

GENERAL STATUTES
OF THE
STATE OF MINNESOTA

36

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SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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CHAPTER 13.

ROADS, CART-WAYS, AND BRIDGES.

***§ 9. Road tax—Liability to—List.**

See *City of Faribault v. Misener*, 20 Minn. 396, 399, (Gil. 347.)

***§ 16. Commutation—When to be paid.**

Every person intending to commute for his assessment, or any part thereof, shall, within two days after he is notified to appear and work on the high-ways, 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. (1873, c. 5, § 16, *as amended* 1879, c. 51, § 1.)

***§ 19. Failure to comply with assessment—Penalty.**

Every person so assessed and duly notified who does not commute, and who refuses or neglects to appear as above provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof as hereinafter 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. (1873, c. 5, § 19, *as amended* 1883, c. 29, § 1.)

***§ 21. Delinquent road-tax—Warrant—Procedure.**

The justice to whom such complaint is made shall forthwith issue a warrant directed to the sheriff or any constable of the county, requiring him to arrest such delinquent and bring him before such justice to be dealt with according to law, and upon such complaint and warrant further proceedings shall be had as is provided for the trial and punishment of misdemeanors. (1873, c. 5, § 21, *as amended* 1883, c. 29, § 2.)

***§ 22. Fines—Disposition.**

All fines imposed by the terms of section number nineteen of this chapter, shall, when collected, be paid to the overseer who entered complaint, to be by him expended in improving the roads and bridges in his district. (1873, c. 5, § 22, *as amended* 1883, c. 29, § 3.)

***§ 23. Fines—Collection—Disposition.**

[Repealed 1883, c. 29, § 4.]

***§ 33. Laying out, altering, and discontinuing roads.**

The supervisors of the town may alter or discontinue any road, or lay out any new road, upon the petition of not less than six legal voters who own real estate or who occupy real estate under the homestead or pre-emption laws of the United States, or under contract from the state of Minnesota, within one mile of the road to be altered, discontinued, or laid out; or upon the petition of eight legal voters, who are freeholders and residents of the town within two miles of the road to be laid out, altered, or discontinued. 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 where it is to terminate: *provided*, that when the supervisors of any town shall lay out a public road or cart-way that shall not be a continuous road extending from one highway to another, the cost of surveying and locating such cart-ways shall be paid by the town as provided by law for laying out public roads, and the damages to the land through or upon which said road or cart-way shall be laid shall be paid by the persons petitioning therefor. (1873, c. 5, § 33, *as amended* 1877, c. 51, § 1; 1878, c. 43, § 1; 1881, *Ex. Sess.* c. 29, § 1; 1885, c. 29; 1887, c. 43. *)

***§ 34. Same—Posting petition.**

Jurisdictional facts necessary to authorize these proceedings by the supervisors are provable by the record in a collateral proceeding. *Cassidy v. Smith*, 13 Minn. 129, (Gil. 122.)

***§ 37. Survey, description, and order—Filing papers.**

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. And after such order is confirmed, and such order, together with the award, has been recorded by such town clerk, the same shall be sent by him to the county auditor, who shall file and preserve all such papers thus transmitted to him, and give his receipt therefor to the town clerk, which said receipt shall be filed by such town clerk and an entry thereof be made by him in the road record, relating to such road. (1873, c. 5, § 37, *as amended* 1877, c. 43, § 1; 1883, c. 63, § 1.)

A highway can be vacated only by an order signed by the town supervisors, and, until signed, such order has no force or effect as an order. *Keyes v. Railway Co.*, 36 Minn. 290, 30 N. W. Rep. 888.

***§ 37a. Survey—Distances to section lines, etc.**

Whenever a surveyor makes a survey of any road or cart-way, when the center of such road or cart-way does not follow some section line or some subdivisional line of a section, he shall note the distance to the point on any course at which such course shall intersect any section line, and the distance such point of intersection of the road and section line is from the most convenient section, quarter section, or meander corner, as established by government survey; and the notes of such intersections shall be incorporated into the order laying out or altering such road or cart-way. (1879, c. 85, § 1.)

***§ 39. Damages.**

The rule laid down in *Winona, etc., R. Co. v. Waldron*, 11 Minn. 515, (Gil. 392, 415,) that the advantages and benefits which are to be estimated in assessing the damages do not embrace the general advantages and benefits which are enjoyed by the claimant, in common with the other owners of real estate in the vicinity, but only such advantages

*The amendment of 1887 adds the proviso, and § 2 repeals all inconsistent acts and parts of acts.

and benefits as are direct and special to the land, a part of which is taken, followed. *Arbrush v. Town of Oakdale*, 28 Minn. 61, 62, 9 N. W. Rep. 30.

Where county commissioners, in laying out a county road, in their award specify the damages to each of several tracts of land, describing them, and then state, "and in all other cases the benefits are equal to the damages," it is sufficient as to all tracts not specifically described. *State v. Leslie*, 30 Minn. 533, 16 N. W. Rep. 403.

***§ 41. Removing fences—Opening road.**

This section has no application to uninclosed lands, and no notice is necessary where the owner voluntarily removes his fence, and his grantee replaces it. The order to open and work the road is necessary only where the owner refuses to remove the fence. *Hunter v. Jones*, 13 Minn. 307, (Gil. 232.)

When road through inclosed land becomes open. What action necessary on part of supervisors where owner refuses to remove fences, or consent to their removal. *State v. Leslie*, 30 Minn. 533, 535, 536, 16 N. W. Rep. 403.

The town is responsible for the acts of the supervisors in laying out and opening roads. *Woodruff v. Town of Glendale*, 23 Minn. 537.

***§ 46a. Road between town and city.**

Whenever the supervisors of any town, and the trustees or common council of any incorporated city or village, shall receive a petition, praying for the location of a road, or for the altering or discontinuing of any road, on the line between such town and incorporated city or village, such road shall be laid out, altered, or discontinued by two or more of the supervisors of such town, and a majority of the common council or trustees of such incorporated city or village. (1879, c. 101, § 1.)

***§ 46b. Same—Appeal.**

The decision of such supervisors and common council or trustees, in relation to such road, may be appealed from in the same manner as provided in the laws of this state for appeals from the decisions of supervisors in relation to town roads. (*Id.* § 2.)

***§ 46c. Same—Application of laws.**

The laws of this state, which apply to a road on the line between two towns, shall be applicable to all roads on the line between any town and an incorporated city or village. (*Id.* § 3.)

***§ 47. Width of public roads — Dedication — Cart-ways — Laying out.**

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; and that when any road or portion thereof shall have been used and kept in repair, and worked, for six years continuously as a public highway, the same shall be deemed as having been dedicated to the public, and be and remain, until lawfully vacated, a public highway, whether the same has ever been laid out as a public highway or not. That the supervisors of the several towns have power to lay out public cart-ways, two rods wide, when petitioned for by five residents, freeholders of said town, desiring the same. The costs of surveying and locating such cart-ways shall be paid by the town, as provided by law in the laying out of public roads, and the damages to lands through or upon which cart-ways may be laid out, shall be paid by the town; and the damages in this section mentioned shall be assessed, and an appeal had, in the same manner as in the case of other public roads; and the town clerk shall record any cart-ways so laid out in the same manner and with like effect as other roads are required to be recorded by him: *provided*, however, that when the petitioners, or any of them, propose in the petition their willingness to dedicate any land to which such petitioner has title for the purposes of such cart-way, such lands shall be deemed as so dedicated, and no damages shall be assessed there-

for; that such cart-way, when laid out and established, shall be deemed a public cart-way for public use. (1873, c. 5, § 47, *as amended* 1877, c. 50, § 1; 1879, c. 51, § 2.)

The provision as to highways by dedication is purely prospective, and nothing done, and no time elapsed, prior to the passage of the act, can be taken into account. *State v. Waholz*, 28 Minn. 114, 9 N. W. Rep. 578.

***§ 47a. Temporary cart-ways—How laid out.**

That whenever any two or more owners of pine lands in the state shall wish to have a temporary public cart-way laid out, they may make application therefor in writing to the supervisors of the town in which such cart-way is desired; or, if the same be not within any organized town, then to the commissioners of the county; and such supervisors or commissioners shall thereupon proceed to lay out such temporary cart-way in all respects as provided by the law in force at the time of such applications, in relation to laying out permanent public cart-ways by town supervisors, except as hereinafter provided; and the cart-ways hereby authorized shall not be less than one nor more than two rods in width. (1883, c. 119, § 1.)*

***§ 47b. Same—Procedure.**

When any such application shall be made, the supervisors or commissioners, at the time of examining such proposed highways, shall also, after such investigation as they deem necessary, determine the necessity of laying out such cart-ways for the purpose of removing the saw-logs, timber, or lumber from any pine or other timbered lands, and the length of time that such cart-way will be necessary, and they shall state such time in their order laying out such cart-way, and at the expiration of such time said cart-way shall cease. But no such cart-way shall be laid out along or upon, or so as to occupy, any road made or caused to be made by the owner of said land, or by any person with the consent of such owner and used by the person or persons making the same, unless such owner shall consent thereto in writing. If the owner of any land across which such cart-way is desired shall appear in person or by authorized agent or attorney before the commissioners or supervisors at the time and place fixed by them to determine such necessity, and shall designate a route for such cart-way, which, in their opinion, shall be reasonably direct and practicable for the purpose desired by such applicants, it shall be their duty, in case they determine such cart-way to be necessary, to lay the same upon the route designated by such owner. (*Id.* § 2.)

***§ 47c. Same—Expenses and damages—Repairs—Appeal.**

All the expenses for laying out and all damages awarded for the taking of lands for such cart-way shall be paid by the persons applying for the same. They shall be public highways, but no tax shall be levied or collected for making, opening, or maintaining the same. The persons applying for the same may enter upon, open, and work any such cart-way at any time after it is laid out, upon paying all the costs and expenses of such proceedings, and upon paying to the several parties in interest, or to the town or county treasurer, as the case may be, for to them all the damages assessed in favor of the owners of lands traversed by such cart-way, nor shall any appeal from an award of damages suspend the right to work and use such cart-way, if the applicants for the same, or any of them, shall file [in] the court to which such appeal may be taken, a bond with sureties, and in an amount approved by the court to which such appeal may be taken, conditioned for the payment of all damages and costs which may be finally awarded in favor of the appellant in such proceedings. An appeal from the award of damages may be taken by the ap-

*"An act to provide for the laying out of temporary public cart-ways." Approved March 5, 1883.

plicants in the same manner as by the persons whose lands are traversed by such cart-way, and in such case the filing of the bond hereinbefore mentioned to secure all costs and damages finally awarded to any such land-owner shall have the same effect in securing the right to open, work, and use such cart-way as the actual payment of such damages and costs. (1883, c. 119, § 3.)

***§ 47d. Same—In unorganized town.**

In case such proposed cart-way does not lie within an organized town, the notices required to be posted in connection with the proceedings for opening the same may be posted in [three] public places at the county seat, and the records of such proceedings required by law to be filed in the office of the town clerk shall be filed in the office of the county auditor. (*Id.* § 4.)

***§ 49. Roads in several towns—Petition.**

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. (1873, c. 5, § 49, *as amended* 1881, *Ex. Sess. c. 58, § 1*; 1885, c. 14, § 1.)

[§ 2 of the act of 1881, (*Ex. Sess.*) making that act applicable to Goodhue county only, is repealed by § 2 of the act of 1885,* which further provides that the latter act shall not apply to Goodhue county, but that the former act shall remain in force therein.]

***§ 53. Action of commissioners—Damages.**

Cited *State v. Leslie*, 30 Minn. 533, 535, 536, 16 N. W. Rep. 408.

***§ 55. County roads defined—Damages—Record of proceedings.**

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. It shall be the duty of the county commissioners to cause all the proceedings in the location, changing, or vacating any state or county road, to be recorded in a suitable book provided for such purpose, to be known as the "Book of State and County Roads," and said book shall be a public record, and shall be *prima facie* evidence in all the courts of this state of its contents. The said county commissioners are authorized to allow a reasonable compensation for such recording, not exceeding ten cents per folio. (1873, c. 5, § 55, *as amended* 1887, c. 45.†)

See *State v. Messinger*, 27 Minn. 119, 124, 6 N. W. Rep. 457.

*The act of 1885 is entitled "An act to amend chapter 58 of the general laws of the extra session of 1881, entitled 'An act relating to locating, establishing, and vacating highways and cartways in Goodhue county, and to amend section 49, chapter 13, General Statutes.'"

†§ 2 of the amendment of 1887 repeals all acts and inconsistent acts and parts of acts.

***§ 59. Appeal to justice of the peace.**

The appeal can be claimed only by one who is in position to sustain special injury, not common to himself with the other inhabitants or property owners of the town, from the laying out, altering, or discontinuing the road. One to, through, or along whose land an old road to be altered or discontinued runs, is in position to claim such appeal. *Schuster v. Supervisors of Town of Lemond*, 27 Minn. 253, 6 N. W. Rep. 802.

***§ 60. Same—Bond—Procedure.**

The bond is essential to the jurisdiction of the justice, and must have two or more sureties. Where the appeal is from the denial by county commissioners of a petition to lay out a highway, the commissioners are proper parties to prosecute a writ of *certiorari* to quash the proceedings before the justice. *State v. Fitch*, 30 Minn. 532, 16 N. W. Rep. 411.

Upon the disagreement and discharge of the jury, it is the duty of the justice to issue a new summons, fixing another time for the hearing of the appeal. If he wrongfully refuses to act, he can be compelled to do so by *mandamus*. If he exceeds his jurisdiction, and his acts are judicial in their nature, a writ of prohibition would be the remedy. But neither of these is the office of a *certiorari*. *Grinager v. Town of Norway*, 33 Minn. 127, 129, 22 N. W. Rep. 174.

See *State v. Austin*, 35 Minn. 51, 26 N. W. Rep. 906.

***§ 62. Appeal to district court—Trial.**

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 said damages are sustained, by filing in the office of the clerk of such court a bond, to be approved by the judge of such district court, or the court commissioner, or the 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 or printed notice of such appeal, upon the chairman of the board of supervisors or the 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 matters referred to in such notice of appeal. Unless the parties otherwise agree, the matter 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 reassess 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 on whom the notice of appeal was served as aforesaid. If the determination of the board of supervisors or commissioners appealed from be affirmed, or if the amount of damages allowed be reduced in said district court, the party appealing shall pay all costs and disbursements incurred in said court; but if the amount of damages allowed be increased, or if such determination shall be altered, modified, or reversed in said district court, otherwise than as to the amount of damages, said costs and disbursements shall be paid by the town or county, as the case may be, said costs and disbursements to be taxed and adjusted as in other cases in said district court, and judgment entered therefor in like manner. (1873, c. 5, § 62, as amended 1881, c. 23, § 1.)

An appeal lies to the district court where the damages claimed exceed \$100, though those awarded by the supervisors were less than that sum. *Gorman v. Town of St. Mary*, 20 Minn. 392, (Gil. 343.)

Filing the duly-approved bond within the thirty days is a jurisdictional requisite to an appeal. *Schwede v. Town of Burnstown*, 35 Minn. 468, 29 N. W. Rep. 72.

The appeal is legally perfected if the appeal-bond is filed and the notice of appeal served within the prescribed thirty days, which ever may be done first. *Restad v. Town of Scambler*, 33 Minn. 515, 24 N. W. Rep. 197.

The notice of appeal need not state that the party appealing has filed the application and bond required by the act to perfect the appeal. *Andrews v. Town of Marion*, 23 Minn. 372.

The successful party is not allowed costs. *Id.*

Notice of appeal, service, and proof. *Town of Haven v. Orton*, 35 N. W. Rep. 264.

***§ 63. Decision of appeal—Subsequent proceedings—Damages—Orders.**

When an appeal shall have been made from the determination of any board of supervisors or county commissioners, and such determination shall have been rendered, [reversed,] or altered, the supervisors or commissioners from whose determination such appeal was taken 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 to lay out, alter, or discontinue such highway. The amount of damages finally determined and awarded, whether by the supervisors or by the court or jury, together with all the charges of officers and other persons necessarily employed in laying out, altering, or discontinuing any town road, shall be audited by the supervisors, specifying the amount of damages and charges due each individual, and the respective amount shall be certified to by the said supervisors, and by them deposited with the town clerk and paid by the town. Before any road shall be opened or used, an amount of town orders equal to the damages assessed to each individual shall be duly issued and deposited with the said town clerk for the use and benefit of said individual, and shall be delivered to him upon demand. The issuing and depositing of said orders shall be deemed to be sufficient security for the payment of said damages. In no case shall any town be compelled to pay any damages that may be awarded in laying [out,] and altering, or discontinuing any county road. (1873, c. 5, § 63, *as amended* 1876, c. 27, § 1; 1881, c. 26, § 1.)

***§ 64. Highways—What are.**

What is included in the "laying out" of a road, and when it is to be deemed "laid out," so as to be a highway to all intents and purposes, must be ascertained by referring to other portions of the statute. *State v. Leslie*, 30 Minn. 533, 535, 536, 16 N. W. Rep. 408.

***§ 65. Obstructing highway—Penalty.**

The provision which makes it the duty of the supervisors to make complaint is not exclusive. Such complaint may be made by any person. *State v. Galvin*, 27 Minn. 16, 6 N. W. Rep. 380.

***§ 65a. Seeding public highways.**

That any person living upon or owning land fronting on any of the public highways of this state may, for the purpose of seeding the same down to grass, plow and level the said highways for said purpose, and seed the same to grass to within eight feet of the center of the same: *provided*, that nothing herein contained shall be construed to authorize the said parties to work upon the same to the hindrance or detriment of the travel upon said roads, or to authorize any compensation for the same. (1879, c. 97, § 1.)

***§ 65b. Obstructing highways by railway cars.**

No person or persons shall obstruct any street or public highway in this state by leaving, placing, keeping, or causing to be left, placed, or kept, any railroad car upon or across any public street, road, or highway in this state, for any purpose or object whatever. (1883, c. 116, § 1.)

***§ 65c. Same—Stopping trains across highway.**

No person shall stop, or cause to be stopped, any train of cars, car, or engine, across any public street, road, or highway in this state, except a sufficient time to couple and separate the cars, not to exceed ten minutes. (*Id.* § 2.)

***§ 65d. Same—Penalty.**

Whoever is guilty of violating any of the provisions of this act shall be deemed to be guilty of a misdemeanor, and shall, upon conviction thereof before any justice of the peace of the county in which such offense is committed,

be punished by a fine of not less than five dollars nor more than fifty dollars, and costs of prosecution, for each and every such offense, and in default of payment of such fine and costs shall be imprisoned in the county jail until such fine and costs are paid, not exceeding thirty days. (*Id.* § 3.)

***§ 66. Obstructing highways—Jurisdiction of justices of the peace.**

The prosecution before the justice is a criminal action, and should be pleaded to as such. *State v. Cotton*, 29 Minn. 187, 12 N. W. Rep. 529. Followed as to this point, *State v. Sweeney*, 33 Minn. 23, 21 N. W. Rep. 847.

Any further proceedings before the justice, after the title to real estate appears to be involved, should be had under Gen. St. 1878, c. 65, § 169. As to this latter point, *State v. Cotton* is overruled. *State v. Sweeney*, 33 Minn. 23, 21 N. W. Rep. 847.

***§ 73a. Field-notes, plat, etc.—Furnishing copy.**

That upon the written request of the board of supervisors of any township in this state the county auditor of the county wherein such township is situated shall furnish a copy of the description and field-notes and plat, if any, of each territorial, state, and county road running into or through such township, as appears by the description, field-notes, and plat on file or of record in his office. (*Added*, 1881, c. 152, § 1.)

***§ 73b. Same—Recording—Effect.**

Upon the filing of such copy in the town clerk's office, the town clerk shall record the same in the road record book of the township, and such record shall be *prima facie* evidence of the existence of such road according to the description and plat so on file. (*Id.* § 2.)

***§ 75a. Gravel-beds and stone-quarries—Condemnation.**

Whenever it shall be deemed necessary for the public good by any board of county commissioners of any county, any board of supervisors of any township, any board of trustees of any incorporated village, or the board of aldermen of any city, for the purpose of making, repairing, or improving any of the public highways or streets within their respective jurisdiction, they may, for the uses and purposes herein specified, enter upon and condemn any plot of ground not exceeding five acres, together with the right of way to the same anywhere within two miles of the public highway or street where the same is to be used as hereinafter provided: *provided*, that the same shall be largely composed of gravel or stone, and suitable for road purposes. (1885, c. 273, § 1.)*

***§ 75b. Same—Proceedings.**

Whenever any board of county commissioners of any county, the board of supervisors of any township, the board of trustees of any incorporated village, or the aldermen of any city, wish to procure land as provided in section one of this act, and cannot agree with the owner or owners of land proposed to be taken for such purposes, application may be made to the district court of the judicial district and in the county wherein said land is situated, giving twenty days' notice thereof to the owner or owners by leaving a copy with him or them, or at their usual place of abode, and said court shall appoint a committee of three disinterested persons who, having been sworn faithfully and impartially to discharge the duties of their appointment, and after giving at least five days' notice to the owner or owners of the time and place of their meeting, shall proceed to examine the premises, and determine on the public necessity of procuring said land, and upon the quantity, boundaries, damage, and value of the land which they should deem proper to be taken for the pur-

*"An act empowering township and other officers to condemn certain lands to improve and repair the public highways and streets under their jurisdiction." Approved March 5, 1885.

poses specified, and make report thereof in writing to said district court by filing the same in the office of the clerk thereof, and shall give the same notice of the filing of their report or of their meeting, and the parties interested may appear before said court and be heard thereon at such time as the court may appoint; and if said committee shall report that the demand for public good requires the acquisition of said territory, and the court shall accept the same, the decision of such court thereon shall have the effect of a judgment, and execution may be issued thereon accordingly in favor of the person or persons to whom damage may be assessed for the amount thereof. But said land shall not be taken or used, or any stone or gravel or other material taken therefrom, until the damages so assessed shall be paid to said owner or owners, or deposited with the treasurer of the county for his or their use, which shall be done within thirty days after such report shall be accepted, and the title of such land shall therefore be vested in the proper officers of such county, town, village, or city making claim to it, under the provisions of this act; and a copy of the report of said committee and of the judgment of the court thereon, certified by the clerk thereof, together with a certificate of the payment of the damages determined by the committee, sworn to by the chairman of the board of officers acquiring title thereto, shall be recorded in the office of the register of deeds in the county where said premises are located; and such record shall be notice to all parties of the title acquired therein, and may be used in evidence of such title in all the courts in this state: *provided*, that the right of way shall be of sufficient width to allow teams to pass, and shall be, by most practicable way, to nearest highway. (1885, c. 273, § 2.)

ROADS IN MORE THAN ONE COUNTY.*

***§ 76. Petition—Commissioners—Limit of jurisdiction.**

Whenever a petition praying that a road be laid through two or more counties in this state, signed by twenty legal voters, resident in said counties, shall be presented to the judge of the district court in the district in which any one of said counties is situate, 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 public road. (1872, c. 40, § 1, *as amended* 1883, c. 21, § 2.†)

***§ 81. Damages—Appraisal—Report.**

The commissioners appointed under and by virtue of section seventy-six of this act shall appraise and fix the amount of damages to be paid to each land-

* By Gen. Laws 1883, c. 21, § 1, the title of the act of 1872 was amended so as to read as follows: "An act authorizing the judge of any district court to appoint commissioners to lay roads through two or more counties, any one of which is within his judicial district."

† This amendment was approved March 3, 1883. The act amended is referred to only by its title, the time of its passage not being given. The section, as amended, is set out in full as above. By the act approved February 17, 1883, (Gen. Laws 1883, c. 64, § 1,) "section 76 of chapter 13 of General Statutes of 1878" is "amended so as to read as follows: Whenever a petition praying that a road be laid out through, between, or into two or more counties in any judicial district in this state, signed by twenty legal voters and tax-payers, resident in said counties, shall be presented to the judge of the district court in said district, or whenever a petition praying that a road be laid out through, between, or into two or more counties in two or more judicial districts in this state, signed by twenty legal voters and tax-payers, resident in said counties, shall be presented to a judge of the district court of one of said districts, 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 of the judicial districts in which the application is made, and such road shall be extended beyond the districts only for the purpose of commencing or ending at some village or public road."

owner for the right of way of the road by them laid out over or across his lands, unless such right of way shall be by the owners duly and voluntarily released to the board of county commissioners in which such land is situated, and in their report said commissioners shall include and set forth separately each appraisal of such damages or compensation made by them, and all voluntary [re]leases of the right of way taken by them. (1873, c. 90, § 1, as amended 1883, c. 64, § 2.)

***§ 82. Jury trial.**

Sections 76-82 must be construed together, and the proceeding authorized to be instituted is in the nature of a special judicial proceeding, to be conducted under the authority and supervision of the district court. *State v. McDonald*, 26 Minn. 445, 1 N. W. Rep. 832.

***§ 83. Damages—Payment.**

When the amount of the damages or compensation to be paid to any one or more of the owners of land taken for such road 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: *provided*, that when a road is laid out on a line between two counties, each county shall pay one-half of the amount of damages as determined. (1873, c. 70, § 2, as amended 1883, c. 64, § 3.)

***§ 97. Cart-ways—Highway labor upon.**

The town supervisors of this state, in their respective towns, may, in their discretion, allow any owner or owners of cart-ways duly and legally established, or hereafter to be laid out by proper authority, to perform his or their highway labor and poll-tax, or either, upon said cart-way or cart-ways. And said supervisors, in their discretion, in all cases where any such cart-way exceeds one mile in length, may expend upon such cart-way any highway labor, poll-tax, road tax, road or bridge money, the same as upon any highway in said town. (1877, c. 96, § 1, as amended 1879, c. 4, § 1.)

CHAPTER 15.

RELIEF OF THE POOR.

§ 2. Relatives—Order of liability.

A step-father is not bound to maintain the children of his wife by a former marriage, unless he voluntarily assumes the relation of parent, and receives them into his family under circumstances such as to raise a presumption that he has undertaken to support them gratuitously. *In re Besondy*, 32 Minn. 355, 20 N. W. Rep. 366.

§ 3. County—Liability.

By Sp. Laws 1875, c. 74, paupers are town and city charges in Freeborn county. *Odegaard v. City of Albert Lea*, 33 Minn. 351, 23 N. W. Rep. 526; *Fenholt v. County of Freeborn*, 29 Minn. 153, 12 N. W. Rep. 458.

§ 4. Residence.

See note to section 15, *infra*.