

THE  
STATUTES AT LARGE  
OF THE  
STATE OF MINNESOTA

COMPRISING  
THE GENERAL STATUTES OF 1866  
*As amended by subsequent Legislation to the close of the Session of 1873*  
TOGETHER WITH  
*ALL LAWS OF A GENERAL NATURE IN FORCE, MARCH 7, A.D. 1873*

WITH REFERENCES TO  
JUDICIAL DECISIONS OF THE STATE OF MINNESOTA, AND OF OTHER  
STATES WHOSE STATUTES ARE SIMILAR

TO WHICH ARE PREFIXED  
THE CONSTITUTION OF THE UNITED STATES, THE ORGANIC ACT,  
THE ACT AUTHORIZING A STATE GOVERNMENT, AND THE  
CONSTITUTION OF THE STATE OF MINNESOTA

*VOL. I.*

---

COMPILED AND ARRANGED BY  
A. H. BISSELL  
ATTORNEY-AT-LAW

---

CHICAGO  
CALLAGHAN AND COMPANY

1873

## CHAPTER XXI.

## OF ROADS, CARTWAYS, AND BRIDGES.

*This Chapter is the Act of March 8, 1873 (S. L. 1873), which repealed Chapter XIII. of the Statutes of 1866.*

## SEC.

1. Town supervisors have the care of roads and bridges.
2. Shall render account to town meeting.
3. Overseers of highways, duty of.
4. Vacancy in office of overseer, how filled.
5. Notice to be given to person appointed.
6. Refusal or neglect to serve—penalty.
7. Supervisors shall meet, where.
8. Shall assess road tax.
9. Assessment, how made.
10. Additional name to be placed on list.
11. Copies of list made for overseers.
12. Overseers to correct omission of list.
13. Notice to work out tax.
14. Powers of overseers in special cases.
15. Commutation of labour tax.
16. Commutation money, when payable.
17. Overseer may require team.
18. Work may be performed by substitute—ten hours a day's work—penalty for each hour lost.
19. Penalty for neglect to work or commute.
20. Overseer shall make complaint, when.
21. Justice to issue summons—how served.
22. Fine, how collected.
23. Fine, how expended.
24. Excuse for neglect does not exempt from tax.
25. Fees of overseer.
26. Overseer to deliver list to supervisor, when.
27. Refusal or neglect to deliver list—penalty.
28. Supervisor to deliver lists to auditor, who shall levy tax—town treasurer to receive tax.
29. Labor on roads, when expended.
30. Overseer to render his account, when—what it must contain.
31. Shall pay to supervisors moneys unexpended.
32. Failure to render account—penalty.
33. Supervisors may alter, discontinue, or lay out road, when and how.
34. Copy of petition to be posted.
35. Notice of hearing to be posted.
36. On proof of notice supervisors shall personally examine, etc.
37. Proceedings and order of supervisors laying out, altering, or discontinuing of a road.
38. Effect of the order as evidence.
39. Benefits and damages, how determined.
40. Supervisor's action final for one year.

## SEC.

41. Fences to be removed by owner of land.
42. Roads on line between towns located or altered.
43. Such highways to be divided for working.
44. Districts belonging to what town.
45. Existing roads between towns to be so worked.
46. Supervisor's decision appealed from.
47. Width of roads and cartways.
48. Application of this law to cities.
49. Roads in more than one town—petition to county commissioners.
50. Proceedings of the commissioners on such petition.
51. Committee to examine road proposed.
52. Committee shall report to the commissioners.
53. Commissioners shall determine questions at their next meeting, and assess damages.
54. Hearing of remonstrances—county to pay damage, when.
55. County roads are what, and how changed.
56. Care of county roads—how opened, improved, and kept in repair.
57. No damages assessed in certain cases.
58. Damage may be assessed in three years.
59. Appeal to a justice of the peace allowed.
60. Appeal how made, and what it shall state—trial of appeal.
61. Return of the jury filed, where.
62. Of appeal to the district court.
63. Proceedings on decision of the appeal.
64. Roads are public highways, when.
65. Penalty for destruction of a public highway.
66. Justices of the peace have jurisdiction.
67. Fines, where paid.
68. Penalty for fast driving on bridge.
69. Proceedings for such offense.
70. Proceedings on conviction.
71. Sign-board on bridge required.
72. Penalty for running toll.
73. Section lines to be considered public roads, where.
74. Authorizes the judges of any district court to appoint commissioners to lay out roads through two or more counties within his judicial district.

**SECTION 1.** *Town supervisors have the care of roads and bridges.*—The supervisors in the several towns in this state shall have the care and superintendence of roads and bridges therein, shall give directions for the repairing of the roads and bridges in their respective towns, regulate roads already laid out, and alter each of them, as they, or a majority of them, deem proper, as herein[after] provided; divide the

respective towns into so many road districts as they 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 deem it necessary, and in all cases to be made within at least twenty days before the annual town meeting; they shall assign to each of the said road districts such of the inhabitants liable to work on highways, as they think proper, having regard to proximity of residence, and require the overseers of highways, as often as they 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.

*Vide* 23 Wis. 357. Work done upon a road by order or permission of the overseer is evidence of adverse user of the road as a highway.

SEC. 2. *What report and statements they must make.*—The supervisors in each town shall render [to] the annual town meeting an account in writing, stating the labor assessed and performed in such town, the sums received by them for fines and commutation, and all other moneys received under this chapter; 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 of the labor to be assessed in that year, that the road tax will accomplish; also a statement in writing of all expenses and damages in consequence of laying out, altering, or discontinuing roads.

SEC. 3. *Duties of overseers of highways.*—The overseers of highways in each town shall repair and keep in order the roads within their respective districts; warn all persons from whom labor is due to work on highways, at such times and places within their several districts as they may think proper; collect all fines and commutation money, execute all lawful orders of the supervisors, and 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 highways.

SEC. 4. *Supervisors may appoint overseer, when.*—If any person chosen or appointed to the office of overseer of highways refuses to serve, or if his office becomes 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.

*Vide* note to sec. 1, *supra*.

SEC. 5. *Appointee notified, how.*—The supervisors making the appointment shall cause such warrant to be forthwith filed in the office of town clerk, who shall give notice to the person appointed as in other cases.

SEC. 6. *Penalty for overseer neglecting duty.*—Every overseer of highways who refuses or neglects to perform any of the duties of this chapter, 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.

SEC. 7. *Supervisors' meetings.*—The superintendent [supervisors] of each town shall meet at the town clerk's office within eighteen days after they are chosen, on such day as they agree upon, and afterwards at such [other] times and places as they think proper.

SEC. 8. *Assessment of road tax.*—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.

SEC. 9. *Poll road tax.*—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 not less than one day nor more than four days in each year. Supervisors shall assess a road tax on all real estate and personal property liable to taxation of the town, to any amount they may deem necessary, not exceeding one dollar 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 list 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 road tax assessed thereon in a separate column; the list so prepared shall be signed by the supervisors and deposited with the town clerk to be filed in his office.

SEC. 10. *List of persons assessed a road tax on personal property.*—The supervisors shall also place on the land road tax list the names of all persons against whom road tax on personal property only has been assessed, and place in a separate column opposite the name of each person on the list the amount of road tax assessed on personal property, which amount shall be subject to collection or commutation by labor, the same as land road tax assessed on real estate.

SEC. 11. *Copies of lists made for overseers.*—The supervisors shall direct the town clerk to make a certified copy of each list, after which the town clerk shall deliver the several copies to the respective overseers of highways of the several districts in which highway labor is assessed, for which he shall receive a fee of twenty-five cents for each copy so delivered. One copy for each overseer shall contain the name and number of days assessed to each person, the other the land and personal property road tax.

SEC. 12. *Overseers to correct omissions of list.*—The overseers of highways shall add the names of persons left out of such lists, and of new inhabitants, and they shall be rated in the same proportion to work on the highways as others are rated by the supervisors on such list.

SEC. 13. *Notice to work out tax.*—Overseers of highways shall give at least three days' notice to all persons assessed to work on highways, and living within the limits of their respective districts, of the time and places 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, but may elect to pay any land road tax in labor in the district in which said land is situated, and shall be allowed one dollar and fifty cents for himself and a like amount for the use of a team and wagon, or plow; such labor shall be at the disposition of the overseers of their respective districts.

SEC. 14. *Powers of overseers in special cases.*—Road overseers have power, and it is hereby made their duty, whenever any public highway becomes obstructed or unsafe from any cause whatever, to call upon any or all persons liable to poll tax in his district to come forthwith with such tools or teams as the overseer may direct, and work upon such highway in removing obstructions or repairing dangerous

places, and for all such labor performed under the direction of the overseers by any person in excess of road tax assessed against him for the year, the road overseer shall give a receipt, stating the value of such labor, and said receipt shall be received in payment of any road tax due from any person to said district to [in] that or any succeeding year, and any road overseer who fails to perform his duty as required by law, shall be subject to prosecution therefor by the supervisors of this town, and upon conviction thereof, shall be liable to a fine of not less than five nor more than fifty dollars, and justices of the peace shall have jurisdiction, upon complaint made on oath, to hear and determine all causes arising under this section.

SEC. 15. *Payment or commutation of labor tax.*—Every person liable to work upon the highways shall work the whole number of days for which he is assessed, but every such person other than the overseer 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 overseer of highways of the district in which the person commuting shall reside, to be applied and expended by the overseer in the improvement of the roads and bridges of the same district. Overseers of highways, when such land tax is paid either in money or labor, shall write the word "paid" against such name or tract of land in their list on which the same is paid.

SEC. 16. *Commutation money paid, when.*—Every person intending to commute for his assessment, or any part thereof, shall, within five days after he is notified to appear and work on the highways, pay the commutation money for the work required of him by such notice, and the commutation shall not be considered as made until such money is paid.

SEC. 17. *Overseer may require team.*—Every overseer of highways has 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.

SEC. 18. *Work by substitute.*—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 or person is in default, to be imposed as a fine on the person assessed.

SEC. 19. *Penalties for neglecting road duty.*—Every person so assessed and duly notified, who does not commute, and who refuses or neglects to appear as above provided, shall be fined for every day's refusal or neglect the sum of two dollars. If he was required to furnish a team, man, carriage, or implements, and refused or neglected so to comply, he shall be fined as follows: 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.

SEC. 20. *Overseers must make complaint of delinquent.*—Every overseer of highways, within nine days after any person so assessed and notified, is guilty of any refusal or neglect for which a penalty or fine is prescribed in this chapter, unless satisfactory excuse is rendered to him for such refusal or neglect, shall make complaint to one of the justices of the peace of the town or an adjoining town.

SEC. 21. *The justice shall summon the delinquent to show cause why he should not be fined.*—The justice to whom such complaint is made shall forthwith issue a

summons directed to any constable of the county, 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.

SEC. 22. *Fine, how collected.*—If upon the return of such summons no sufficient cause is shown to the contrary, the justice of the peace shall impose a fine as provided in this chapter, for the offense complained of, and shall forthwith issue a warrant under his hand, directed to any constable of the county in which such delinquent resides, commanding him to levy such fine, with the cost of proceedings, on the goods and chattels of the delinquent.

SEC. 23. *Fine, how expended.*—The constable to whom such warrant is 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 complaint, to be by him expended in improving the roads and bridges in his district.

SEC. 24. *Excuse for a neglect does not exempt from the tax.*—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 is assessed during the year.

SEC. 25. *Overseer's compensation.*—Every overseer of highways is entitled to one dollar and fifty cents per day, to be paid out of the fines and commutation money, for every day he is necessarily employed in the execution of his duties as overseer. When there are no funds from fines or commutations, the supervisors may pay the overseers out of any funds in their hands raised for the purpose of repairing and making roads and bridges.

SEC. 26. *Overseer must deliver his list, when.*—Every overseer of highways shall deliver to the supervisors of his town, on or before the first day of October in each year, 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.

SEC. 27. *Fine for neglect to deliver list.*—If any overseer refuses or neglects to deliver 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 supervisors of such town, and applied by them in improving roads and bridges of such town.

SEC. 28. *Unpaid tax levied and collected how.*—The supervisors of the several towns shall receive the lists of [the] overseers of highways pursuant to the preceding section, and return the same to the auditor of the county on or before the first day of November in each year, who is hereby required to levy the amount of such arrearages of road tax upon the lands so returned, which arrearages shall be collected in the same manner as contingent charges of the county are levied and collected. Such road tax, when collected, shall be paid to the town treasurer of the proper town upon the certificate of the auditor of the county, and shall be applied by the supervisors of the town in the construction or repair of roads and bridges, to be paid by the town treasurer upon the order of the supervisors.

SEC. 29. *Three-fourths road labor done before August.*—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 August in each year.

SEC. 30. *Overseer to render his account, when—what it must contain.*—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:

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

*Second.* The names of all those who have actually worked on the highway, with the number of days they have worked.

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

*Fourth.* 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.

SEC. 31. *Overseer's duty with unexpended money.*—Every such overseer shall 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.

SEC. 32. *Penalty for neglect to account or to pay balance.*—If any overseer refuses or neglects to render such account, or if having rendered the same he shall refuse or neglect to pay any balance which may 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 improvement of the roads and bridges in such town.

SEC. 33. *Concerning alteration or laying out of roads—the petition.*—The supervisors of the town may alter or discontinue any road, or lay out any new road when petitioned by any number of legal voters not less than six, residing or owning real estate within one mile of the road 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 and discontinued, and if for a new road, the names of the owners of 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: *provided*, that the said supervisors shall not have power to vacate, alter, or change any state road, any portion of which passes through any of the unauthorized [unorganized] counties of the state, nor shall they vacate any portion of any mail route, or change the same in any manner so as to make the same materially longer, and when such change is made in any such route, the supervisors shall cause the same to be immediately opened and made passable: *provided*, that state roads not opened within two years from the time they were laid out may be vacated as other roads.

*Vide* 2 Wis. 129, petition must be signed by six freeholders to give supervisors jurisdiction.

21 Wis. 32, petition must describe the line of road with certainty.

SEC. 34. *Posting the petition.*—Whenever any number of legal voters as afore-said determine to petition the supervisors for the alteration or discontinuance of any road or laying out 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 is had in relation thereto.

SEC. 35. *Notice by the supervisors on such petition.*—Whenever the supervisors receive a petition in compliance with the preceding sections for laying out, altering,

or discontinuing any highway, they shall, within thirty days, make out a notice and fix therein a time and place at which they will meet and decide upon such application, and the applicant shall, at least ten days previous to such time, cause such notice to be given to all occupants of the land through which such highway may pass, which notice shall be served personally or by copy left at the usual place of abode of each of said occupants. The supervisors shall also cause copies of such notice to be posted in three public places in said town at least ten days previous to such meeting; every such notice shall specify as near as practicable the highway proposed to be laid out, altered, or discontinued, and the several tracts of land through which the same may pass.

*Vide* 6 Wis. 134; 7 Wis. 134, what notice must contain; also *ibid.*, and 16 Wis. 519, notice must be served on all occupants.

SEC. 36. *On proof of notice supervisors shall act.*—The supervisors upon being satisfied that the notices required in the preceding section have been duly served, proof of which shall be shown by affidavit, shall proceed to examine personally such highway, and shall hear any reasons for or against the laying out, altering, or discontinuing the same, and shall decide upon the application as they deem proper.

*Vide* 16 Wis. 519.

SEC. 37. *Proceedings and order of the supervisors, laying out, discontinuing, or altering a road.*—Whenever the supervisors shall lay out, alter, or discontinue any highway, they shall cause a survey thereof to be made when necessary, and they shall make out an accurate description of the highway so altered, discontinued, or laid out, and incorporate the same in an order to be signed by them, and shall cause such order, together with all the petitions and affidavits of the service of notices, to be filed in the office of the town clerk, who shall note the time of filing the same, but on the refusal of the supervisors to lay out, alter, or discontinue such road, they shall note the fact on the back of the petition and file the same as aforesaid. All orders, petitions, and affidavits, together with the award of damages, shall be made out and filed within five days after the date of the order for laying out, alter[ing] or discontinuing such highway. But the town clerk shall not record such order within thirty days, nor until a final decision is had, and not then unless such order is confirmed. And in case the supervisors shall fail to file such order within twenty days, they shall be deemed to have decided against such application.

*Vide* 21 Wis. 32; also 18 Wis. 537; 23 Wend. 328, road need not be laid on the exact line called for in the petition.

SEC. 38. *Effect of the order as evidence.*—The order laying out, altering, or discontinuing any highway, or a copy of the record duly certified by the town clerk, shall be received in all courts as competent evidence of the facts therein contained, and shall be *prima facie* evidence of the regularity of the proceedings prior to the making of such order, except in cases of appeal when such appeal has been taken within the time limited in this chapter.

*Vide* 16 Wis. 519; 18 Wis. 537.

SEC. 39. *Damages and benefits, how determined.*—The damages sustained by reason of laying out, altering, or discontinuing any road, may be ascertained by the agreement of the owners and the supervisors, and unless such agreement is 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 is opened, worked,



or used. Every agreement and release shall be filed in the town clerk's office, and shall for ever preclude such owners of lands from all further claim for damages. In case the supervisors and the owners of land claiming damages cannot agree, or if the owner of any land through which any highway shall be laid out, altered, or discontinued, is unknown, the supervisors shall in their award of damages specify the amount of damages awarded by them to all such owner or owners, giving a brief description of such parcel of land in their award, the supervisors shall assess the damages at what they 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. The supervisors in all cases of assessing damages shall estimate the advantages and benefits the new road or alteration of an old one will confer on the claimant for the same as well as the disadvantages. Any person living on United States land who has made his declaratory statement for the same in the proper land office, shall for all the purposes of this act be considered the owner of such land.

SEC. 40. *Supervisors' action final for one year.*—The determination of the supervisors of any town refusing to lay out, alter, or discontinue any highway shall be final (unless such determination be appealed from as provided in this act) for [the] term of one year after the filing of such order or determination in the town clerk's office; and no application for laying out, altering, or discontinuing any such highway shall be again acted upon by such supervisors within said term of one year; and in case the determination of the supervisors of any town, in laying out, altering, or discontinuing any highway, shall be appealed from, as provided in this chapter, and such determination shall be reversed on such appeal, the said supervisors shall not, within one year after the making of the determination reversed on such appeal, act again upon an application to lay out, alter, or discontinue any such highway.

*Vide 14 Wis. 266, irregularities in proceedings, how reviewed.*

SEC. 41. *Fences to be removed by owner of land.*—Whenever the supervisors or commissioners have laid out any public road through any inclosed, cultivated, or improved lands, in conformity with the provisions of this chapter, and their decision has not been appealed from, they shall give the owner or occupant of the land through which the road is laid, twenty days' notice in writing to remove his fences; if such owner does not remove his fences within twenty days the supervisors shall cause such fences to be removed and direct the road to be opened and worked: *provided*, that no inclosure shall be ordered opened between the first day of April and the first day of October.

SEC. 42. *Roads on line between towns located or altered.*—Whenever the supervisors of any town receive a petition praying for the location of a new road, or the 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 one side or the other of such line as they think proper.

SEC. 43. *Such highways to be divided for working.*—The supervisors, when there may be such highways, shall divide such highway 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 said districts may be equal, as near as may be, and shall allot an equal number of such districts to each of said towns.

SEC. 44. *Districts belonging to what towns.*—Each district shall be considered as belonging wholly to the town to which it may be allotted, for the purpose of opening the road and keeping it in repair; and the supervisors shall cause such highway and the petition and the allotment thereof to be recorded in the office of the town clerk in each of said towns.

SEC. 45. *Existing roads between towns to be so worked.*—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.

SEC. 46. *Supervisors' decision appealed from.*—The decision of the supervisors in relation to town line roads may be appealed from in the same manner as provided in this chapter for appeals from the decisions of supervisors in relation to town roads.

SEC. 47. *Width of roads.*—All public roads to be laid out by the supervisors or county commissioners shall not be less than four rods wide, and may be six rods in width when all residents of lands adjoining said road shall petition for the same: *provided*, that the supervisors of the several towns have power to lay out public cartways two rods wide when petitioned for by the residents desiring the same, the cost of surveying and locating said cartways shall be paid by the town as provided by law in the laying out of public roads, and the damages to the land through or upon which the said cartway is laid out shall be paid by the person for whose benefit the said cartway is laid, and the damages in this section mentioned shall be ascertained, and an appeal had in the same manner as in the case of public roads, and the town clerk shall record cartways in the same manner.

SEC. 48. *Application of this law to cities.*—The same powers and duties in and by this chapter conferred and imposed upon town supervisors are also conferred and imposed upon the city councils of the several cities throughout this state, and in addition it shall be the duty of the city council to appoint some qualified elector of each road district in the city to be overseer of roads, for such district, and the overseers of roads, city clerks, justices of the peace, and the constables of the several cities of this state, shall exercise the same powers and perform the same duties and be subject to the same liabilities as are in and by this chapter conferred and imposed upon the town overseers of roads, town clerks, town justices of the peace, and town constables; and all the provisions of this chapter shall be applicable to the several cities in this state unless otherwise provided for in their several charters, subject, however, to the reservation made in the succeeding section in regard to incorporated cities.

SEC. 49. *Roads in more than one town—petition to county commissioners.*—If twenty-four freeholders of any county containing one hundred or more legal voters, and twelve freeholders of any county containing less than one hundred legal voters, petition the board of commissioners of such county for the location, establishment, change, or vacation of any highway running into more than one town of said county, and not within the limits of any incorporated city, whether such highway is connected or to be connected with other roads or not, setting forth in such petition the beginning, course, and termination of the highway proposed to be located, established, changed, or vacated, together with the names of the owners of the lands if

known through which the same may pass, the auditor of such county shall lay such petition before the board of county commissioners at their next session thereafter.

SEC. 50. *Proceedings of the commissioners on such petition.*—When the board of county commissioners to whom such petition is presented are satisfied that at least thirty days' notice thereof has been given before the session of said board at which such petition is to be heard by posting up notices in three of the most public places in each of the towns through which such highway is proposed to be located, changed, or vacated, the board of commissioners shall appoint from the members thereof a committee to examine such proposed location, establishment, change, or vacation; and the board, if necessary, shall designate a time when and a place where such committee will meet upon such route.

SEC. 51. *Committee to examine road proposed.*—At the time and place designated said committee shall meet and proceed to examine the highway proposed to be located, changed, or vacated, and in such examination may employ a competent surveyor.

SEC. 52. *Committee shall report to the commissioners.*—After such committee have completed their examinations they shall make a report of their proceedings, setting forth the highway proposed to be located, established, changed, or vacated, by course and distance, and recommending therein, according to the opinion of the majority, either that the prayer of the petitioners be granted or rejected, a copy of which report shall be returned to the board of commissioners at their next session thereafter.

SEC. 53. *Commissioners shall determine question at their next meeting, and assess damages.*—At the next meeting of the board of commissioners they shall proceed to determine the prayer of such petition, and such board shall declare it granted if a majority of the board so agree, and shall direct the auditor to notify the supervisors of the several towns in which such road is located or established or change or vacation is made, when such supervisors will cause to be opened so much of such highway as lies in their respective towns: *provided*, that all damages sustained by reason of laying out or altering any county road shall be assessed by the county commissioners laying out such road, and paid by the county.

SEC. 54. *Hearing of remonstrances.*—If at the session of the board of commissioners at which the report of the road committee appointed to examine such highway is presented, any person over whose land such road passes shall remonstrate against granting the prayer of the petition, setting forth in writing that he is damaged in a sum mentioned, by the location, change, or vacation of such highway, to the truth of which he takes and subscribes an oath, such board shall determine from the face of the report and the evidence before them, the amount of damages sustained, and whether the damages so assessed are greater than the utility of the proposed highway or change, and if they deem the road of sufficient advantage to the county to warrant the paying of the damages assessed by the board, they shall declare such highway located, changed, or vacated, and all damages declared assessed shall be paid by the county interested: but if they shall determine that the damages assessed are greater than [the advantage of] the proposed location or change, they shall order the petition dismissed.

SEC. 55. *County roads are what and how changed.*—Every road located by state or county authority is a county road, and shall only be changed or vacated by an order of the county commissioners, as provided for in this chapter. All

damages claimed in the location of any state road through any of the organized counties of this state, shall be determined by the provisions of this chapter the same as in the location of a county road, and the organized counties through which any state road is located shall be liable for such damages.

SEC. 56. *Care of county roads—how opened and improved—how kept in repair.*—The county commissioners have general supervision of county roads, and have power to appropriate such sums of money from the county treasury as they think advisable for opening, vacating, re-surveying, or otherwise improving such roads, not exceeding in any one year the sum or ratio of one thousand dollars to each five hundred thousand dollars of assessed valuation of real estate in such county: *provided*, that additional sums may be appropriated, but shall not be expended except upon ratification thereof by a vote of the people, to assist in building bridges and opening and repairing county roads, to be expended under their direction: *provided further*, that the towns through which any county road may pass, shall keep such road in repair the same as other roads in their towns.

SEC. 57. *No damages assessed in certain cases.*—No damages shall be assessed or allowed under the provisions of this chapter to any person, persons, or corporations by the reason of laying out any new road or altering any old one when the title of the land over which such road passes was vested in the state or the United States at the time of the location of such road, excepting as otherwise provided in this chapter.

SEC. 58. *Damages may be assessed within three years.*—The county commissioners, in cases of county roads, and the town supervisors, in cases of town roads, may assess and allow damages on application in cases where roads have been previously laid out and no damages have been assessed, or allowed, or release given, if they consider such assessment just and right: *provided, however*, that no damages shall be allowed or paid unless application for such damages shall have been made within three years from the date of the laying of such roads.

SEC. 59. *Appeal to a justice of the peace allowed.*—Any person who shall feel himself aggrieved by any determination or award of damages made by the supervisors of any town or towns, or by the commissioners of any county, either in laying out, altering, or discontinuing, or in refusing to lay out, alter, or discontinue any highway or cartway, may, within thirty days after the filing of such determination or award of damages as provided in this act, appeal therefrom to a justice of the peace of the county for a jury to hear and determine such appeal, provided the amount of damages allowed in such appeal does not exceed one hundred dollars.

SEC. 60. *How such appeal shall be made, and what it shall state.*—Every application to a justice of the peace for an appeal shall be in writing, and shall briefly state the grounds on which it is made, and whether it is brought in relation to damages assessed, or in relation to laying out, altering, or discontinuing, or refusal to lay out, alter, or discontinue any highway, or whether it is brought to reverse entirely the decisions of the supervisors or commissioners, or any part thereof,—if the latter, what part. Upon filing such application and a bond executed to the supervisors of the town, or the commissioners of the county, with sufficient sureties to be approved by the justice, conditioned to pay all costs arising from such appeal, provided that the determination of the supervisors, or the county commissioners (as the case may be) shall be sustained, such justice shall issue a

summons specifying therein a time and place for the hearing of such appeal, which summons shall be served on one or more of the supervisors (or commissioners, if a county road) at least six days before such time, and at the time and place so appointed, the justice shall proceed as in other cases of trial by jury. If upon the trial it is deemed necessary by the jury, or either party in the action, that a personal examination by the jury of the road in controversy is necessary, the justice may, on motion of the jury or either party in the action, direct the jury to view and examine the highway described in the application, and consider the determination of the supervisors or commissioners in laying out, altering, or discontinuing, or in refusing to lay out, alter, or discontinue the same, and to make return to him in writing within ten days.

SEC. 61. *Return of the jury filed, where.*—The justice shall file the return of the jury in the office of town clerk if the appeal was taken from the decision of the board of supervisors of the town, and in the office of county auditor if the appeal was taken from the decision of the county commissioners; and if the determination of the supervisors or commissioners shall be affirmed by the jury the party appealing shall pay all costs, but if such determination shall be reversed or altered, or a greater amount of damages awarded, then the costs in the case shall be a charge against the town or county as the case may be.

SEC. 62. *Of appeal to the district.*—In case the amount of damages claimed exceed one hundred dollars, appeal may be taken within thirty days to the district court of the county in which such damages are sustained, by filing in the office of the clerk of the court of such county an application and bond to be approved by the judge of such district court or the court commissioner or county auditor of the county, of the same nature as provided in the two preceding sections of this chapter, and by the service of a written notice of such appeal upon the chairman of the board of supervisors or county commissioners, as the case may be, signed by the party making the appeal or his attorney. Such appeal shall bring before the appellate court the propriety of the amount of damages and all other matters referred to in such appeal; unless the parties otherwise agree, the matters shall be submitted to a jury and tried as other appeal cases are tried, and the court or jury, as the case may be, shall re-assess the damages aforesaid, and make the verdict conform to the justice and facts in the case, but the rule for ascertaining and fixing such judgment shall be based upon the same principles as the supervisors or commissioners were required to adopt in originally determining the same, and upon judgment being rendered the clerk of said court shall serve a certified transcript of such judgment upon the chairman of the board of supervisors or county commissioners as the case may be.

SEC. 63. *Proceedings on decision of the appeal.*—When an appeal shall have been made from the determination of any board of supervisors or county commissioners, and such determination shall have been reversed or altered, the supervisors or commissioners from whose determination such appeal was taken, such supervisors or commissioners shall proceed to lay out, alter, or discontinue such highway, in conformity with the decision of such appeal, and the proceedings thereon shall be the same, as if they had originally so determined so to lay out, alter, or discontinue such highway.

SEC. 64. *Public highways, when.*—Every road laid out by the proper authorities, as provided for in this chapter, from which no appeal has been taken within

the time limited for taking such appeal, is hereby declared a public highway to all intents and purposes, and all persons having refused or neglected to take an appeal, as provided for in this chapter, shall for ever be debarred from any further redress.

SEC. 65. *Penalty for obstruction of a public highway.*—Whoever at any time obstructs any of the public highways in this state with fences, logs, brushwood, timber, or other material, with intent to prevent the free use thereof by the public, is guilty of a misdemeanor, and shall be punished by a fine not less than ten nor more than twenty-five dollars with costs, or be imprisoned in the county jail not less than ten nor more than twenty-five days: *provided*, that in all cases five years' use by the public of any road laid out by public authorities and the repairs thereof is sufficient to establish a public highway within the intent and meaning of this section; *and be it further provided*, that in all cases where any road is established under the provisions of this section, the supervisors or commissioners, as the case may be, shall cause a survey thereof to be made as soon as practicable, and draw an order signed by them declaring such road to be a public highway under the provisions of this section, and file the report of the survey, together with the plat and their order, in the proper office, and cause the same to be recorded as other road papers are recorded.

*Vide* 13 Wis. 663. When a highway is obstructed, any person desiring to pass along the same may remove the obstruction. *Vide* also 14 Wis. 483; 18 Wis. 265; 19 Wis. 593; and 19 Wend. 375.

SEC. 66. *Justices of the peace have jurisdiction.*—Justices of the peace shall have jurisdiction on complaint made on oath to hear and determine all cases arising under the preceding section.

SEC. 67. *Fines, where paid.*—All fines recovered under the provisions of this chapter shall be paid into the treasury of the town wherein the offense was committed, to be used in repairing the public highways within such town.

SEC. 68. *Penalty for fast driving on bridge.*—Whoever drives or rides upon the bridges belonging to any incorporated bridge company, or upon any bridge which has been or may be erected by any county or town, or upon any bridge which has been or may be erected by any individual, and upon which the notice hereinafter prescribed is conspicuously displayed, faster than a walk, shall forfeit and pay for the use and benefit of the county wherein such bridge is located, in whole or in part, as a penalty therefor, the sum of not less than five nor more than ten dollars for each and every such offense.

SEC. 69. *Proceedings for such offense.*—Upon a complaint made to any justice of the peace in any county where such bridge is located in whole or in part, that any such offense has been committed, the said justice shall issue his warrant reciting the substance of the complaint, requiring the officer to whom it was directed forthwith to arrest the accused and bring him before such justice, or some other justice of the same county, to be dealt with according to law. If the name of the person committing the offense is not known to the complainant or the justice, the complainant may give the justice such description as may enable the person accused to be identified, and the warrant shall recite such description and shall justify the officer to whom it is directed in arresting the person described and bringing him before the justice.

SEC. 70. *Proceedings on conviction.*—In all cases of conviction under the provisions aforesaid, the justice shall enter judgment for the fine and costs against the

defendant, and may commit him until the judgment is satisfied, or issue execution upon the judgment to the use of the county.

SEC. 71. *Sign-board on bridge required.*—No fine shall be imposed under the provisions aforesaid unless there was at each end of said bridge, at the time when such offense was committed, a conspicuous sign-board upon which was printed the following words and figures: Ten dollars fine for riding or driving on this bridge faster than a walk.

SEC. 72. *Penalty for running toll.*—Whenever any bridge or ferry company, or individual, is authorized by law to collect toll for the crossing of any bridge or ferry belonging to such company or individual, any person who willfully runs the toll-gate of such company or individual and passes over such bridge or ferry with the intention of avoiding the payment of the toll prescribed by law, or who refuses to pay such toll when thereto lawfully requested, shall forfeit and pay for the use and benefit of the county wherein such bridge or ferry is located a fine of five dollars for each and every such offense, which fine shall be prosecuted and collected, together with costs, in the same manner as the penalties prescribed in the preceding sections.

SEC. 73. *Section lines to be considered public roads, where.*—In all townships in this state in which no public roads have been laid out, or which have not been organized, the congressional section lines shall be considered public roads, to be opened to the width of two rods on each side of such section lines, upon the order of the board of supervisors, without any survey being had except where it may be necessary on account of variations caused by natural obstacles, subject, however, to all the provisions of this chapter in relation to assessment of damages.

SEC. 74 of said act repealed chapter xiii. of the Statutes of 1866, chapters 30, S. L. 1867; 43 and 49, S. L. 1868; 33, S. L. 1869; 35 and 36, S. L. 1870; 41 and 42, S. L. 1871; and 41 and 42, S. L. 1872. The act took effect from and after its publication.

## SEC. 74.

## AN ACT

AUTHORIZING THE JUDGES OF ANY DISTRICT COURT TO APPOINT COMMISSIONERS TO LAY OUT ROADS THROUGH TWO OR MORE COUNTIES WITHIN HIS JUDICIAL DISTRICT.

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

Sec. 1. Whenever a petition praying that a road be laid through two or more counties in any judicial district in this state, signed by twenty legal voters resident in said counties, shall be presented to the judge of the district court in said district, the said judge is hereby authorized to appoint three commissioners, whose duty it shall be to meet at such times and places as may be necessary, and to immediately proceed to lay out a road as directed by the judge, in accordance with the prayer of the petition, provided that no road shall be ordered by any judge to extend more than six miles outside the judicial district in which the application is made; and such road shall be extended beyond the district only for the purpose of commencing or ending at some village or public road.

Sec. 2. Notices of the presentation of any such petition, as that mentioned in the preceding section, to any district judge, shall be posted at least thirty days prior to such presentation in at least three of the most public places in said judicial

# MINNESOTA STATUTES 1873 SUPPLEMENT

## AN ACT

SUPPLEMENTARY TO AN ACT ENTITLED "AN ACT AUTHORIZING THE JUDGE OF ANY DISTRICT COURT TO APPOINT COMMISSIONERS TO LAY OUT ROADS THROUGH TWO OR MORE COUNTIES WITHIN HIS JUDICIAL DISTRICT."

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

SECTION 1. The commissioners appointed under and by virtue of the act entitled "An Act authorizing the judge of any district court to appoint commissioners to lay out roads through two or more counties within his judicial district," approved March fourth, eighteen hundred and seventy-two, shall appraise and fix the amount of damages to be paid to each land owner for the right of way for the road, by them laid out, over or across his lands, unless such right of way shall be by the owner duly and voluntarily released to the board of county commissioners of the county in which such land is situate; and in their report the said commissioners shall include and set forth separately each appraisal of such damages or compensation made by them, and all voluntary releases of the right of way taken by them.

SEC. 2. Any person deeming himself or herself aggrieved by such appraisal of such commissioners, may demand a jury trial to determine the amount of damages or compensation to which he is entitled for the right of way for such road over his or her land. Such demand for jury trial shall be in writing, signed by the demandant, his or her agent or attorney, and filed in the office of the clerk of the court in the county in which the commissioners' report is filed, within thirty days after the entry of the order of the court confirming the report of the commissioners. A failure to so file a demand for jury trial shall be deemed and regarded as a consent of the land owner to the appraisal made by the commissioners. When any such demand for jury trial shall be so made and filed, the trial so demanded shall be had at the term of the district court next thereafter to be held in the county in which the land to which such demand applies is situated, unless continued for cause. If the land is situate in a county different from the one in which the commissioners' report is filed, the clerk in whose office such report and demand are filed, shall make and certify a copy of said demand and so much of the commissioners' report as applies to the same, and transmit the said copy to the clerk of the district court in the county in which such land is situate, and he shall file the same in his office. The board of county commissioners, or the county attorney of the county in which the land so taken for a road is situate, may in like manner and with like effect, demand a jury trial to determine the amount of damages to be paid in any one or all of the cases within such county, and the like proceedings shall thereupon be had.

SEC. 3. When the amount of the damages or compensation to be paid to any one or more of the owners of land taken for such roads shall have been finally determined by proceedings under the provisions of this act, the board of county commissioners of the county in which such land is situate, shall provide for the payment of and pay the same in the manner provided by law for the payment of the like damages or compensation for land taken for a county highway or road laid out and established by the board of county commissioners.

SEC. 4. The provisions of this act may, in the discretion of the court, be applied to the appointment and proceedings of the commissioners in any and all cases in which they have been appointed, under or by virtue of the provisions of the act to which this act is supplementary.

SEC. 5. This act shall be in force from the time of its passage.

Approved March 10, 1873.