of them as they, or a majority of them, shall deem proper, as hereinafter provided; to cause the roads and the bridges which are or may be erected over streams intersecting roads, to be kept in repair; to divide their respective towns into so many road districts as they shall deem convenient, by writing under their hands, to be lodged with the town clerk, and by him entered in the town records, such division to be made annually if they shall deem it necessary, and in all cases, to be made at least ten days before the annual town meeting; to assign to each of the said road districts, such of the inhabitants liable to work on highways as they shall think proper, having such regard to proximity of residence as may be, and to require the overseers of highways, from time to time, as often as they shall deem necessary, to warn all persons liable to work on roads, to come and work thereon, with such tools, carriages, cattle or teams, as the said overseers, or either of them shall direct.

(a, b, c, d)

Supervisors to superintend roads and bridges; their duties therein.

To lay out road districts and assign and call out highway labor.

(a) Commissioners of highways can not, by virtue of their office, bring suits to recover damages against individuals or corporations, for illegally entering upon and taking possession of the public highways or bridges of their town. Neither have the electors of a town, at town meeting, power by resolution or otherwise, to authorize such commissioners to bring an action in their own names, or in their name of office, for such injuries. Such a resolution, if passed at a town meeting, would not bind the town.—[*Cornell v. Guilford*, 1 Den., 510.]

Where the electors of a town in their town meeting, directed the commissioners of highways to prosecute a turnpike company for entering upon and taking possession of a public highway and bridge in that town, and the commissioners accordingly brought a suit for that cause of action and had judgment against them, held, that they could not sustain an action against the town to be reimbursed their costs and expenses, or the costs recovered against them in that suit.

The electors of a town can not bind the town, except in manner prescribed by law.—[*Id.*]

(b) A vote of a town that the selectmen shall lay out a particular town way, is unauthorized and improper, it being the intention of the statute that the selectmen shall exercise their own discretion on the subject.—[*Kean v. Stetson*, 5 Pick., 492.]

(c) It seems that where a bridge is built by an individual over a natural stream, for his own benefit, if the bridge be of public utility and is used by the public, they are bound to keep it in repair; but

Supervisors to render accounts of labor assessed, moneys received, expenses, &c.

(157.) SEC. II. The supervisors in each town shall render to the board of town auditors, at their annual meeting for auditing the accounts of town officers, an account in writing, stating the labor assessed and per-  
 formed in such town, the sums received by such supervisors for fines and commutations and all other moneys received under this act; a statement of the improvements necessary to be made on the roads and bridges, and an estimate of the probable expense of making such improvements, beyond that the labor to be assessed in that year and the road tax will accomplish; also, a statement in writing, of all expenses and damages in consequence of laying out, altering, or discontinuing the roads. (e)

Overseers of highways to repair and keep in order roads; warn persons to work collect fines, &c.

(158.) SEC. III. It shall be the duty of overseers of highways in each town, to repair and keep in order the roads within their several districts for which they shall have been elected; to warn all persons from whom labor is due, to work on the highways at such times and places within their several districts, as they may think proper; to collect all fines and commutation money, and to execute all lawful orders of the supervisors, and to deliver to the town clerk, within sixteen days after election or appointment, a list, subscribed by such overseer, of the names of all the inhabitants in his road district who are liable to work on the highways. (f)

not so when the necessity for the bridge is created by the individual.—[*Dygett v. Schenck*, 23 *Wend.*, 446.

Commissioners of highways are not bound to build or repair bridges when not in funds to defray the expense.—[7 *Wend.*, 474.

An indictment against commissioners of highways for not repairing a bridge, is defective unless it aver that the duty of repairing bridges at common law, belonged to the county, and the remedy for not doing so was by presentment or indictment.—[2 *Hill*, 619.

(d) Form of division of town into road districts..

The undersigned, supervisors of the town of \_\_\_\_\_, do hereby divide said town into road districts as follows: Road district number one, shall include all roads within the following territory, to wit: [name the sections, or specify the boundaries]; and we assign to said district, to work upon the roads therein [naming the persons], residents thereof, [and if non-residents are assigned, add their names], non-residents thereof.

Road district number two [and describe it and those assigned to it as before, and so for all the districts.]

Dated at \_\_\_\_\_, in the county of \_\_\_\_\_, and state of Minnesota, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_.

A. B.,  
C. D.,  
E. F., } Supervisors.

(e) Form of supervisors' account to town auditors.

Annual account of supervisors of the town of \_\_\_\_\_ and state of Minnesota, to the board of town auditors of said town, for the year ending the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_.

1. Labor assessed in said town during said year, \_\_\_\_\_ days.
2. Labor performed in said town during the same, \_\_\_\_\_ days.

2. Sums received by us for fines and commutations, and other moneys received under act relative to highways: \_\_\_\_\_ dollars, being as follows:

1859.	From A. B., commutation for [naming duty commuted for,]	\$	cts.
Aug. 1.		19	50
Nov. 1.	From C. D., fine for [naming delinquency,]	15	00
	Total of receipts as above,	\$34	50

3. Improvements necessary to be made on roads and bridges in said town: [state them in detail.] Probable expense of such improvements, beyond what the labor to be assessed in that year, and the road tax, will accomplish: \_\_\_\_\_ dollars.

4. Expenses and damages in consequence of laying out, altering or discontinuing roads.

For laying out road from _____ to [describing it,] expenses,	\$10.00
Damages,	5.00
For altering road from _____ to [describing it,]	15.00
Damages,	8.60
For discontinuing road from _____ to [describing it,]	20.00

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_.

A. B.,  
C. D.,  
E. F., } Supervisors.

(f) Form of overseer's list of persons liable to work on highways.

I hereby certify that the following are the names of all persons liable to work on the highways in road district No. \_\_\_\_\_ of the town of \_\_\_\_\_, in the county of \_\_\_\_\_, and state of Minnesota, namely:

A. B.  
C. D. [ &c.]

Dated at \_\_\_\_\_, in the county of \_\_\_\_\_, and state of Minnesota, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_.

E. F., Overseer of highways for said district.

(159.) SEC. IV. If any person chosen or appointed to the office of overseer of highways, shall refuse to serve, or if his office shall become vacant, the supervisors of the town shall, by warrant under their hands, appoint some other person in his stead; and the overseer so appointed, shall have the same powers, be subject to the same orders, and liable to the same penalties as overseers chosen at town meetings. (*g*)

Supervisors to fill vacancy in office of overseer.

(160.) SEC. V. The supervisors making the appointment shall cause such warrant to be forthwith filed in the office of the town clerk, who shall give notice to the person appointed, as in other cases. (*h*)

Warrant to be filed with town clerk; town clerk to notify.

(161.) SEC. VI. Every overseer of highways who shall refuse or neglect to perform any of the duties of this act, or which may be lawfully required of him by the supervisors of his town, shall for every such refusal or neglect forfeit the sum of ten dollars, to be sued for by the chairman of the board of supervisors of the town, and when recovered to be applied by him in making and improving the roads and highways therein.

Neglect by overseer, penalty for.

(162.) SEC. VII. The supervisors of each town shall meet at the town clerk's office within eighteen days after they shall be chosen, on such day as they shall agree upon, and afterwards at such other times and places as they shall think proper.

Town supervisors' first and other meetings.

(163.) SEC. VIII. The town clerk shall deliver the list filed by the overseers to the supervisors, who shall proceed to ascertain, estimate and assess the highway labor and road tax to be performed and paid in their town the next ensuing year. (*i*)

Supervisors to assess highway labor and road tax.

(164.) SEC. IX. Every male inhabitant being above twenty-one years and under the age of fifty, excepting paupers, idiots, lunatics and such others as are exempt by law, shall be assessed at least two days in each year. Supervisors shall assess a road tax on all real estate liable to taxation, of the town, to any amount they may deem necessary, not exceeding fifty cents on each one hundred dollars of value, as valued on the assessment roll of the preceding year. They shall affix the name of each person named in the lists so furnished by the overseers, the number of days assessed to each person for highway labor, and also a description of each tract of land and the name of the owner, if known, with the valuation thereof, as taken from the assessment roll of the previous year, and the amount of the road tax assessed thereon in a separate column. The lists

Supervisors to assess road tax on persons and real estate; lists how made.

(*g*) *Form of appointment to fill vacancy in office of overseer of highways.*

A. B. is hereby appointed overseer of highways in and for road district No. \_\_\_\_\_ in the town of \_\_\_\_\_ county of \_\_\_\_\_, and state of Minnesota; said office being now vacant by [state cause of vacancy.]  
 Dated at \_\_\_\_\_, in the county of \_\_\_\_\_, and state of Minnesota, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_.  
 C. D., } Supervisors of  
 E. F., } said town  
 G. H., } of

(*h*) The form of notice used in case of appointment of town officers, may be used in this case, with little alteration, to suit occasion.

An overseer of highways is not liable in a private action for any error of judgment in the execution of his trust. He is only responsible for any neglect or refusal under the section of the act which subjects him in such case to a penalty.—[*Freeman v. Cornwell*, 10 *Johns.*, 470.  
 If, however, an officer acts maliciously or oppressively, he is liable.—[5 *Johns.*, 125.]

(*i*) *Form of supervisors' order, assessing highway labor and road tax.*

We the undersigned, supervisors of the town of \_\_\_\_\_, do hereby estimate and assess \_\_\_\_\_ days' labor on the highways, to be performed within the year next hereafter ensuing, to each inhabitant of said town liable to such assessment; and we also do estimate and assess a road tax to be paid by the inhabitants of said town during said year, of \_\_\_\_\_ cents on each one hundred dollars of real estate liable to taxation within said town.  
 Dated at \_\_\_\_\_, in the county of \_\_\_\_\_, and state of Minnesota, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_.  
 A. B., }  
 C. D., } Supervisors.  
 E. F., }

When lands are dedicated by the owner to public use as streets, they do not become public highways until accepted as such by the public authorities.—[*Oswego v. Oswego Canal Co.*, 2 *Selden*, 253.]

# MINNESOTA STATUTES 1858

so prepared shall be signed by the supervisors, and deposited with the town clerk, to be filed in his office. (*j, k*)

Town clerk how to copy lists for overseers.

(165.) SEC. X. The supervisors shall direct the town clerk to make a copy of each list, shall sign such copies, after which they shall cause the several copies to be delivered to the respective overseers of highways of the several districts in which the highway labor is assessed. One copy for each overseer shall contain the name and number of days assessed to each person, the other the land road tax.

Overseer to add names of persons omitted.

(166.) SEC. XI. The names of persons left out of such list, and of new inhabitants, shall from time to time be added to the several lists, and they shall be rated by the overseers in the same proportion, to work on the highways, as others rated by the supervisors on such lists.

## ARTICLE XXII.

Overseer how to give notice to work on highways.

(167.) SEC. I. It shall be the duty of overseers of highways to give at least three day's notice to all persons assessed to work on highways, and living within the limits of their respective districts, of the time and place, when and where they are to appear for that purpose, and with what implements; but no person being a resident of the town, shall be required to work on any highway other than in the district in which he resides.

Commutation of road tax; money how expended.

(168.) SEC. II. Every person liable to work on the highways, shall work the whole number of days for which he shall have been assessed, but every such person, other than the overseers of highways, may elect to commute for the same, or for some part thereof, at the rate of one dollar and fifty cents per day; in which case, such commutation money shall be paid to the overseers of highways of the district in which the person commuting shall reside, to be applied and expended by the overseer in the improvements of the roads and bridges in the same district.

Commutation not made until money is paid.

(169.) SEC. III. Every person intending to commute for his assessment or any part thereof, shall, within twenty-four hours after he shall be notified to appear and work on the highways, pay the commutation money

*(j) Form of supervisors' list of assessment of highway labor.*

The undersigned, supervisors of the town of \_\_\_\_\_, in the county of \_\_\_\_\_, and state of Minnesota, have assessed the highway labor due from the inhabitants of road district number \_\_\_\_\_, in said town, for the ensuing year, as follows, namely: from

A. B., \_\_\_\_\_ Two days.  
C. D., \_\_\_\_\_

Dated at said town of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_.

E. F., }  
G. H., } Supervisors.  
J. K., }

The town clerk will make a copy of the above list.

E. F., }  
G. H., } Supervisors.  
J. K., }

*(k) Form of supervisors' list of assessment of road tax.*

The undersigned, supervisors of the town of \_\_\_\_\_, in the county of \_\_\_\_\_, and state of Minnesota, have assessed the road tax upon the lands in road district number \_\_\_\_\_ of said town, for the ensuing year, as follows:

Owner	Description of land.	No. acres.	Value pr. acre.	Total value.	Amount of tax.
A. B.	S. E., $\frac{1}{4}$ section 3,	160	\$25.00	\$4,000	\$8.00
C. D.	N. E., $\frac{1}{4}$ section 8,	160	\$20.00	\$3,200	\$6.40

Dated at said \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_.

E. F., }  
G. H., } Supervisors.  
J. K., }

The town clerk will make a copy of the above list.

E. F., }  
G. H., } Supervisors.  
J. K., }

for the work required of him by such notice, and the commutation shall not be considered as made until such money be paid.

(170.) SEC. IV. Every overseer of highways shall have power to require a team or cart, wagon or plow, with a pair of horses or oxen, and a man to manage them, from any person having the same within his district, who shall have been assessed two days or more, and who shall not have commuted his assessment, the person furnishing the same upon such requisition, shall be credited for two days for each day's service therewith.

Teams, &c., may be required; allowance for same.

(171.) SEC. V. Every person assessed to work on the highways and warned to work, may appear in person, or by an able-bodied man as a substitute, and the person or substitute so appearing, shall actually work ten hours in each day, under a penalty of fifteen cents for every hour such person or substitute shall be in default, to be imposed as a fine on the person assessed.

Substitutes; ten hours a day's work; penalty for default.

(172.) SEC. VI. Every person so assessed and duly notified, who shall not commute, and who shall refuse or neglect to appear as above provided, shall forfeit for every day's refusal or neglect, the sum of two dollars. If he was required to furnish a team, carriage, man or implements, and shall refuse or neglect to comply, he shall be fined as follows:

Persons not working or commuting, fines for.

For [wholly] omitting to comply with such requisition, four dollars for each day.

For omitting to furnish a cart, wagon or plow, one dollar for each day.

For omitting to furnish a pair of horses or oxen, one dollar and fifty cents for each day.

For omitting to furnish a man to manage the team, one dollar and fifty cents for each day.

(173.) SEC. VII. It shall be the duty of every overseer of highways, within six days after any person so assessed and notified, shall be guilty of any refusal or neglect for which a penalty or fine is prescribed in this act, unless a satisfactory excuse shall be rendered to him for such refusal or neglect, to make complaint to one of the justices of the peace of the town. (a)

Overseer's complaint for not working on highways.

(174.) SEC. VIII. The justice to whom such complaint shall be made, shall forthwith issue a summons, directed to any constable of the town, requiring him to summon such delinquent to appear forthwith before such justice, at some place to be specified in the summons, to show cause why he should not be fined according to law for such refusal or neglect, which summons shall be served personally, or by leaving a copy at his abode. (b)

Justice's summons thereon, requisites of; service of.

(175.) SEC. IX. If upon the return of such summons no sufficient cause shall be shown to the contrary, the justice shall impose a fine as is provided in this act, for the offense complained of, and shall forthwith issue a warrant under his hand, directed to any constable of the town where such delinquent shall reside, commanding him to levy such fine,

Return of summons; fine, how levied.

(a) This complaint need not necessarily be in writing; it will be a sufficient compliance with the law, if made on oath, in which case the complaint may be recited in the summons.

(b) Form of summons for neglect or refusal to work on highways.

State of Minnesota, }  
County of            } ss.

The people of the state of Minnesota, to any constable of the town of \_\_\_\_\_, within said county, greeting:

You are hereby commanded to summon A. B., of said town, forthwith to appear before me at my office in said town, to show cause why he should not be fined according to law, for refusal and neglect to perform work upon the highways, as alleged in a complaint this day made before me upon oath by C. D., overseer of highways in road district number \_\_\_\_\_, within said town, in which district said A. B. has been assessed and is liable for such labor.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D., 18 \_\_\_\_\_.

E. F., Justice of the Peace. [seal.]

with the costs of proceedings, on the goods and chattels of such delinquent. (c)

Fines when collected; how disposed of.

(176.) SEC. X. The constable to whom such warrant shall be directed, shall forthwith collect the moneys therein mentioned. He shall pay the fine, when collected, to the justice who issued the warrant, who is hereby required to pay the same to the overseer who entered the complaint, to be by him expended in improving the roads and bridges in the district over which he is overseer.

Penalty, how applied in assessment.

(177.) SEC. XI. Every penalty collected for neglect or refusal to appear and work on the highways, shall be set off against his assessment upon which it was founded, estimating each two dollars collected as a satisfaction for one day's work.

Excuse not to free from furnishing road labor.

(178.) SEC. XII. The acceptance by an overseer of any excuse for refusal or neglect, shall not in any case exempt the person excused from commuting for or working the whole number of days for which he shall have been assessed during the year.

Overseers how paid, &c.

(179.) SEC. XIII. Every overseer of highways shall be entitled to one dollar and fifty cents per day, to be paid out of fines and commutation money, for every day he is necessarily employed in the execution of his duties as overseer, beyond the amount of his own highway labor and road tax—the number of days to be accounted to and audited by the supervisor of the town. When there are no funds from fines or commutations, the supervisors may pay the overseers out of other funds in their hands.

Notice to work out land road tax; how tax may be paid.

(180.) SEC. XIV. It shall be the duty of the overseer of highways to warn all residents of his district against whom a land road tax is assessed, giving them three days' notice, to work out the same on the highways, and he shall receive such tax in labor from every able-bodied man, or his substitute, at the rate of one dollar per day, and any person or his agent, may pay such tax in road labor at the rate of one dollar per day, or any person may pay such tax in money if he elect so to do.

Payment how noted.

(181.) SEC. XV. It shall be the duty of the overseers of highways, when such land tax has been paid, either in money or labor, to write the word "paid," directly against each name or tract in his list on which the same has been paid.

Certificate of paid and unpaid land road tax.

(182.) SEC. XVI. Every overseer of highways shall deliver to the supervisor of his town, at least five days previous to the annual meeting of the supervisors, the list furnished by the supervisors, containing the land road tax, with his certificate thereon, that on all tracts of land in said list, opposite which the word "paid" is not written, such tax is due and remains unpaid, according to the best of his knowledge and belief. (d)

(183.) SEC. XVII. If any overseer shall refuse or neglect to deliver

(c) Form of justice's warrant for collecting fine.

State of Minnesota, } ss.  
County of \_\_\_\_\_

The people of the state of Minnesota, to any constable of the town of \_\_\_\_\_, within said county, greeting:

You are hereby commanded forthwith to levy, of the goods and chattels of A. B., of said town, \_\_\_\_\_ dollars fine, and \_\_\_\_\_ dollars costs, imposed on him by me for neglect and refusal to work upon the highways, as shown to me in a complaint made before me upon oath by C. D., overseer of highways, upon the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_; and the said A. B., having shown no sufficient cause to the contrary.

Hereof fail not, but immediate return make, and have then with you the amount of said fine and costs.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_.

E. F., Justice of the Peace.

(d) Form of certificate of overseer of highways, on returning list to supervisor.

I hereby certify that the taxes set down in the annexed list are still due and unpaid to the best of my knowledge and belief, on all tracts of land in said list opposite to which the word "paid" is not written.

Dated at \_\_\_\_\_, in the county of \_\_\_\_\_, and state of Minnesota, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_.  
A. B., Overseer of highways of road district number \_\_\_\_\_ in said town.

such list with his certificate, as provided in the last section, he shall, for every offense, forfeit the sum of five dollars, and also the amount of tax remaining unpaid, to be recovered by the commissioners of highways, and applied by them in improving the bridges and roads of such town.

Penalty for overseer's neglect to certify.

(184.) SEC. XVIII. It shall be the duty of the supervisors of the several towns to receive the lists of the overseers of highways pursuant to the preceding section, and lay the same before the board of supervisors at their annual meeting, and to cause the amount of such arrearages of road tax to be levied on the lands so returned, and to be collected in the same manner that the contingent charges of the county are levied and collected, and to order the same when collected, to be paid over to the supervisors of the town, to be by them applied to the construction of roads and bridges.

Duty of supervisors on arrears of road tax.

(185.) SEC. XIX. It shall be the duty of every overseer of highways to have at least three-fourths of the road labor assessed in his district worked out or actually expended on the highways previous to the first day of October in each year.

When road labor to be done.

(186.) SEC. XX. Every overseer of highways shall, on the second Tuesday next preceding the time of holding the annual town meeting in his town, within the year for which he is elected or appointed, render to one of the supervisors of the town, an account in writing, containing,

Overseers' annual return.

1st. The names of all the persons assessed to work on the highways in the district of which he is overseer.

2d. The names of all those who have actually worked on the highways, with the number of days they have worked.

3d. The names of all those who have been fined, and the sums in which they have been fined.

4th. The names of all those who have commuted, and the manner in which the moneys arising from fines and commutations have been expended by him. (e)

(187.) SEC. XXI. Every such overseer shall also then and there pay to the supervisors, all moneys remaining in his hands unexpended, to be applied by the supervisors on the roads and bridges in the town. (f)

Overseer to pay over money.

(188.) SEC. XXII. If any overseer shall refuse or neglect to render such account, or if, having rendered the same, he shall refuse or neglect to pay any balance which may then be due from him, he shall, for every such offense, forfeit the sum of five dollars, to be recovered with the balance of the moneys remaining in his hands, by the supervisors of the town, and applied to the making or improving of roads and bridges in such town.

Penalty for refusal or neglect to pay over.

(e) Form of annual account of overseer of highways.

Annual account of A. B., overseer of highways of road district number \_\_\_\_\_ of the town of \_\_\_\_\_, for the year ending the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_.

1. Names of all persons assessed to work on the highways in said district:

[Insert them alphabetically or otherwise.]

2. Names of all persons who have worked on the highways in said district, and number of days they have worked:

A. B., 2 days.

C. D., 3 "

(&c.)

3. Names of all those who have been fined, and the sums in which they have been fined:

E. F., \$3.00.

G. H., 1 50.

(&c.)

4. Names of all those who have commuted, and amounts:

J. K., \$2.00.

L. M., 3.00.

(&c.)

Amounts received for fines and commutations as above, \$ \_\_\_\_\_; of which I have expended \$ \_\_\_\_\_, as follows: [giving items of same;] and the balance remaining in my hands is \$ [or,] and no balance remains.

(f) Chancellor Kent, in speaking of the duty of commissioners of highways, in keeping roads in repair, says: "This seems to be a general duty, applicable at all times, and in all places; yet when we come to read the details of their duty, we perceive it does not exist absolutely, but arrives only when the commissioners have money in hand from forfeiture and penalties, or which have been paid over to them under the direction of the supervisors.—[17 Johns., 451.

ARTICLE XXIII.

Supervisors to lay out, alter or discontinue roads; legal voters to petition; petition how made.

(189.) SEC. I. The supervisors of the town may alter or discontinue any road, or lay out any new road, state and county roads excepted, when petitioned by any number of legal voters not less than twelve, residing within one mile of the road so to be altered, discontinued or laid out. Said petition shall set forth in writing, a description of the road and what part thereof is to be altered or discontinued, and if for a new road, the names of the owners of the land, if known, over which the road is to pass, the point at which it is to commence, its general course, and the point near which it is to terminate. (a)

Notices when and where to be posted.

190.) SEC. II. Whenever any number of legal voters determine to petition the supervisors for the alteration or discontinuance of any road, or laying out of any new road, they shall cause a copy of their petition to be posted up in three of the most public places of the town twenty days before any action shall be had in relation thereto. (b)

(a) Form of petition for new road. [See note after this form.]

To the supervisors of the town of \_\_\_\_\_, in the county of \_\_\_\_\_, and state of Minnesota: The subscribers, being legal voters, do hereby request you to lay out a public road of the width of \_\_\_\_\_ rods, and to open the same according to law, the route of the same being within one mile of our residences, and the description thereof being as follows: [state the beginning, course and end of said road, describing it as clearly as possible.]

Said road will pass over the land, as we are informed, of [naming all the proprietors so far as known, over whose lands it will pass.]

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_.

[Names of applicants.]

If the applicants cannot ascertain the names of owners over whose lands the road will pass, the last clause may be

"The names of the proprietors of the lands over which said road will pass are unknown to the subscribers."

If some of them are known and others not, then add to the same clause, "and said road will also pass over certain lands, the names of whose owners are unknown to the subscribers, to wit: [Describing said lands]"

When a petition is presented to the supervisors for their action, they should first examine and see that it is regular upon its face, and that the law has in all respects, been complied with, otherwise they should not act. The law requires, first—that the petition shall be signed by not less than twelve legal voters residing within one mile of the road proposed to be altered, discontinued or laid out. Second, if it is to alter or discontinue a road, the petition must set forth a description of the road which it proposes to alter or discontinue, and if a new road, it must set forth the names of the owners of lands, if known, over which it is to pass, the point at which it is to commence, its general course, and the place at or near where it is to terminate. Upon the first, the commissioners may satisfy themselves from actual knowledge, or upon proper inquiry. The second will appear from the petition itself.

NOTE.—The form here given for a petition for a new road, can be easily varied to suit an application for alteration or discontinuance of a road. The subsequent forms will likewise be confined to the subject of the laying out of new roads, but can also be easily varied to suit the occasion of altering, discontinuing or refusing to lay out.

In proceedings under the act as to laying out roads, that the certificate as to the propriety and necessity of a road is made by more than twelve freeholders, and where twelve of the number are legal voters and reside within one mile of the road, it will be no objection that others whose names are on the petition are not legal voters, or do not reside within one mile of the road.—[See *Carnel v. Judges of Putnam*, 7 *Wen.*, 264.

To give commissioners of highways jurisdiction of proceedings to lay out a highway, the legal application must be made to them, and their action without it would be void.—[*Harrington v. People*, 6 *Barb.*, 607.

The applicants for a road designate the general course desired; the commissioners, the particular route; and the latter may make such variations as they may think proper, in the exercise of a sound discretion, if the departure is not of such a character as to induce the belief that the preliminary proceedings of the application had been wholly disregarded.—[*Hallock v. Woolsey*, 23 *Wen.*, 328.

Where commissioners were appointed by an act of the legislature to lay out a road on the most direct and eligible route, commencing at or near a certain village, and the road was laid out, commencing at a distance of sixty rods from the village, in a field where there was no road with which the new road could be connected, and the route instead of being the most direct and eligible, was, as expressed by the court, strikingly injudicious; yet, notwithstanding these facts, the court awarded a peremptory mandamus to the commissioners of highways of the town, through which the road was laid, to proceed forthwith to open and work the road, as laid out by the state commissioners.—[*People v. Collins*, 19 *Wen.*, 56.

(b) Form of affidavit of posting copies of road petition; to be endorsed on back of such petition.

State of Minnesota, } ss.  
County of \_\_\_\_\_

On the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_, I, the subscriber, did post up three copies of the within petition, as follows: [naming places.] in the town of \_\_\_\_\_, in said county, being three of the most public places of said town.

Subscribed and sworn to before me, }  
this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_.

A. B.

C. D., Justice of the Peace.

(191.) SEC. III. Whenever the supervisors shall receive a petition in compliance with the two preceding sections, they, or a majority of them, shall, within ten days after the expiration of the twenty days named in section two, personally examine the proposed alteration, discontinuance or route for the new road proposed, and shall hear any reasons that may be offered for or against altering, discontinuing or laying out the same. If they shall consider such alteration, discontinuance, or laying out necessary and proper, and that the public interest will be promoted thereby, they shall grant the prayer of the petitioners as hereinafter provided.

Supervisors to personally examine roads and to hear reasons for and against.

(192.) SEC. IV. Whenever the supervisors shall determine to lay out any new road, or alter any old one, they shall cause a survey to be made by a competent surveyor, who shall make a report to them of such survey, accompanied with a plat, particularly describing the route by metes and bounds, courses and distances; they shall incorporate such report and survey, accompanied with the plat in an order to be signed by them, declaring such road so altered or laid out to be a public highway, which order, together with the petition, shall be deposited with the town clerk, who shall note the time of filing the same, but on refusal, shall note the fact on the back of such petition. (c)

Supervisors to cause survey to be made; surveyor to report with plats, &c.

(c) Form of surveyor's report on survey of road.

To the supervisors of the town of \_\_\_\_\_, in the county of \_\_\_\_\_, and state of Minnesota:  
The undersigned respectfully reports, that having been employed by you to survey a road [describing it as in the petition], the following is a correct survey of the same as directed, namely: [stating the metes and bounds, courses and distances, &c., as required in the act]; and that the plat hereto annexed is a correct plat of said road as so surveyed.  
Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_.

A. B., Surveyor.

Form of supervisor's order laying out a new road.

State of Minnesota, }  
Town of \_\_\_\_\_, County of \_\_\_\_\_, } ss.  
Whereas, we the undersigned, supervisors of said town, upon the petition of [naming them], legal voters, copies of said petition having been posted as required by law, did personally, on the day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_, examine the route of a certain road asked for in said petition, namely: [describing the route as in the petition]; and did previous to laying out said road, appoint a time and place for a meeting for the hearing of reasons for or against the same, which time and place were legally notified by written notices posted in three of the most public places in said town, eight days before said meeting; and said meeting was held, and upon consideration of the reasons for and against the laying out of said road, we were of opinion that such laying out is necessary and proper, and will promote the public interest; and whereas we determined to lay out said road according to said petition, and caused a survey thereof to be made by a competent surveyor, whose report of said survey is as follows: [set out the surveyor's report and plat.]  
Now therefore we do order and determine that a road be, and the same is hereby laid out and established, as by said survey and plat in this order recited appears, and said road is hereby declared a public highway, \_\_\_\_\_ rods wide. the line in said survey to be the center of said road.  
Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_.

A. B., }  
C. D., } Supervisors.  
E. F., }

The foregoing form of order may be considered somewhat extended, but it contains no more than seems to be necessary. It should show that the supervisors acquired jurisdiction by a petition in due form of law, and that they subsequently pursued the law in laying out and establishing the road; it will then be received as prima facie evidence of the facts it contains.—See 6 Barb., 607. No particular form of words are necessary, if the facts sufficiently appear.—[Tucker v. Rankin, 15 Barb., 471. When the words used were, "have and do lay out a highway," it was held to import that the road was laid out at the date of the order.—[Fowler v. Mott, 19 Wend., 204.]

In laying out a road by the commissioners of highways, it is sufficient in the survey to run a single line, which will be intended as the center of the road, and a specification of the quantity of land which the road will take from each proprietor over whose ground it passes, will ascertain its width.—[People v. Redhook, 13 Wend., 310.]

All the land within a highway fence is not necessarily subject to the right of way; and if not, it may be occupied by the owner; and if he places an obstruction there, and another is injured by it, he is not therefore liable; and though such obstructions be within the highway, he is not liable, unless the person injured exercised ordinary diligence to avoid it.—[6 Cow., 189. But he would be otherwise liable. See 5 Gil., 371.]

In an action to recover a penalty for obstructing a highway, it is not necessary to produce record evidence of the road; and if such evidence is introduced, as for instance, the order establishing the road; it is not necessary prior to the introduction of such order, to show that all the previous steps required by the statute had been taken; but the presumption is, that the antecedent proceedings have been regular, which presumption, however, is subject to be rebutted.—[Nealy v. Brown, 1 Gil., 10; see also Sage v. Barnes, 9 Johns., 365.]

Where the owner of the soil digs a race-way across a road to conduct water to his mill, it seems that he must restore it to a traveling condition, and if an injury occurred, though he used the utmost care to prevent it, he was liable in damages; unless the party injured is chargeable with gross negligence. The right of the owner depends upon mere sufferance, and whenever an injury occurs, the race-way will be adjudged a nuisance.—[Dyger v. Schenck, 23 Wen., 446.]

Town clerk to file orders of supervisors on roads.

(193.) SEC. V. It shall be the duty of the town clerk, whenever any order of the supervisors for laying out, altering, or discontinuing a road shall be received by him, to carefully file the same, and the time hereinafter limited for appealing from such order shall be computed from the time of filing the same; but the town clerk shall not record such order until a final decision is made, and not then unless such order is confirmed.

Road damages how ascertained, agreed on, or assessed.

(194.) SEC. VI. The damages sustained by reason of laying out or opening or altering any road may be ascertained by the agreement of the owners and the supervisors, and unless such agreement be made, or the owners shall in writing release all claim to damages, the same shall be assessed in the manner hereinafter prescribed before the same shall be opened or worked or used. Every agreement and release shall be filed in the town clerk's office, and shall forever preclude such owners of such lands from all further claim for such damages. In case the supervisors and the owners of land claiming damages cannot agree, it shall be the duty of the supervisors to assess the damages at what they may deem just and right to each individual claimant with whom they cannot agree, and deposit a statement of the amount of damages so assessed to each individual with the town clerk, who shall note the time of filing the same. It shall be the duty of the supervisors in all cases of assessing damages to estimate the advantages and benefits the new road or alteration of an old one, will confer on the claimants for the same, as well as the disadvantages. (d, e)

(d) Form of agreement on damages in laying out roads.

This agreement, made between A. B., C. D., and E. F., supervisors of the town of \_\_\_\_\_, in the county of \_\_\_\_\_, and state of Minnesota, of the first part, and G. H., of the town of \_\_\_\_\_, in the county of \_\_\_\_\_, and State of \_\_\_\_\_, of the second part, witnesseth:

That the damages sustained by the said G. H., by reason of the laying out, by said supervisors, on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_, through his land situated as follows [describe the land with reasonable certainty] of a road beginning [describe the road as in the order], are agreed to be fixed and liquidated at the sum of \_\_\_\_\_ dollars.

In testimony whereof, said parties have hereunto subscribed their names, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_.

A. B.,  
C. D.,  
E. F.,  
G. H., } Supervisors.

Form of release of damages by owner of land.

Know all men by these presents, that I, A. B., for value received, do hereby release all claims to all damages sustained by me, by the laying out and opening through my lands [describing them], of a certain public road [describing it as in the order for laying it out], which said road was laid out on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_, by C. D., E. F., and G. H., supervisors of the town of \_\_\_\_\_, in the county of \_\_\_\_\_ and state of Minnesota.

In-witness whereof, I have hereunto set my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_.

A. B. [Seal.]

Executed and delivered in presence of }  
J. K.

(e) Form of supervisors' assessment of road damages not agreed on or released.

We the subscribers, supervisors of the town of \_\_\_\_\_ in the county of \_\_\_\_\_ and state of Minnesota, do hereby assess to the persons hereinafter named, the sums set against their several names, being by us deemed just and right damages sustained by them from the opening of a road [describe road as in order of laying it out] laid out by us on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_, on application to us duly made; said persons being all those owners of lands over which said road passes, with whom we have been unable to agree upon such damages, or who have not released all claim for such damages; and before making said assessment we applied to each and every of them for such agreement or release, without success, and in said assessment we have taken into account the advantages and benefits to accrue to the persons assessed, as well as the disadvantages; namely:

To A. B., on land [describing it with reasonable certainty], \$50.00  
To C. D., 30.00  
To E. F., 00.00

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_.

G. H.,  
J. K.,  
L. M., } Supervisors.

The constitution, art. I. sec. 13, provides that no man's property shall be taken or applied to public use without just compensation being made to him. The advantages of the road, it seems, must be taken into account, and will properly be considered compensation to the owner, so far as it goes in enhancing the value of his lands. Consistency would therefore seem to require, that in every instance where damages are claimed, whether it be through inclosed or cultivated lands, or not, that the advantages be balanced off against the disadvantages, or damages, and report thereof made, as in the foregoing form.

(195.) SEC. VII. Any person or persons being owners of or agents for any tract of land over which any highway, altered, discontinued or laid out, shall run, feeling themselves aggrieved by any order made by the supervisors, may appeal from the same at any time within thirty days after the filing of such order in the town clerk's office, such appeal shall note the time such order was filed, and shall be made to any three members of the board of county supervisors, neither of whom shall be a resident of the town in which such highway is situated. All persons who wish to make an appeal from such order, shall act in concert and make their appeal to the same three supervisors.

Appeals from supervisors' action on roads.

(196.) SEC. VIII. Every such appeal shall be in writing, addressed to the supervisors, and signed by the party or parties appealing. It shall briefly state the ground on which it is made, and whether it is brought in relation to damages assessed by the supervisors, or in relation to the alteration, discontinuance, or laying out of the road, or whether it is brought to reverse entirely the determination of the supervisors, or only to reverse a part thereof; and in the latter case it shall specify what part. The appeal shall be left with one of the three county supervisors, by the person or persons appealing, and such person or persons shall also leave a notice of such appeal to [with] the other county supervisors to whom the appeal is made. (f)

Appeal to be in writing; what to be stated; with whom left.

In a recent case, *Hatch v. Vermont Central R. R. Co.*, *Vermont Supreme Court*, June, 1853, the court say: The general rule may now be regarded as settled in this country, that the advantages accruing to the proprietor of the land taken by the contemplated public work, may be taken into account in appraising the damage. So, too, where any portion of the land is taken, the commissioners may doubtless estimate consequential damages to the remaining portion of the land. It is scarcely possible to come fairly at the value of the land taken or actual damage suffered, in any other mode.—[Cites *Symonds v. City of Cincinnati*, 14 O. R. 147.]

The owner of the soil over which a highway is laid, retains all his rights not incompatible with the public right of way, and may maintain trespass for cutting timber thereon.—[*Babcock v. Lamb* 1 Cow., 238.]

The public acquires no more than a right of way, or easement, by the laying out of a highway, and the proprietor still retains the fees and may maintain trespass or ejection in relation to it.—[3 *Hill*, 567; 12 *Wen.* 88; 14 *Johns.* 483; 2 *Johns.* 357; 15 *Johns.* 447. A public highway being a mere easement, and the seizin and right to convey still remain in the owner, the fact that part of the land was a highway and used as such is no breach of the covenants of seizin and of power to convey. [ *Whitbeck v. Cook*, 15 *Johns.* 483.]

It seems that the title to the land over which a turnpike road passes is vested in the company solely for the purpose of a road, and that when the road is abandoned, the land reverts to the original owner.—*Hooker &c. v. Utica &c.*, *Turnpike Co.* 12 *Wen.* 371.

The right of way, public or private, is but an incorporeal hereditament, an easement at which *per se* does not divest the owner of the fee of the land. The owner is entitled to the same remedies for an injury to his residuary interest, that he would be entitled to if it was entire and absolute.—[*Gidney v. Earl*, 12 *Wen.* 68.]

It has been decided in New York, their constitution being the same as ours in this respect, that an act of the legislature giving to commissioners of highways the power to lay out new roads through wild or unimproved lands, without the consent of the owner, is unconstitutional and void, if no compensation is required to be made to such owner.—[*Wallace v. Karlenowefski*, 19 *Barb.* 118. *Gould v. Glass*, *id.* 179. The owners consent, for the purpose of waiving damages, need not be in writing, but may be verbal, and proved by oral testimony.—[*Fowler v. Mott*, *id.*]

Lands adjoining a public highway, remaining uninclosed, are considered as dedicated to the public use, and no action will lie by the owner against any person traveling over them.—[*Cleveland v. Cleveland*, 12 *Wen.* 172.]

(f) Form of appeal from road decision of supervisors.

To A. B., chairman board of supervisors of the town of \_\_\_\_\_; C. D., chairman board of supervisors of the town of \_\_\_\_\_; and E. F., chairman of board of supervisors of the town of \_\_\_\_\_, all in the county of \_\_\_\_\_, and state of Minnesota:

You are respectfully notified that the subscriber hereby appeals against an order [state the substance of the order], made by the supervisors of the town of \_\_\_\_\_ in said county, on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_, and filed by the town clerk of said town on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_; a copy of which said order, and of all papers filed with said clerk in relation to the road therein referred to is hereto annexed, and to which copies reference is had. The ground on which this appeal is made are [state them briefly]; and said appeal is made in reference to the damages assessed by the said supervisors [or as the case may be,] and to reverse entirely the determination of said supervisors [or to reverse it partly, stating what part.]

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_ G. H.

Form of notice of appeal to be left with supervisors.

To A. B., supervisor of the town of \_\_\_\_\_, in the county of \_\_\_\_\_. You are hereby respectfully notified that I have lodged with C. D., chairman of the board of supervisors of the town of \_\_\_\_\_, in said county, an appeal from the order of the supervisors of the town of \_\_\_\_\_, in said county, laying out a road [describe it as in order]; which appeal is made to A. B., C. D. and E. F., supervisors, and is dated the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_.

The grounds upon which this appeal is made are [state them as in appeal,] and said appeal is brought [state purpose as in appeal.]

Dated this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_ G. H.

Supervisors, when to meet on appeal.

(197.) SEC. IX. It shall be the duty of the supervisors to whom the appeal is made, as soon as may be convenient after the expiration of thirty days from the filing of the order in the town clerk's office, from which the appeal is made, to agree on a time when and where they will meet to consider the same; which shall be at some place deemed convenient at or near the road to be examined. (g)

Notice of hearing to be served on supervisors and petitioners; notice must be eight days.

(198.) SEC. X. The person or persons making the appeal shall cause a notice in writing, of the time and place agreed on by the three supervisors, when and where they will meet, to be served on each of the supervisors from whose order they appealed, and also on at least three of the petitioners who petitioned in relation to such road; which notice shall be served at least eight days before the time named therein, by delivering one to each supervisor, or leaving one at each of their dwellings, and in like manner shall notice be served on three petitioners. (h)

Trial of appeal, how conducted.

(199.) SEC. XI. It shall be the duty of the county supervisors to convene at the time and place mentioned in the notice, and to hear the proofs and allegations of the parties. They shall have power to issue process to compel the attendance of witnesses, and may adjourn from time to time, as may be necessary. Their decision, or that of any two of them, shall embrace the whole matter in controversy. They shall first consider the propriety and expediency of locating, altering or discontinuing the road; secondly, the subject of damages, if such subject was embraced in the appeal under which they are acting, and they shall fix on the amount of damages which, in their judgment, is right and just to be paid to each person claiming, but no person shall be entitled to a re-assessment of damages, unless his other name appears in the appeal in reference to that subject. (i)

Form of decision to fix damages.

An appeal stating the proceedings of commissioners in laying out a road to be illegal, is a sufficient compliance with the law, requiring the grounds of the appeal to be briefly stated, in the case where exceptions were taken to the sufficiency of the petition, on the ground of the qualification of the petitioners within the meaning of the law, though it seems it would have been well to have specified the objection.—[*Bushwick v. Messerole*, 10 *Wend.*, 122.]

An appeal suspends the powers of the commissioners; and until their acts are affirmed by a decision, they can not open the road. If they do so they are trespassers.—[*Clark v. Phelps*, 4 *Cow.*, 190.]

If, on an order being made discontinuing a highway, a fence be built across it, an appeal subsequently brought will not have the effect of rendering the fence a public nuisance.—[*Drake v. Rogers*, 3 *Hill*, 604.]

(g) After the appeal, the supervisors will become actors, and if they do not proceed, it can not be imputed as a laches to the party.—[*Clark v. Phelps*, 4 *Cow.*, 150.]

The notice should be served upon the three petitioners in like manner as upon the supervisors, so that each may have a copy. A true copy shall be retained by the person or persons taking the appeal; and the person serving such notice shall make affidavit of the fact, to be indorsed upon the back of the copy of the notice retained, which affidavit may be in the following form:

(h) Form of notice to supervisors and petitioners appealed against.

To A. B., C. D., and E. F., supervisors of the town of \_\_\_\_\_, in the county of \_\_\_\_\_ and state of Minnesota; and to N. O., P. K. and S. T., three of the petitioners for the road hereinafter named.

You are hereby respectfully notified that I have appealed from an order of the supervisors of said town of \_\_\_\_\_, made on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, and laying out a road [describe it as in order]; and that G. H., J. K., and L. M., supervisors of the towns of \_\_\_\_\_, and \_\_\_\_\_, in said county, to whom this appeal is brought, will meet at the house of V. W., in the town of \_\_\_\_\_, in said county, on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, for the hearing and determining of said appeal; which appeal is for the purpose of [stating purpose of it]; and you may appear if you see cause; at said time and place, for the purpose of opposing said appeal.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_. X. Y.

Form of affidavit of service of notice of appeal.

On the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_, I served true and attested copies of the within notice upon the within named supervisors and petitioners, by delivering one to each of said persons [or by leaving one at the dwelling of each of said persons.] A. B.

Subscribed and sworn to before me, }  
 this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_. }  
 C. D., Justice of the Peace. }

(i) Form of order of supervisors before whom appeal is brought

State of Minnesota, } ss.  
 County of \_\_\_\_\_, }

Whereas an appeal was brought before us, by A. B., of the town of \_\_\_\_\_, in said county, on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_, from an order of the supervisors of said town, dated on the \_\_\_\_\_ day of \_\_\_\_\_,

(200.) SEC. XII. Every such supervisor shall be entitled to receive three dollars for each day employed in hearing and deciding such appeal, to be paid by the party appealing, when the determination of the supervisors is sustained, but if reversed, to be paid by the town.

Compensation for hearing appeal.

(201.) SEC. XIII. Upon the refusal of the supervisors to alter, discontinue or lay out any new road petitioned for as provided in section one of this article, any one of the petitioners may appeal from such determination, in the same manner and subject to the same provisions and restrictions, as relates to persons who feel themselves aggrieved by a determination of the supervisors to alter, discontinue or lay out a new road. (j)

Appeal from supervisors' refusal to act about a road.

(202.) SEC. XIV. When an appeal shall have been made from the determination of the supervisors refusing to lay out, alter or discontinue [a road and the county supervisors shall reverse such determination, such county supervisors shall alter, discontinue,] or lay out the road applied for, as the case may be, and in doing so, shall proceed in the same manner in which supervisors of towns are directed to proceed in like cases. Such roads shall be opened by the supervisors of the town in the same manner as if laid out by themselves. (k)

Duty of supervisors in cases of appeal from such determination.

A. D. 18 , and filed with the town clerk on the day of , A. D. 18 , a copy of which and of all the papers connected with said appeal is hereto annexed;

And whereas we agreed to meet and did meet accordingly, at [stating place], on the [stating time], to hear the testimony and statements of the parties, and said supervisors and three of the petitioners for said order, having been duly notified, were then and there present, and whereas we did hear said testimony and allegations, and are now fully advised in the premises,

Now therefore, we do order and determine that [stating decision in full.]

Dated at , this day of , A. D. 18 .

C. D. } Chairman Board of Supervi-  
sors of town of  
E. F., Chairman, &c.  
G. H., Chairman, &c.

Fees, days each, each dollars.

The order of the supervisors altering or establishing a road should always be drawn with a great deal of care, and should properly show, by recital or by documents and papers annexed and referred to, a history of the whole proceedings, so as to make a perfect record; the foregoing form is recommended as being the most convenient of the two. To give commissioners of highways jurisdiction of proceedings to lay out a highway, an application must be made to them in writing as required by law; and an order directing the laying out of a highway, made on appeal from the decision of such commissioners must recite the making of such an application to the commissioners, otherwise the order will not be conclusive evidence of the regularity of the proceedings for laying out the road.—[Harrington v. People, 6 Barb.

On an appeal from the doings of the commissioners in laying out a road, an inquiry into the damages of the owners of the lands will be proper to enable the supervisor to determine whether the benefit will equal the expense, and whether the public good will be promoted by the road.—[Bushwick v. Messerole, 10 Wen., 122.

Referees appointed by the county court to hear appeals from commissioners of highways, decide the appeal, not on facts existing at the time of the original application to the commissioners but on the facts existing at the time of the hearing before them. In this respect the hearing before them is in the nature of a new proceeding.—[See People v. Goodwin, 1 Selden, 173.

It is no part of the duty of supervisors, in considering appeals, to entertain dilatory or technical objections. They are bound to hear and determine the case on the merits. The only questions for them to decide are, as to the expediency or in expediency of the road, and the amount of damages which the appellant will sustain by the location thereof.—[Beadles v. Smith, 15 Ill., 326.

All objections of a dilatory nature should be made before the commissioners of highways, and should they err in their proceedings, the remedy by certiorari, and not appeal, is the proper course, and which it seems will be awarded in such cases.—[See People v. Wilkinson, 13 Ill., 590.

(j) For forms, see those used for previous appeals from decision of supervisors. It has been held in New York, 7 Wen. 264, that a general appeal from the determination of commissioners refusing to lay out a road, is a sufficient compliance with the requirements of the statute.

(k) It seems, that where supervisors have committed errors in their order, reversing the order of the commissioners and determining to lay out a road, they have a right, after filing their order, to deposit in the town clerk's office, a document correcting the errors; which will be deemed a valid amendment. The reversal of the commissioners' order, and the determination to lay out the road, were quasi judicial acts, and could not be reversed or altered by the supervisors; but making up the record of their proceedings was ministerial, and should they refuse to make such correction, it seems a mandamus will be awarded, requiring them to do so.—[Woolsey v. Tompkins, 23 Wend., 324.

Where the commissioners of highways refuse to open a road laid out by the supervisors on appeals, a mandamus lies to compel them to do so; which writ need not in the first instance be directed to the commissioners by their individual names. It is only in case of disobedience to the writ, that they are to be proceeded against personally.—[People v. Champion, 16 Johns, 61.

Where a highway is laid out along the line of a farm, taking no portion of the land of the owner, but subjecting him to the expense of maintaining the whole of a fence, the expense of the half of which was formerly borne by him, such owner, under the existing highway act, is not entitled to compensation; and although damages are allowed to him; the supervisors of the county have no authority to cause the same to be collected.—[People v. Supervisors Oneida Co., 19 Wend., 162.

Where damages were assessed to the owner of land taken for a highway, which was discontinued before payment of them, and the road was never opened, it was held that the owner had a vested

Supervisor unable to attend, his substitute; shall continue to act in appeal after end of office.

(203.) SEC. XV. In case any one of the county supervisors to whom such application shall have been made shall become unable to attend before the determination of such appeal, it shall be the duty of the supervisors named therein to select another of the supervisors of the county, who shall act with them in all subsequent proceedings in the same manner as if he had been originally named in the appeal. In case the term of office of any county supervisor shall expire before the determination of such appeal, he shall continue to act in the premises the same as if he had been re-elected.

Damages as finally settled, how paid.

(204.) SEC. XVI. The amount of damages as finally settled by the three county supervisors, or as agreed on by the supervisors together with all charges of officers and other persons employed in laying out or discontinuing any road, shall be rendered by the supervisors to the board of town auditors, with the amount of damages and charges due each individual, which account shall be audited by said board, certified to and deposited with the town clerk. The town clerk shall make out the aggregate amount of such damages and charges with his certificate thereto attached, and deliver the same to the chairman of the board of supervisors of the town previous to the annual meeting of the board of county supervisors.

Relief against road damages causing oppressive tax.

(205.) SEC. XVII. After a final decision by any three supervisors to whom any road difficulty has been appealed, if in the opinion of the supervisors, town clerk and justice of the peace, or any four of them, the damages are manifestly too high, and that in providing for the payment thereof an oppressive tax will have to be levied on the property of said town, they may petition the board of county supervisors, at any meeting of said board held within six months after such decision, for relief either from the whole or a part of the damages. The board shall hear the reasons for and against granting such relief, and if a majority of them shall be of opinion that the town should be relieved from the whole amount of damages, then and in that case the opening of said road shall be postponed until the damages or a major part thereof are in some other way provided for than by levying a tax on the property of the town: *provided*, that such action shall only stay proceedings until the next town meeting, and during the term of office of the petitioners against such tax. (1)

Disagreement of supervisors of different towns; proceedings.

(206.) SEC. XVIII. Whenever the supervisors of any town shall disagree with the supervisors of any other town of the same county, or of another county relating to the laying [out] of a new road, or the alteration of an old road, which shall extend into both of such towns, the supervisors of such towns shall meet together at the request of either disagreeing supervisors, and make their decision on the subject of disagreement.

right to such damages, and was entitled to a writ of *mandamus* to compel payment thereof.—*Harrington v. Berkshire*, 22 Pick., 268.

(1) Form of petition to county supervisors against excessive damages.

To the board of supervisors of the county of

The petition of the undersigned respectfully represents: That on or about the day of A. D. 18 , the supervisors of the said town did order and determine that there should be laid out and opened a road [describe it]; and that an appeal was taken from said order to A. B., C. D., and E. F., supervisors of said county; and that upon said appeal, said supervisors did decide and order as follows, namely: [state decision, and in particular damages assessed]; which damages, in the opinion of your petitioners, are manifestly too high, and in providing for the payment of them, an oppressive tax will have to be levied on the property of said town.

And your petitioners, in behalf of said town, do therefore pray for relief either from the whole or a part of said damages, and that the opening of said road may be delayed until some other mode shall be provided of payment of said damages, than by levying a tax upon the property of said town.

Dated at , this day of , A. D. 18

G. H. }  
 J. K. } Supervisors.  
 L. M. }  
 N. O., Town Clerk.  
 P. R. }  
 S. T. } Justices of the Peace.

(207.) SEC. XIX. Whenever the supervisors of any town receive a petition praying the location of a new road, altering or discontinuing of an old one, on the line between two towns, such road shall be laid out, altered or discontinued by two or more of the supervisors of each of said towns, either on such line or as near thereto as the convenience of the ground will admit, and they may so vary the same, either to the one side or to the other of such line, as they may think proper. (m.)

Road on town line, to be acted on by supervisors of both towns.

(208.) SEC. XX. It shall be the duty of the said supervisors when there may be such highway, to divide it into two or more road districts, in such manner that the labor and expense of opening, working and keeping in repair such highways through each of the said districts may be equal, as near as may be, and to allot an equal number of such districts to each of said towns.

Road districts; how divided.

(209.) SEC. XXI. Each district shall be considered as belonging wholly to the town to which it may be allotted, for the purpose of opening and improving the road and keeping it in repair; and the supervisors shall cause such highway, and the position and allotment thereof to be recorded in the office of the town clerk in each of said towns.

Allotment and petition to be recorded.

(210.) SEC. XXII. All roads heretofore laid out on the line between any two towns shall be divided, allotted, recorded and kept in repair in the manner above directed.

Roads between towns.

(211.) SEC. XXIII. Whenever the supervisors shall have laid out any public road through any enclosed, cultivated or improved lands, in conformity with the provisions of this act, and their decision shall not have been appealed from, they shall give the owner or occupant of the land through which such road shall have been laid, sixty days' notice in writing, to remove his fences. If such owner does not remove his fences within sixty days, the supervisors shall cause such fences to be removed and shall direct the road to be opened and worked. (n)

Supervisors to give notice to remove fences; to cause removal.

(212.) SEC. XXIV. If the decision of the town supervisors shall have been appealed from, then the sixty days' notice shall be given after the decision of the county supervisors upon such appeal shall have been filed in the office of the town clerk of the town.

In case of appeal notice to remove fences to be given after decision.

(m) Form of order of supervisors of adjoining towns, for road on line between such towns.

State of Minnesota, }  
County of \_\_\_\_\_, } ss.  
Whereas the supervisors of the town of \_\_\_\_\_, and \_\_\_\_\_ within said county, did meet at the said \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_, for the purpose of laying out [or as the case may be] a road on the line between said towns.

Now, therefore, it is ordered at said meeting that such road be laid out [as the case may be,] according to the survey and plat hereof, made by order of said supervisors, namely: [insert survey, or state alteration or other action decided upon] and that the line above described shall be the center of said road, and said road is hereby declared to be a public highway \_\_\_\_\_ rods wide.

And that said highway be divided into \_\_\_\_\_ road districts, namely [describe them]; and that the [naming them] of said districts shall be allotted to said town of \_\_\_\_\_, and the remaining districts to the town of \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_.

A. B. }  
C. D. } Supervisors of  
E. F. } town of \_\_\_\_\_  
G. H. }  
J. K. } Supervisors of  
L. M. } town of \_\_\_\_\_

(n) Form of notice to remove fences.

To A. B. You are hereby notified to remove from the enclosed (or cultivated and improved) lands [describing them with reasonable certainty] owned (or occupied) by you, within sixty days from the date of this notice, all fences within the bounds of a certain highway laid out through said lands by an order, dated the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_, a copy of which is hereto annexed; which order was made by the supervisors of the town of \_\_\_\_\_, in the county of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_.

C. D. }  
E. F. } Supervisors.  
G. H. }

This notice is to be served by leaving a copy with the owner or occupant, and should be served by or in the presence of some indifferent person, having no interest in the matter; and a true copy

Public roads town highways.

(213.) SEC. XXV. Public roads now legally existing are declared the highways of towns in which they shall lie. (o)

Public roads to be four rods wide.

(214.) SEC. XXVI. All public roads to be laid out by the supervisors of any town, shall not be less than four rods wide.

Supervisors may not alter state roads.

(215.) SEC. XXVII. This act shall not be construed as conferring any power on the supervisors to alter state roads now or hereafter existing by law.

ARTICLE XXIV.

Miscellaneous Provisions.

Towns to be election precincts; judges of election.

(216.) SEC. I. Each town organized under this act, or the act providing for township organization, approved March twentieth, eighteen hundred and fifty-eight, shall constitute an election precinct, and the supervisors shall be *ex officio* judges of election: *provided*, that if neither of them be present at the time for opening the polls, the voters present may elect judges to act for the day.

Secretary of state to cause this act to be printed.

(217.) SEC. IV. It shall be the duty of the secretary of state to cause to be printed, immediately on the adjournment of the legislature, five thousand copies of this act, with practical forms and notes, with references to decisions of other states on questions upon like statutes.

Road tax to be based upon assessment of 1858.

(218.) SEC. V. The town supervisors already elected under the act of March twentieth, and June twenty-first, and the supervisors in towns to be organized under this act, may copy the assessment rolls in their towns for eighteen hundred and fifty-eight, to base the assessment of road tax upon, instead of last year's assessments, for the present year, and are hereby authorized to meet and assess the same as soon as may be practicable, in their several towns.

Towns may raise money at any town meetings.

(219.) SEC. VI. That the several towns under this act shall have power to direct such sums of money to be raised in their respective towns, for prosecuting or defending suits, or for the support and maintenance of roads and bridges, or for any purpose, as they may deem necessary, to be voted at any annual or called town meeting.

Act of March 20, 1858, repealed.

(220.) SEC. VII. An act entitled "an act to provide for township

should in all cases be retained by the commissioners; its actual service must be proved should it ever be questioned, and will not be presumed. The presumption which is sometimes indulged in favor of public officers, does not extend to such a case.—[*Case v. Thompson*, 6 *Wen.* 634.]

If fences are removed without giving sixty days' notice, all persons concerned therein are trespassers.—[*Kelly v. Horton*, 2 *Cow.*, 424.]

It has been held in numerous instances, that payment or assessment of damages of the owners of lands through which a public highway is laid is not a condition precedent to the right to open the road; and where a law authorising the taking of private property for public purposes, *provides* for a just compensation to the owner. It is not unconstitutional because it omits to make the assessment and payment of damages a condition precedent to an entry upon and occupation of, the premises. It is deemed sufficient if the law make definite and certain provision for ultimate compensation to the owner.—[*Baker v. Johnson*, 2 *Hill*, 342; *Smith v. Helmer*, 7 *Barb.*, 416; *Robottom v. McClure*, 4 *Black.*, 505. But not so, it seems, in case of a railroad corporation.—[*Bloodgood v. Mohawk & Hudson River R. R. Co.*, 18 *Wen.*, 9.]

Where commissioners of highways had laid out a road in pursuance of law but neglected to file their proceedings, and a mandamus directed to their successors, commanding them to open it, by mistake misdescribed the road; on application for a rule requiring the defendant to furnish the original application, and that the mandamus be amended thereby, it appeared that the paper sought for had remained in the hands of H., a former commissioner, and was beyond the control of the defendants. Motion, therefore, denied as to the defendants. But a rule was made upon H., that he file the paper with the clerk of the town, &c., or show just cause why he should not do so.—[*People v. Vail*, 1 *Cow.*, 589.]

A mandamus to commissioners of highways to open and work a road will be granted without regard to the near approach of the expiration of their offices; when the term of office expires, their successors must obey the command of the writ.—[*People v. Collins*, 19 *Wen.*, 56.]

(o) Where a road is used and traveled by the public as a highway, and is recognized and kept in repair as such, by the authority whose duty it is by law to open and repair public roads, proof of these facts furnishes a legal presumption liable to be rebutted, that such road is a public highway.—[*Egman v. People*, 1 *Gil.* *Nealy v. Brown*, 16. 10.]

Parol evidence is admissible to show where a road is located. Although there should be some uncertainty as to the precise location of the road, yet, if the evidence be such as to convince the jury as to its location, it is sufficient for them to act upon.—[*Nealy v. People*, 16. 10.]

organization," approved March twentieth, eighteen hundred and fifty-eight, is hereby repealed, but no rights accrued or liabilities incurred under said act, shall be affected thereby.

(221.) SEC. VIII. Each city shall be allowed one member of the board of county supervisors from each ward contained in such city; and the senior councilman in each ward shall be such member, unless the city shall elect some other person for that purpose.

City supervisors; senior councilmen when supervisors.

(222.) SEC. IX. Every town which may contain more than eight hundred inhabitants, shall be allowed to send one additional town supervisor as a member of the board of county supervisors, for each additional eight hundred inhabitants, and for any additional [fraction] of over four hundred.

Additional supervisors when town has over eight hundred inhabitants.

(223.) SEC. X. All laws now in force applicable to the board of county commissioners, shall apply to the county supervisors' court, as created under the provisions of this act, and the office of county commissioner is hereby declared to be discontinued in all counties from and after the first meeting and organization of the board of county supervisors.

County supervisors substituted for county commissioners

(224.) SEC. XI. The board of supervisors shall have power to alter, establish, or discontinue any county road or roads, in their respective counties.

Power of county supervisors respecting roads.

(225.) SEC. XII. All acts and parts of acts inconsistent with this act, are hereby repealed.

Act repealed.

(226.) SEC. XIII. This act shall take effect and be in force from and after its passage.

Take effect.

An Act relating to Justices of the Peace and Constables. (a)

✓ [Chapter 9, Revised Statutes.]

SEC. I. [*Superseded by article 3 of the township act of 1858.*]

(227.) SEC. II. No person shall be elected to the office of justice of the peace, who is not a citizen of the United States, and who shall not have resided in the territory at least six months next before his election.

Who may be elected justice of the peace.

(228.) SEC. III. (b) Every justice of the peace, elected in either of the counties of this territory, shall, before he enters upon the duties of his office, take and subscribe an oath, or affirmation, in writing, to support the constitution of the United States, and the laws of this territory, and faithfully to discharge and perform all the duties of his said office, according to the best of his abilities and understanding, which oath, or affirmation, shall be filed in the office of the clerk of the district court of the county in which such justice of the peace may reside, and shall execute to the treasurer of the same county, a bond, with two sufficient sureties, to be approved by the treasurer of the said county, and filed in the office of the said clerk of the district court, in the penal sum of five hundred dollars, conditioned, that he will pay over, on demand, all moneys received by him by virtue of his office, to the person or persons entitled to the same; and the said justice; and his sureties, shall be liable, in said bond, to each and every person for whom such justice shall collect money, and refuse to pay the same; and it shall be competent for any person, to whom such justice and his sureties may have become liable, so as aforesaid, to sue such justice and his sureties, or any of them, in a civil action, and on proof that the said justice has neglected or refused to pay any such sum of money, by him collected, as aforesaid, then, and in every such case, judgment shall be given against the parties defendant in such suit, for the moneys so col-

Oath of office and bond to be filed with clerk of district court.

(a) The following sections are those of the revised statutes which remain in force. They should be read with those parts of the town act of 1858 which treat of justices of the peace and constables  
 (b) Compare section 8 of article 6, of township act of 1858.

lected, together with interest and costs, according to the condition of such bond; *provided, always*, that a copy of such bond, under the official certificate of the clerk, with whom the same is filed and recorded, shall be legal evidence of the contents and execution thereof, in all courts.

SEC. IV. [*Superseded by article 5 of town act of 1858.*]

Jurisdiction of justices of the peace; office where to be kept.

(229.) SEC. V. The jurisdiction of justices of the peace, elected in pursuance of the provisions of this chapter, shall be co-extensive with the limits of the county in which they shall be elected, and no other or greater, whether said county be attached to any other county, or whether any other county be attached to it: *provided*, that every justice elected under the provisions of this chapter, shall keep his office in the precinct for which he may be elected, and not elsewhere.

In case of vacancy, docket where to be deposited.

(230.) SEC. VI. If any justice of the peace, die, resign, or remove out of the town or precinct for which he may be elected, or his term of office be in any other manner terminated, the docket, books, records, papers, and documents appertaining to his office, or relating to any suit, matter, or controversy, committed to him in his official capacity, shall be delivered to the nearest justice in the same county, who may thereupon proceed to hear, try, and determine such matter, suit, or controversy, or issue the execution thereon, in the same manner as it would have been lawful for the justice, before whom such matter or suit was commenced, to have done.

When county divided, justice of the peace to continue to act as such.

(231.) SEC. VII. When a county shall be divided, any justice of the peace of the original county, whose place of residence may be embraced within the limits of the new county, shall continue to discharge the duties of the justice of the peace in said county, until his successor shall be elected and qualified.

SEC. VIII. [*Superseded by town act of 1858, article 3, § 2.*]

Constables to give bond.

(232.) SEC. IX. (b) Every person elected or appointed to the office of constable, before he enters upon the duties of his office, and within the time prescribed by law for filing his oath of office, shall execute an instrument in writing, with two or more sufficient sureties, to be approved by the clerk of the board of county commissioners, which writing shall in substance be in the following form:

Form of bond.

A. B., chosen a constable in the precinct of \_\_\_\_\_ in the county of \_\_\_\_\_ and territory of Minnesota, and C. D. and E. F. his sureties, do hereby jointly and severally agree, to pay to each and every person who may be entitled thereto, all such sums of money, as the said constable may become liable to pay for, on account of any moneys which may come into his hands, by virtue of his office, or for the neglect of any official duty.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ A. D.

A. B.  
C. D.  
E. F.

Executed in presence of \_\_\_\_\_ }  
clerk of the board of commissioners. }

SEC. X. [*Superseded by town act, article 6, § 8.*]

Duties of constables.

(233.) SEC. XI. Any constable may, within his county, serve any writ, process, or order, lawfully directed to him, by any judge of probate, coroner, or justice of the peace, and generally do and perform all acts by law required of constables, and shall receive the same fees as are by law paid to the sheriff, for like services.

SEC. XII. [*Superseded by town act of 1858, article 7, § 1.*]

An Act relating to Fences, Fence Viewers, and Pounds.

[Chapter II., revised statutes.]

(234.) SEC. I. All fences four and a half feet high and in good repair, consisting of rails, timber, boards, or stone walls, or any combination thereof, and all brooks, rivers, ponds, creeks, ditches, and hedges, or other things which shall be equivalent thereto, in the judgment of the fence viewers, within whose jurisdiction the same may be, shall be deemed legal and sufficient fences. What to be deemed a legal fence.

(235.) SEC. II. The respective occupants of lands, inclosed with fences, shall keep up and maintain partition fences between their own and the next adjoining inclosures, in equal shares, so long as both parties continue to improve the same. (a) Partition fences, how maintained.

(236.) SEC. III. In case any party shall neglect to repair or rebuild any partition fence, which of right he ought to maintain, the aggrieved party may complain to two or more fence viewers of the county, who after due notice to each party, shall proceed to examine the same; and if they shall determine that the fence is insufficient, they shall signify the same in writing to the delinquent occupant of the land, and direct him to repair or rebuild the same within such time as they shall judge reasonable; and if such fence shall not be repaired or rebuilt accordingly, it shall be lawful for the complainant to repair or rebuild the same. (b, c) Neglect to maintain partition fence.

(a) It is desirable that adjoining owners should amicably agree upon the portion of partition fence to be maintained by each. For that purpose a written agreement should be made and signed in duplicate, one copy to be kept by each party. The form may be as follows:

*Form of agreement of adjoining owners to divide and maintain partition fence.*

This agreement, made this        day of       , A. D. 18       , between A. B., of the town of        in the county of        and state of Minnesota, on the one part, and C. D. of the said town, on the other part, witnesseth:

That whereas the lands of the said A. B. and C. D. are separated by a partition fence, beginning [describe the fence], it is agreed between the said parties that        rods [or one-half, or as the case may be of said fence, to be measured from [describe beginning and end of this part], shall be well and sufficiently maintained and kept in good repair by the said A. B.; and that the remainder of said fence shall be kept in like good repair by said C. D.

In witness whereof, the above parties have hereunto set their hands and seals, the day and year first above written.

A. B. [seal.]  
C. D. [seal.]

This form, with the witnesses and acknowledgment required in section VIII. of this act, may be recorded as there provided.

Where a dispute arises as to the proportion of a fence to be maintained by each party, it may be settled by fence viewers, even where there has been an agreement on the subject.—[Burger v. Kortwright, 4 Johns, 414.]

The decision of the fence viewers as to the proportion of fence of each party is not necessary, where there is no dispute between them.—[Willoughby v. Carlton, 9 Johns.]

It is held that any person occupying land, and interested in the making and maintaining a division fence, be his estate or interest in the premises what it may, is entitled to avail himself of the provisions of the statute in reference to division fences; the remedy is not limited to the owner of the fee.—[Bronk v. Becker, 17 Wen., 320.]

(b) *Form of notice by fence viewers to parties of examination of fence needing repair.*

To A. B., of the town of       , in the county of       , and state of Minnesota:

You are hereby notified that on the        day of       , A. D., 18       , we shall proceed to examine the partition fence between the land of yourself and of C. D., beginning at [describe the line of fence] to decide whether said fence is insufficient; the said C. D., having complained to us that you have neglected to repair and rebuild the same, and that said fence is insufficient by reason of your said neglect. And you may be present at said time if you see fit.

Dated at       , this        day of       , A. D. 18       .

E. F., }  
G. H., } Fence Viewers.

(c) *Form of notice to delinquent party, to repair his portion of partition fence.*

To A. B., of the town of       , in the county of       , and state of Minnesota:

You are hereby notified that at the request of C. D., of said town of       , we, the undersigned, have examined the partition fence between his lands and yours, beginning [describe line of fence]; which fence you ought of right to maintain; and that we find said fence to be insufficient.

You are therefore notified to repair [or rebuild] the same in a good and sufficient manner within        days from the date hereof.

Dated at       , this        day of       , A. D., 18       .

E. F., }  
G. H., } Fence Viewers.

Double value of repairs may be recovered of delinquent.

(237.) SEC. IV. When any deficient fence, built up or repaired by any complainant as provided in the preceding section, shall be adjudged sufficient by two or more of the fence viewers, and the value of such repairing, or building up, together with their fees, shall be ascertained by a certificate under their hands, the complainant shall have a right to demand either of the occupant or owner of the land, where the fence was deficient, double the sum so ascertained; and in case of neglect or refusal to pay the sum so due for one month after demand thereof be made, the complainant may recover the same, with interest at one per cent. a month, in a civil action. (d)

Fence viewers to determine controversies relative to partition fences.

(238.) SEC. V. When any controversy shall arise about the rights of the respective occupants in partition fences, or their obligation to maintain the same, either party may apply to two or more fence viewers of the county where the lands lie, who after due notice to each party, may, in writing assign to each, his share thereof, and direct the time within which each party shall erect or repair his share of the fence, in the manner before provided; which assignment being recorded in the register of deeds' office, shall be binding upon the parties, and upon all the succeeding occupants of the lands; and they shall be obliged always thereafter to maintain their respective portions of said fence. (e, f)

Other party may erect fence in case of neglect, and recover double value.

(239.) SEC. VI. In case any party shall refuse or neglect to erect or maintain the part of any fence assigned to him by the fence viewers, the same may be erected and maintained by the aggrieved party, in the manner before provided; and he shall be entitled to double the value thereof ascertained in the manner aforesaid, and to be recovered in like manner.

Divisions of fences recorded, &c., to be valid.

(240.) SEC. VII. All divisions of fences made by fence viewers, according to the provisions of this chapter, or which shall be made by

(d) Form of certificate by fence viewers of sufficiency of fence built by complainant, and of value thereof, and of their fees.

We, the undersigned, do hereby certify that the fence between the lands of A. B., and C. D., both of the town of \_\_\_\_\_ in the county of \_\_\_\_\_, and state of Minnesota, which said fence has been built up [or repaired] by said C. D., is a good and sufficient fence; that the value of such building up [or repairing] is \_\_\_\_\_ dollars, \_\_\_\_\_ cents; and that our fees are \_\_\_\_\_ dollars, \_\_\_\_\_ cents.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_.

G. H., } Fence Viewers.  
E. F., }

(e) Form of notice by fence viewers of assignment of portions of partition fence; to be sent to both parties.

To A. B., of the town of \_\_\_\_\_, in the county of \_\_\_\_\_, and state of Minnesota:  
You are hereby notified that on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_, we, the undersigned, shall proceed to assign to you and to C. D., of said town, the shares of the partition fence between your respective lands, beginning [describe the fence], which you and said C. D., are obliged to maintain, and that at the said time we shall also direct the time within which you and the said C. D., shall erect [or repair] your and his respective shares of said fence.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_.

G. H., } Fence Viewers.  
E. F., }

(f) Form of assignment of shares of partition fence to be maintained by parties.

We, the undersigned, fence viewers in and for the county of \_\_\_\_\_, and state of Minnesota, do hereby assign to A. B., and C. D., of the town of \_\_\_\_\_, in said county, the shares respectively to be maintained by them of a certain partition fence between their lands, as follows:

To the said A. B., that portion of said fence beginning at \_\_\_\_\_ and ending at \_\_\_\_\_; and to the said C. D., that portion of said fence beginning at \_\_\_\_\_ and ending at \_\_\_\_\_.

And said A. B., and C. D., are hereby directed to erect [or repair] their respective shares of said fence above assigned, within \_\_\_\_\_ days of the date of this assignment.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_.

J. K., } Witnesses.

L. M., }

State of Minnesota, } ss.

County, }

Town of \_\_\_\_\_, A. D. 18 \_\_\_\_\_.

Then personally appeared the above named A. B. and C. D., and acknowledged the above instrument to be their act and deed.

Before me, E. F., Justice of the Peace.

NOTE. Care should be had that the descriptions of the beginnings, courses and endings of the portions of fence, may be as clear and definite as possible.



Divisions of partition fence between persons occupying lands in common.

(245.) SEC. XII. When any lands belonging to different persons in severalty shall have been occupied in common without a partition fence between them, and one of the occupants shall be desirous to occupy his part in severalty, and the other occupant shall refuse or neglect, or demand to divide with him the line where the fence ought to be built, or to build a sufficient fence on his part of the lines when divided, the party desiring it may have the same divided and assigned by two or more fence viewers of the same county, in the manner provided in this chapter. (i)

If party neglect to make his part of fence, party may make same and recover double the expenses.

(246.) SEC. XIII. Upon the division and assignment as provided in the preceding section, the fence viewers may, in writing under their hands, assign a reasonable time for making the fence, having regard to the season of the year; and if either party shall not make his part of the fence, within the time so assigned, the other party may, after having completed his own part of the fence, make the part of the other, and recover therefor, double the ascertained expense thereof, together with the fees of the fence viewers in the manner provided in this chapter.

When one party wishes to open inclosure, the other party may purchase.

(247.) SEC. XIV. When one party shall cease to improve his land, or shall open his inclosure, he shall not take away any part of the partition fence belonging to him, and adjoining the next inclosure, if the owner or occupant of such adjoining inclosure will within two months after the same shall be ascertained, pay therefor, such sum as two or more fence viewers shall, in writing under their hands, determine to be the value of such partition fence belonging to such parties. (j)

The owner of uninclosed land to pay for half of division fences.

(248.) SEC. XV. When any uninclosed grounds, shall be afterward inclosed, the owner or occupant thereof, shall pay one-half of each partition fence, standing upon the line between his land and the inclosure of any other owner or occupant, and the value thereof shall be ascertained by two or more fence viewers of the county, in writing under their hands, in case the parties do not agree; and if such owner or occupant shall neglect or refuse for sixty days after the value has been so ascertained, and demand made, to pay for one-half of such partition fence, the proprietor of each fence may maintain a civil action for such value, and the cost of ascertaining the same. (k)

Fence viewers may be taken from either county in certain cases.

(249.) SEC. XVI. In all cases where the line upon which a partition fence is to be made, or to be divided, is the boundary line between counties, or partly in one county and partly in another, a fence viewer shall be taken from each county.

Partition fences running into water.

(250.) SEC. XVII. When a partition fence running into the water is necessary to be made, the same shall be done in equal shares, unless otherwise agreed by the parties; and in case either party shall refuse or neglect to make or maintain the share belonging to him, similar proceedings shall be had as in case of other fences, and with the like effect.

Owners to support division fences.

(251.) SEC. XVIII. In all cases where the line upon which a partition fence to be built between unimproved lands, has been divided by the fence viewers, or by agreement in writing between the owners of such

(i) The form of assignment of shares of partition fence and of time for erecting or repairing the same under this and the following section, may be the same as that in note (f) above.

(j) Form of determination of value of partition fence where inclosure to be opened.

We, the undersigned, fence viewers of the town of \_\_\_\_\_, in the county of \_\_\_\_\_, and state of Minnesota, having been applied to to value part of a certain partition fence between lands of A. B., and of C. D., of said town, being the portion thereof belonging to the said C. D., do hereby determine the value of said portion to be \_\_\_\_\_ dollars, and \_\_\_\_\_ cents.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_.

E. F., }  
G. H., } Fence Viewers.

(k) The form for valuing a partition fence under this section may be the same as that in note (i), omitting the words "part of," and "being the portion thereof belonging to the said C. D.," and substituting for "portion" in the last line, "fence."

lands, recorded in the office of the register of deeds of the county where such lands lie, the several owners thereof, and their heirs and assigns forever, shall erect and support said fences agreeably to such divisions.

(252.) SEC. XIX. If any person shall determine not to improve any of his lands adjoining any partition fence that may have been divided according to the provisions of this chapter, and shall give six months' notice of such determination to all the adjoining occupants of lands, he shall not be required to keep up or support any part of such fence during the time his lands shall be open and unimproved; and he may thereafter remove his portion thereof, if the owner or occupant of the adjoining inclosure will not pay therefor, as provided in the fourteenth section of this chapter. (l)

Owner may remove partition fence on six months' notice.

SEC. XX. [*Superseded by sec. 3, of art. 3, of township act of 1858.*]

(253.) SEC. XXI. Any fence viewer who shall, when requested unreasonably, neglect to view any fence, or to perform any other duty required of him in this chapter, shall forfeit the sum of five dollars, and shall also be liable to the party injured for all damages consequent upon such neglect.

Penalty for neglect of fence viewers to act.

(254.) SEC. XXII. Each fence viewer shall be paid by the person employing him, at the rate of one dollar a day for the time he shall be so employed; and if such person shall neglect to pay the same within thirty days after the service shall have been performed, each fence viewer having performed any such service may recover in a civil action double the amount of such fees.

Fees of fence viewers, and how recovered.

(255.) SEC. XXIII. Each county may, at its own expense, and in such places therein as the electors shall direct, provide and maintain one or more sufficient pounds, in which swine, sheep, horses, asses, mules, goats and neat cattle may be restrained and kept from going at large contrary to law, or to any by-law of such county. (m)

County may maintain pounds.

(256.) SEC. XXIV. If any person shall willfully injure any pound maintained by such county, he shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding fifty dollars, or by imprisonment in the county jail not exceeding ninety days, at the discretion of the court.

Penalty for injuring pound.

(l) *Form of notice by owner that he will not improve land.*

To A. B., of the town of \_\_\_\_\_, in the county of \_\_\_\_\_, and state of Minnesota:  
 You are hereby notified that from and after the \_\_\_\_\_ day of \_\_\_\_\_, A. D., 18\_\_\_\_, I shall not improve my land, which is divided from yours by a partition fence, [describing the fence.]  
 Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_.

C. D.

(m) Compare township act of 1858, art. 13, sec. 1.