

GENERAL STATUTES

33

OF THE

STATE OF MINNESOTA,

IN FORCE JANUARY, 1891.

VOL. 1.

CONTAINING ALL THE LAW OF A GENERAL NATURE NOT
REMEDIAL, THE LATTER BEING IN VOL. 2.

COMPILED AND ANNOTATED

BY

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OF THE ST. PAUL BAR.

SECOND EDITION.

ST. PAUL:

PUBLISHED BY THE AUTHOR.

1891.

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CHAPTER 13.

ROADS, CARTWAYS, TURNPIKES; FERRIES AND BRIDGES.

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G. S. ch. 13; Laws 1867, ch. 30; 1868, chs. 48, 49; 1869, ch. 93; 1870, chs. 35, 36; 1871, chs. 41, 42; 1872, chs. 41, 42, were repealed by acts 1873, ch. 5, § 74; which act, together with all other unrepealed laws, constitutes this chapter.

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TITLE 1.

ROADS, HIGHWAYS AND CARTWAYS.

GENERAL SUPERVISION OF COUNTY ROADS.

SEC. 1642. **County commissioners.**—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, resurveying, or otherwise improving such roads, not exceeding in any one year the sum or ratio of one thousand dollars to each five hundred thou-

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sand 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.

1873, ch. 5, § 56: "An act relating to roads, cartways and bridges." Approved March 8, 1873. G. S. ch. 13, § 67, as amended 1868, ch. 43, limited the appropriation to "opening and working" said roads. Otherwise same as above.

SEC. 1643. Same — Power to change or vacate.— 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 (10) cents per folio.

1873, ch. 5, § 55, as amended 1887, ch. 45. Amendment below *. G. S. ch. 13, § 66, as amended 1868, ch. 48, read: "Every state road or other continuous road passing through or into more than one organized county." Otherwise same as above *. 27 M. 124.

SEC. 1644. Public roads confirmed and established.— That all public roads and highways within this state which have been opened and in use as such, and included in a road district in the town in which the same are respectively situated, during five years next preceding the time when this act shall take effect, are hereby declared to be public roads or highways, and confirmed and established as such, whether the same have been lawfully laid out, established and opened, or not.

1874, ch. 56, § 1: "An act to confirm and establish certain public highways." Approved March 9th. In force April 1, 1874. Sections 2, 3, 4 and 5 of this act provided that if any right of way included in any such road or highway has not been paid for or released, the owner may, at any time *within two* years after this act takes effect, file with the auditor a statement of his claim for compensation, to be placed before county commissioners, who shall assess and determine the amount in the manner therein provided. If claimant aggrieved, he may appeal to district court. The amount so determined payable by the county in which the roads are located. Acts 1875, ch. 34, approved March 4th, amended this law by limiting the time to file the claim "before the first day of May, 1875."

SEC. 1645. Same — Claim barred — Altering such roads.— In case any claim which might be made under the provisions of this act shall not be made, in the way and manner hereinbefore provided, within two years from the time when this act shall take effect, the same shall be forever barred, and the right of way over all lands in the roads or highways hereinbefore specified shall be deemed to have been compensated or released. But all roads or highways established by this act shall be subject to be altered or vacated the same as other roads.

1874, ch. 56, § 6. Section 7 of this act provided that "the provisions of this act providing for the determination and payment of compensation to the owners of land for the right of way over the same shall be deemed, and are hereby declared, to be good and sufficient security to such owners, their successors or assigns, for the payment of such compensation within the intent and meaning of section thirteen of article one of the constitution of this state."

SEC. 1646. Powers and duties conferred on cities and villages.— The same powers and duties in and by this chapter conferred and imposed upon town supervisors are also conferred and imposed upon the city and village councils of the several cities and villages throughout this state; and in addition, it shall be the duty of the city and village councils to appoint some

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[SECS. 1647-1650.]

qualified elector of each road district in the city or village to be overseer of roads for such district; and the overseers of roads, city and village clerks, justices of the peace, and the constables of the several villages in 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 and incorporated villages 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.

1873, ch. 5, § 48, as amended 1889, ch. 85. Same as § 58, ch. 13, G. S., as amended 1869, ch. 80, except below *, and the insertion of word "village" by acts 1889.

SUPERVISORS.

SEC. 1647. Powers and duties.—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 hereinafter 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.

1873, ch. 5, § 1: "An act relating to roads, cartways and bridges." Approved March 8, 1873. Same as § 1, ch. 13, G. S.

SEC. 1648. Meetings.—The 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.

1873, ch. 5, § 7. Same as § 7, ch. 13, G. S.

SEC. 1649. Report to annual town meeting.—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.

1873, ch. 5, § 2. Same as § 2, ch. 13, G. S.

OVERSEERS.

SEC. 1650. Duties.—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

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by such overseer, of the names of all the inhabitants in his road district who are liable to work on highways.

1873, ch. 5, § 3. Same as § 3, ch. 13, G. S.

SEC. 1651. Same — Render accounts.— 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 highways, 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 been commuted, and the manner in which the moneys arising from fines and commutations have been expended by him.

1873, ch. 5, § 30. Same as § 30, ch. 13, G. S.

SEC. 1652. Same — Pay over 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.

1873, ch. 5, § 31. Same as § 31, ch. 13, G. S.

SEC. 1653. Same — Neglect to account or pay.— 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 offence 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.

1873, ch. 5, § 32. Same as § 32, ch. 13, G. S.

SEC. 1654. Same — 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.

1873, ch. 5, § 17. Substantially § 16, ch. 13, G. S.

SEC. 1655. Powers when road obstructed or unsafe.— 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.

1873, ch. 5, § 14. G. S. ch. 13, § 13, as amended 1863, ch. 48, only provided for the repair of bridges and roads by labor of those subject to poll tax after the assessed labor is exhausted, and the giving of a receipt as above.

SEC. 1656. Compensation.— Every overseer of highways is entitled to one dollar and fifty cents per day, to be paid out of the fines and commuta-

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[SECS. 1657-1662.]

tion 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.

1873, ch. 5, § 25. G. S. ch. 13, § 25, as amended 1867, ch. 30, limited the compensation to "not exceeding ten dollars in any one year." Otherwise same as above.

SEC. 1657. Vacancy.—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.

1873, ch. 5, § 4. Same as § 4, ch. 13, G. S.

SEC. 1658. Same—Notify appointee.—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.

1873, ch. 5, § 5. Same as § 5, ch. 13, G. S.

SEC. 1659. Penalty for neglect of 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 supervisors of the town, and, when recovered, to be applied by him in making and improving the roads and highways therein.

1873, ch. 5, § 6. Same as § 6, ch. 13, G. S.

ASSESSMENT.

SEC. 1660. 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.

1873, ch. 5, § 8. Same as § 8, ch. 13, G. S.

SEC. 1661. Rate of assessment.—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 overseer, 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.

1873, ch. 5, § 9. Same as § 9, ch. 13, G. S., except that one day is substituted for two days and one dollar for fifty cents.

SEC. 1662. Assessment 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.

1873, ch. 5, § 10. Not in G. S.

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SECS. 1663-1669.]

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SEC. 1663. Assessment lists — Copies.— 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.

1873, ch. 5, § 11. Same as § 10, ch. 13, G. S., except the fee, and the words "personal property."

SEC. 1664. Correcting lists.— 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.

1873, ch. 5, § 12. Same as § 11, ch. 13, G. S.

LABOR ON HIGHWAYS.

SEC. 1665. Notice to work.— 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.

1873, ch. 5, § 13. Same as § 12, ch. 13, G. S., except between * *. Acts 1872, ch. 42, repealed by 1873, ch. 5, § 74, amended this section of G. S. by inserting "shall be allowed \$2 per day for himself and a like amount for the use of a team of horses or oxen, and fifty cents per day for a wagon or plow."

SEC. 1666. 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.

1873, ch. 5, § 18. Same as § 17, ch. 13, G. S.

SEC. 1667. Labor on cartways.— The town supervisors of this state, in their respective towns, may, in their discretion, allow any owner or owners of cartways 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 cartway or cartways.* And said supervisors, in their discretion, in all cases where any such cartway exceeds one mile in length, may expend upon such cartway any highway labor, poll tax, road tax, road or bridge money the same as upon any highway in said town.

1877, ch. 96, as amended 1879, ch. 4, by adding below *. Acts 1877, ch. 96, entitled "An act relating to cartways," approved February 23, 1877.

SEC. 1668. When labor to be performed.— 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.

1873, ch. 5, § 29. Same as § 29, ch. 13, G. S.

SEC. 1669. Commutation of labor.— 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 com-

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[SECS. 1670-1674.]

mute 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.

1873, ch. 5, § 15. Same as § 14, ch. 13, G. S. The last sentence does not include assessment for personal property as designed in § 10 of this act.

SEC. 1670. Same — Payment of.— 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 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.

1873, ch. 5, § 16, as amended 1879, ch. 51. G. S. ch. 13, § 15, required the payment within twenty-four hours after notified. Acts 1873, ch. 5, § 16, extended this to five days. Acts 1879 reduced it to two days. Otherwise all are alike.

SEC. 1671. Penalty for refusal or neglect.— 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 (\$2). 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 (\$4) for each day; for omitting to furnish a cart, wagon or plow, one dollar (\$1) for each day; for omitting to furnish a pair of horses or oxen, one dollar and fifty cents (\$1.50) for each day; for omitting to furnish a man to manage the team, one dollar and fifty cents (\$1.50) for each day.

1873, ch. 5, § 19, as amended 1883, ch. 29, by inserting the provision that the person in default shall be guilty of a misdemeanor and upon conviction shall be fined. Same as § 18, ch. 13, G. S., except amendment of 1883.

SEC. 1672. Same — Complaint to justice.— 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.

1873, ch. 5, § 20. Same as § 19, ch. 13, G. S., except that nine days is substituted for six, and words "or an adjoining township" added.

SEC. 1673. Same — Duty of justice.— 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, ch. 5, § 21, as amended 1883, ch. 29. G. S. ch. 13, § 20, and acts 1873, ch. 5, § 21, the same, and required the justice to issue a summons to be served personally, requiring delinquent to appear and show cause why he should not be fined.

SEC. 1674. Same — Disposition of fines.— All fines imposed by the terms of section number nineteen (19), 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, ch. 5, § 22, as amended 1883, ch. 29. G. S. ch. 13, § 21, and acts 1873, ch. 5, § 22, are the same, and provided that the justice impose the fine, and issue execution to be levied on the goods and chattels of delinquent. Acts 1873, ch. 5, contained a section (23) which was same as § 22, ch. 13, G. S., and was repealed by acts 1883, ch. 29, § 4, providing that the constable collect the fine and pay same to justice, to be paid to overseer and expended in improving the roads and bridges in his district.

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SECS. 1675-1680.] ROADS, HIGHWAYS AND CARTWAYS.

SEC. 1675. No exemption.—The acceptance by an overseer of any excuse for refusal or neglect shall not, in any case, exempt the person excused for [from] commuting for or working the whole number of days for which he is assessed during the year.

1873, ch. 5, § 24. Same as § 24, ch. 13, G. S.

DELINQUENT ROAD TAX.

SEC. 1676. List of.—Every overseer of highways shall deliver to the town clerk of his town, on or before the first day of October in each year, the list furnished by the supervisors, containing the land and personal property road tax, with his certificate thereon that all taxes in said list, opposite which the word "paid" is not written, are due and unpaid, according to the best of his knowledge and belief.

1873, ch. 5, § 26, as amended 1876, ch. 26; 1877, ch. 49. Same as § 26, ch. 13, G. S., as amended 1867, ch. 30, except that the list was returned to the supervisors the first of September.

SEC. 1677. Neglect to deliver the list.—If any overseer refuses or neglects to deliver such list, with his certificate, as provided in the last section, he shall for every offence 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.

1873, ch. 5, § 27. Same as § 27, ch. 13, G. S.

SEC. 1678. Collection of.—The town clerk of each of the several towns shall receive the lists returned by the overseers of highways, pursuant to section twenty-six, and keep the same on file in his office, and shall make out and deliver to the auditor of the county, on or before the first day of November in each year, a list containing a description of each tract or parcel of land on which the tax is delinquent, together with the name of the owner, if known, and if unknown, so state, and the amount of tax due and remaining unpaid on each, * and containing all of the unpaid road taxes levied upon personal property, according to the lists on file in his office; and shall make his certificate thereon to the effect that the same is a correct list of delinquent road taxes for the year therein stated, as appears from the several lists returned by the overseers of highways, and on file in his office; and it is hereby made the duty of the county auditor to extend such unpaid taxes upon the tax list of the current year, to be collected in the same manner as other taxes.* 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 or the town in the construction or repair of roads and bridges, to be paid by the town treasurer upon the order of the supervisors.

1873, ch. 5, § 28, as amended 1876, ch. 26; 1877, ch. 49. Substantially § 28, ch. 13, G. S., as amended 1871, ch. 40. G. S. ch. 13, § 28, same as above, except between **, and return to be made to town clerk. Acts 1871, ch. 40, amended G. S. by requiring tax to be expended in the districts where raised. 1873, ch. 5, § 28, re-enacted § 28, ch. 13, G. S., leaving out the amendment of 1871. Acts 1876 inserted provision between ** substantially. Acts 1877, ch. 49, inserted provision as to personal property.

BOUNDARIES OF TOWN ROADS.

SEC. 1679. Surveyor to fix.—It is the duty of the county surveyor, when requested by the supervisors of any town in his county, as hereinafter provided, to survey, plat and fix the boundaries of any highway situate in such town.

1889, ch. 175, § 1: "An act authorizing the county surveyors to establish the boundary lines of highways." Approved March 19, 1889.

SEC. 1680. Same.—It shall be the duty of the supervisors of the several towns, whenever requested by any freeholder or freeholders whose lands are

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[SECS. 1681-1687.]

intersected by or adjoins any highway, to notify the county surveyor to make an accurate survey and establish the true boundaries of any highway in such town; provided that all the costs and expenses thereof, except the fees of such supervisors, shall be paid by such applicant or applicants.

1889, ch. 175, § 2.

SEC. 1681. Notice of survey, etc.—Notice of the time and place of making such survey, and of establishing such boundary lines, shall be given by such supervisors to all persons the boundaries of whose lands may be thereby affected, at least ten (10) days before the time fixed for making the same, by serving said notice upon such persons, and all occupants of lands affected, in the manner provided by section one hundred and twenty-one (121) of chapter eleven (11) of the general statutes of one thousand eight hundred and seventy-eight (1878), except that such service, and all affidavits and returns therein provided, may be made by any person competent to serve a summons in a civil action.

1889, ch. 175, § 3.

SEC. 1682. File plat of.—When such survey is made, the surveyor shall, within twenty (20) days thereafter, complete and file with the register of deeds a correct plat of such survey, showing courses and distances, duly certified by him, together with said notice of time and place of making the same, and proof by affidavit of the service thereof.

1889, ch. 175, § 4.

SEC. 1683. Entry of plat.—The register of deeds shall file the same in his office, and make entry thereof in the reception index of deeds, and the same when so filed and entered, shall be notice to all persons of the contents thereof, for which service the register shall be entitled to a fee of fifty (50) cents.

1889, ch. 175, § 5.

SEC. 1684. Appeal.—Any person feeling himself aggrieved by such survey, plat or boundary lines so established, may appeal therefrom to the district court of the proper county within thirty (30) days from the filing of such plat, by serving a notice of such appeal on the chairman of the supervisors of the town, and by giving bond with sufficient sureties to such supervisors, conditioned to pay all costs and disbursements, in case the accuracy of such plat be affirmed.

1889, ch. 175, § 6.

SEC. 1685. Same.—Such appeal shall be tried and determined at the next term of such district court, in the same manner and subject to the same rules as those applicable to appeals in the location of public highways from judgments of a justice of the peace, except that the clause limiting appeals to causes where the damages claimed exceed one hundred (100) dollars, shall not apply.

1889, ch. 175, § 7.

SEC. 1686. Same.—Unless such appeal be so taken, and such survey set aside, such plat shall be conclusive evidence that the boundaries so established are true and correct.

1889, ch. 175, § 8.

EXISTING ROADS.

SEC. 1687. Plat and notes.—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

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- into or through such township, as appears by the description, field notes and plat on file or of record in his office.

1881, ch. 152, § 1: "An act to amend chapter 5 of the general laws of 1873, relating to roads, cartways and bridges." Approved February 26, 1881.

SEC. 1688. **Same—Evidence.**—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.

1881, ch. 152, § 2.

SEC. 1689. **Roads on section lines.**—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.

1873, ch. 5, § 73. Not in G. S.

ROADS ON LINE BETWEEN TWO TOWNS.

SEC. 1690. **Petition for.**—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.

1873, ch. 5, § 42. Same as § 50, ch. 13, G. S.

SEC. 1691. **Divided into districts.**—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.

1873, ch. 5, § 43. Same as § 51, ch. 13, G. S., as amended 1870, ch. 36. 25 M. 124.

SEC. 1692. **Same.**—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.

1873, ch. 5, § 44. Same as § 52, ch. 13, G. S.

SEC. 1693. **Existing roads.**—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.

1873, ch. 5, § 45. Same as § 53, ch. 13, G. S.

SEC. 1694. **Appeal.**—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.

1873, ch. 5, § 46.

ROADS ON LINE BETWEEN TOWN AND CITY OR VILLAGE.

SEC. 1695. **Petition for.**—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 discontinu-

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ing 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, ch. 101, § 1: "An act to provide for laying out, altering or discontinuing any highway on the line between any town and an incorporated city or village in the state of Minnesota." Approved March 25, 1879.

SEC. 1696. 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.

1879, ch. 101, § 2.

SEC. 1697. Law applicable.—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.

1879, ch. 101, § 3.

ROADS RUNNING INTO MORE THAN ONE TOWN.

SEC. 1698. Petition for.—If twenty-four (24) freeholders of any county containing one hundred (100) or more legal voters, and twelve (12) freeholders of any county containing less than one hundred (100) 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, ch. 5, § 49, as amended 1881, Ex. S. ch. 58; 1885, ch. 14. Same as § 59, ch. 13, G. S., as amended 1869, ch. 30. Acts 1881, Ex. S. ch. 58, amended this section of acts 1873 by re-enacting it as it reads above, and in section 2 providing "that whenever the word highway occurs in said ch. 5, so far as the same relates to locating more than one town, the same shall be made to read highways or cartways, provided that this act shall apply only to the county of Goodhue." This act is entitled: "An act relating to locating, establishing and vacating highways and cartways in Goodhue county, and to amend § 49, ch. 13, G. S." Acts 1885, ch. 14, amended ch. 58, acts 1881, Ex. S., by re-enacting § 49 as above, and in § 2, repealing § 2, ch. 58, acts 1881, Ex. S., with the proviso "that the provisions of this act shall not apply to the county of Goodhue, and that as to said county the said ch. 58 of the general laws of the extra session of 1881 shall be and remain in full force and effect." 38 M. 442.

SEC. 1699. Proceedings.—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.

1873, ch. 5, § 50. Same as § 60, ch. 13, G. S. 39 N. W. 325.

SEC. 1700. Committee to examine.—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.

1873, ch. 5, § 51. Same as § 61, ch. 13, G. S.

SEC. 1701. And report.—After such committee have completed their examinations, they shall make a report of their proceedings, setting forth the

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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.

1873, ch. 5, § 52. Same as § 62, ch. 13, G. S.

SEC. 1702. **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.

1873, ch. 5, § 54. Same as § 64, ch. 13, G. S.

SEC. 1703. **Granting petition.**— 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.

1873, ch. 5, § 53. Same as § 63, ch. 13, G. S., except the proviso. 27 M. 124; 50 M. 535; 38 M. 442.

SIDE ROADS AND FORD CROSSINGS.

SEC. 1704. **How laid out.**— The board of county commissioners of each county in this state shall have power and authority to lay out and establish side roads and ford crossings, near or adjacent to any bridge forming part of any county or town road, over any stream of water in their county; said side road on each side of said stream of water to intersect with the adjacent road at the nearest practicable point. In the laying out and establishing such side roads and ford crossings, the same proceedings shall be had in all respects, including the assessment and payment of damages, as are required by law in laying out and establishing county roads: *provided*, that this act shall not authorize the laying out and establishing side roads or ford crossings near or adjacent to any bridge the cost of which was less than one thousand dollars.

1874, ch. 58, § 1: "An act providing for laying out side roads and ford crossings and to prevent overcrowding cattle while crossing bridges." Approved March 9, 1874.

ALTER OR DISCONTINUE OLD AND LAY OUT NEW ROADS.

SEC. 1705. **Petition for.**— 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 (6) 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 (8) legal voters who are freeholders

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and residents of the town within two (2) 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.

Cost.— *Provided*, that when the supervisors of any town shall lay out a public road or cartway that shall not be a continuous road extending from one highway to another the cost of surveying and locating such cartways 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 cartway shall be laid shall be paid by the persons petitioning therefor.

Vacated.— *And provided further*, that all roads or parts thereof heretofore or hereafter laid out by township supervisors, and not opened to public use within ten (10) years from the time they were laid out, are hereby declared vacated.

1873, ch. 5, § 33, as amended 1875, ch. 35; 1877, ch. 51; 1878, ch. 43; 1881, Ex. S. ch. 29; 1885, ch. 29; 1887, ch. 43. The first proviso is acts 1887, ch. 43. G. S. ch. 13, § 33, as amended 1868, ch. 48, only required petition of six legal voters, but not to apply to state roads or mail routes. Acts 1871, ch. 41, added proviso that in all townships in which no public roads have been laid out or unorganized March 15, 1871, the congressional section lines shall be public roads to the extent of two rods on each side. Acts 1873, ch. 5, § 33, re-enacted G. S. ch. 13, § 33, leaving out acts 1871. Acts 1875, ch. 35, required voters to be owners of real estate within one mile of the road. Acts 1877, ch. 51, extended qualification to voters who occupy realty under homestead or pre-emption laws, and struck out proviso as to state roads and mail routes. Acts 1878, ch. 43, extended qualification of voter to those who occupy land under contract from the state. Acts 1881, Ex. S. ch. 29, amended this section of act of 1873, ch. 5, without mentioning acts 1875, 1877, 1878, by adding the second proviso. Acts 1885, ch. 29, amended this section as amended by acts 1875, 1877 and 1878, ignoring acts 1881, Ex. S. ch. 29, by adding, "or upon the petition of eight legal voters who are freeholders and residents of the town within two miles of the road." Acts 1887, ch. 43, amended the law as it stood exclusive of the acts of 1885, ch. 29, by adding the proviso as to non-continuous roads. 25 M. 124.

SEC. 1706. Post petition.— Whenever any number of legal voters, as aforesaid, 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.

1875, ch. 5, § 34. Same as § 34, ch. 13, G. S.

SEC. 1707. Notice of hearing.— 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.

1873, ch. 5, § 35. Substantially same provision in § 35, ch. 13, G. S., as amended 1870, ch. 35. 13 M. 129; 35 M. 146.

SEC. 1708. Hearing — Personal examination.— 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.

1873, ch. 5, § 36. Same provision in § 35, ch. 13, G. S., as amended 1870, ch. 35.

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SEC. 1709. Survey, description and order.—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, ch. 5, § 37, as amended 1877, ch. 48; 1883, ch. 63. Above * is substantially § 36, ch. 13, G. S. 36 M. 292.

SEC. 1710. Same — Notes of intersections.—Whenever a surveyor makes a survey of any road or cartway, when the center of such road or cartway 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 cartway.

1879, ch. 85: "An act relating to the surveying of roads and cartways." Approved March 6, 1879.

SEC. 1711. Order granting petition.—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.

1873, ch. 5, § 38. 25 M. 124.

SEC. 1712. Damages and benefits.—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 forever 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

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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.

1873, ch. 5, § 39. Substantially § 83, ch. 13, G. S. 28 M. 61.

SEC. 1713. Same — When not allowed.— 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.

1873, ch. 5, § 57. Not in G. S.

SEC. 1714. Same — When barred.— 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.

1873, ch. 5, § 58. Not in G. S.

SEC. 1715. Second application, when.— The determination of the supervisors of any town in 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.

1873, ch. 5, § 40.

SEC. 1716. Cartways and roads — Width of — Dedication for cartway.— 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 cartways two rods wide when petitioned for by five residents, freeholders of said town, desiring the same.

The costs of surveying and locating such cartways 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 cartways 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 cartway 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 pur-

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poses of such cartway such land shall be deemed as so dedicated, and no damages shall be assessed therefor; that such cartway, when laid out and established, shall be deemed a public cartway for public use.

1873, ch. 5, § 47, as amended 1877, ch. 50; 1879, ch. 51. G. S. ch. 13, § 56, provided that the road be not less than four rods wide, and cartways two rods; costs of survey for cartway payable by the town, and the damages paid by the person for whose benefit the cartway "is laid," and damages ascertained and appeal had in the same manner as in case of public roads. Acts 1872, ch. 41, amended this by inserting that the road "may be six rods wide when all residents of lands adjoining the road shall petition for the same." Acts 1873, ch. 5, § 47, re-enacted G. S. ch. 13, § 56, as amended 1871, ch. 41. Acts 1877, ch. 50, inserted the provision: that if road used is kept in repair and worked for six years it shall be deemed dedicated to the public, and the proviso in the above section. Acts 1879, ch. 51, inserted the provision that the damages be paid by the town, instead of "person petitioning therefor." 28 M. 115.

SEC. 1717. Removal of fences.—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; and 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.

1873, ch. 5, § 41. Same as § 54, ch. 13, G. S. 13 M. 307; 23 M. 537; 30 M. 535.

APPEALS.

SEC. 1718. To justice of the peace.—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.

1873, ch. 5, § 59. G. S. ch. 13, §§ 39, 40, 41, 42, 43, 45, 46 and 55, provided for appeal from supervisors to three county commissioners. 27 M. 254; 33 M. 129.

SEC. 1719. Proceedings thereon — Jury trial.—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 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

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in refusing to lay out, alter or discontinue the same, and to make return to him in writing within ten days.

1873, ch. 5, § 60. 33 M. 129, 533; 35 M. 51.

SEC. 1720. Return of jury.—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.

1873, ch. 5, § 61.

SEC. 1721. Appeal to district court.—In case the amount of damages claimed exceed one hundred (100) dollars, appeal may be taken within thirty (30) 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 (2) 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 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 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, ch. 5, § 62, as amended 1891. ch. 23. Amendment left out word application before bond and added matter after *. 20 M. 392; 23 M. 372; 33 M. 515; 35 M. 469.

SEC. 1722. Proceedings after reversal.—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, 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

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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, ch. 5, § 63, as amended 1876, ch. 27; 1881, ch. 26. Above * is acts 1873. Below * is amendment of 1876, ch. 27, except last sentence, which was added by acts 1881. This section is substantially §§ 46, 48, ch. 13, G. S., as amended 1868, ch. 49.

SEC. 1723. Result if no appeal.—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 forever be debarred from any further redress.

1873, ch. 5, § 64. 30 M. 535.

TEMPORARY PUBLIC CARTWAY.

SEC. 1724. How laid out.—That whenever any two (2) or more owners of pine lands in the state shall wish to have a temporary public cartway laid out, they may make application therefor in writing to the supervisors of the town in which such cartway 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 cartway in all respects as provided by the law in force at the time of such applications, in relation to laying out permanent public cartways, by town supervisors, except as hereinafter provided; and the cartways hereby authorized shall not be less than one (1) nor more than two (2) rods in width.

1883, ch. 119, § 1: "An act to provide for the laying out of temporary public cartways." Approved March 5, 1883.

SEC. 1725. Proceedings.—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 cartways 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 cartway will be necessary, and they shall state such time in their order laying out such cartway, and at the expiration of such time said cartway shall cease. But no such cartway 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 cartway 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 cartway, 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 cartway to be necessary, to lay the same upon the route designated by such owner.

1883, ch. 119, § 2.

SEC. 1726. Expenses and damages.—All the expenses of laying out and all damages awarded for the taking of lands for such cartway, 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

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and work any such cartway 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 cartway, nor shall any appeal from an award of damages suspend the right to work and use such cartway, 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 applicants in the same manner as by the persons whose lands are traversed by such cartway, and in such case the filing of the bond [hereinbefore] herebefore 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 cartway as the actual payment of such damages and costs.

1883, ch. 119, § 3.

SEC. 1727. Notices.— In case such proposed cartway 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 there [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.

1883, ch. 119, § 4.

WATERING TROUGHS ON HIGHWAYS.

SEC. 1728. Allowance for maintaining.— Any person in any city, town or township in this state, who shall construct and maintain and keep in repair a watering trough beside the highway, which shall be above the ground and made easily accessible for horses and carriages, shall be allowed by the city, town or township, five dollars out of his highway tax for each year during which he shall furnish the same.

1870, ch. 15, § 1: "An act to encourage the establishing of watering places on the highways." Approved February 16, 1870.

SEC. 1729. Well or spring.— Any person in any city, town or township who shall construct and maintain and keep in repair a good well or spring beside the highway, and easily accessible, and provide it with a suitable pail or bucket, and keep the same so supplied and in good repair, shall be allowed by the city, town or township, three dollars out of his highway tax for each year during which he shall furnish the same.

1870, ch. 15, § 2.

SEC. 1730. Supervisors to fix location.— Any person upon any highway or road, in any district or ward, wishing to furnish such watering trough, well or spring, shall make application to the aldermen of the city, or supervisors of the town, who shall decide where such trough, well or spring shall be located, and the number that shall receive the benefits of this act.

1870, ch. 15, § 3, as amended 1877, ch. 43.

OBSTRUCTION OF HIGHWAYS.

SEC. 1731. In any manner — Planting — Plowing.— Whoever at any time obstructs any of the public highways in this state, in any manner, with intent to prevent the free use thereof by the public, or whoever shall do, or cause to be done any planting or plowing thereon within the width of one full rod on each side of the centre line of said highway, shall be subject to a fine of not less than five nor more than twenty-five dollars, together with the costs attending such conviction, and, on failure to pay such fine and costs,

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may be committed to the county jail, there to remain until such fine and costs are paid, or until discharged according to law; and it is hereby made the duty of the board of supervisors of the several towns of this state to make complaint and prosecute, in their official capacity, all violations of the provisions of this section.

1873, ch. 5, § 65, as amended 1874, ch. 55; 1876, ch. 25; 1878, ch. 32. G. S. ch. 13, § 68, provided that whoever obstructs with fences, logs, brushwood, timber or other material, with intent to prevent the free use by the public, is guilty of misdemeanor. Acts 1871, ch. 42, added if not used for ten years, not public highway. Acts 1873, ch. 5, § 65, re-enacted G. S. ch. 13, § 68, and added a provision requiring survey, platting and recording of roads. Acts 1874, ch. 55, merely provided that whoever obstructs in any manner with intent to prevent the free use, or any person who shall do or cause to be done any plowing thereon except by permission, with like intent, shall be fined. Acts 1876, ch. 25, added the provision that supervisors prosecute violations. Acts 1878, ch. 32, is a consolidation of the substance of prior acts, adding the limitation "within the width of one full rod on each side of the centre line." 27 M. 716; 29 M. 187; 33 M. 24.

SEC. 1732. Same — Plow and level.— 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 centre 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, ch. 97: "An act to authorize the plowing and leveling the public highways in this state for the purpose of seeding the same down to grass." Approved March 10, 1879.

SEC. 1733. Obstruction by railroad 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, ch. 116, § 1: "An act to prohibit the obstruction of highways by railroad cars or engines." Approved March 1, 1883.

SEC. 1734. Same.— 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 (10) minutes.

1883, ch. 116, § 2.

SEC. 1735. 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 (5) dollars nor more than fifty (50) 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 (30) days.

1883, ch. 116, § 3.

SEC. 1736. Jurisdiction of justices.— Justices of the peace shall have jurisdiction, on complaint made on oath, to hear and determine all cases arising under the preceding section.

1873, ch. 5, § 66. Same as § 69, ch. 13, G. S.

SEC. 1737. Disposal of fines.— All fines recovered under the provisions of this chapter shall be paid into the treasury of the town wherein the offence was committed, to be used in repairing the public highways within such town.

1873, ch. 5, § 67. Same as § 70, ch. 13, G. S.

TITLE 2.

ROADS IN MORE THAN ONE COUNTY.

SEC. 1738. Petition — Commissioners — Limitations.— Whenever a petition praying that a road be laid out through, between or into two (2) or more counties in any judicial district in this state, signed by twenty (20) 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 (2) or more counties in two (2) or more judicial districts in this state, signed by twenty (20) legal voters and tax-payers, resident in said counties, shall be presented to a judge of the district court of one (1) of said districts,* the said judge is hereby authorized to appoint three (3) 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 (6) 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. *Provided, further*, that in cases where said road is by said petition to run through or into two (2) or more counties situated in two (2) or more judicial districts, the judges of said districts shall act in conjunction with each other on said petition, and if the proposed road is by them deemed to be a public necessity, it shall be their duty to appoint commissioners from each of the counties affected by said road, not exceeding five (5) in all, and to direct them to lay out the said road accordingly. And it shall be the duty of said commissioners to meet at such times and places as may be necessary, and to proceed to lay out said road in like manner, as is provided herein in other cases.

1872, ch. 40, § 1, as amended 1883, ch. 21; 1883, ch. 64; 1889, ch. 179. Acts 1889 added second proviso. Remainder same as acts 1872, except between ** and words "between or into" and "tax-payers," which were inserted by acts 1883, ch. 64. Acts 1883, ch. 21, struck out the words "in any judicial district in this state;" and 1883, ch. 64, restored them. Acts 1872, ch. 40, entitled "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," approved March 4, 1872. This title was amended 1883, ch. 21, to read: "An act authorizing the judge of any district court to appoint commissioners to lay out roads through two or more counties, any one of which is within his judicial district." 26 M. 447.

SEC. 1739. Notice of.— 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 district, and there shall be one of said notices posted at each county seat of the counties through which the road prayed for is to pass.

1872, ch. 40, § 2.

SEC. 1740. Survey — Assessment — Damages.— The commissioners shall appoint a surveyor, one axeman and two chainmen to make a survey of such a road. The compensation of the commissioners shall be three dollars each per day, and that of surveyor shall be four dollars per day, and the axeman and chainmen shall each receive two dollars per day, such compensation to be paid only for the time the parties are actually engaged in making such survey. *The damages incurred and the compensation to be paid to the persons over whose land such road shall be laid out, by reason of the laying out of the same, shall be assessed and determined by said commissioners; and the expense of such survey and the damages and expenses which are incurred by the laying out thereof, including the compensation to be paid for right of way, shall be paid by the counties through which said road is laid, without regard

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to the length located in each county, each county paying therefor its just proportion; and such proportion shall be entirely in the discretion of the court, and shall be by said court determined, regard being had to the benefits to be derived from said road by the different counties through or into which it shall pass.* Stakes shall be placed at the starting point, which shall be on said public road, and at each of the angles of the road. Witness trees shall be marked wherever stakes are placed: *provided*, that where there are no trees, monuments shall be erected.

1872, ch. 40, § 3, as amended 1873, ch. 6. Amendment between * *, except that in acts 1872 this section also provided that expenses of survey, and damages, and expenses for laying out the road, payable proportionately by counties through which road is laid.

SEC. 1741. Duties of surveyor.—The surveyor shall follow the lines of the United States surveys, where practicable; and shall make two or more plats of the location of such road, in which the county lines, and all stakes, trees, and monuments, together with the distances, shall be written; and said surveyor shall forward one of such plats to the register of deeds of each county through which said road is located, and such plats shall be placed on file by such register of deeds, and be part of the records of their office. The surveyor shall receive two dollars for each plat so made and forwarded by him as aforesaid.

1872, ch. 40, § 4.

SEC. 1742. Duties of commissioners.—The commissioners appointed under and by virtue of section seventy-six (76) of this act, shall appraise and fix the amount of damages to be paid to each land 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 releases of the right of way taken by them.

1873, ch. 70, § 1, as amended 1883, ch. 64. Acts 1873, ch. 70, is entitled "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, approved March 4, 1872," and provided that the commissioners appointed under and by virtue of that act appraise and fix the damages as above, which was amended 1883, ch. 64, by providing that the commissioners appointed "under and by virtue of section 76 of this act." This means § 3, ch. 40, acts 1872 (§ 1740, *ante*).

SEC. 1743. Report of commissioners.—The commissioners appointed, as herein provided, shall make a report of all proceedings had by them under this act to the term of the district court held in the county next after the completion of their duties, and any person feeling aggrieved may appear and be heard thereat. The confirmation of the report of the commissioners by the judge of the district court shall in all cases be final.

1872, ch. 40, § 5.

SEC. 1744. Jury to determine damages — When.—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 situate, unless continued for cause. If the land is situate in a county different from

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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.

1873, ch. 70, § 2. 26 M. 447.

SEC. 1745. Payment of damages.— 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 (2) counties, each county shall pay one-half of the amount of damages as determined.

1873, ch. 70, § 3, as amended 1883, ch. 64, by adding the proviso.

SEC. 1746. Pending cases.— 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.

1873, ch. 70, § 4.

TITLE 3.

ROADS FOR STEAM TRACTION TRANSPORTATION.

SEC. 1747. Proceedings.— Upon the presentation of a petition signed by a majority of the freeholders, and persons living on United States lands who have filed their declaratory statement for the same in the proper land office, and actually residing at the time within one mile of the line of any road proposed to be used for steam traction transportation, asking for the legal establishment of such road as may be prescribed by such petitioners, within the limits of the county in which said petitioners reside, it shall be the duty of the board of county commissioners of the proper county to cause a road for steam traction transportation to be laid out, opened and improved, in the same manner and under the same powers and restrictions in all respects as provided by law for laying out, opening or constructing and repairing county roads in this state, except as hereinafter provided.

1870, ch. 20, § 1: "An act to provide for the use of steam traction motors for the purpose of transportation." Approved February 19, 1870.

SEC. 1748. Agreement to operate.— No action shall be taken by any board of county commissioners in the improvement or construction of any road for steam traction transportation until an agreement shall have been entered into by and between the board of county commissioners, for and in behalf of the proper county, and some responsible person or the duly authorized representative of an association of persons, by which such person or association of persons shall be obliged to provide and operate on the road proposed to be opened such number of steam traction motors as will suffice to transport

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to and from the stations along said road specified in said agreement, without any unreasonable delay, and at a cost not exceeding the compensation to be specified in said agreement, all agricultural products or other freight belonging to any *bona fide* resident of such county, for a term of years not exceeding twenty; and in consideration of the above-mentioned obligation and the faithful performance of the same, the board of county commissioners, for and in behalf of the county in which the contemplated road is to be located and constructed, may secure to the said person or association of persons the right to operate said road with steam traction motors for the same term of years, without interference or hindrance through any action of the county authorities of the said county.

1870, ch. 20, § 4.

SEC. 1749. Survey — Cost — Submission to vote.— As soon as said agreement shall have been signed by said person or representative of an association of persons, party of the one part, and by the chairman of the board of county commissioners of the proper county, party of the other part to said agreement, the said board of county commissioners shall cause the line and limits of said proposed road to be definitely surveyed and marked, including the portion of any road already established that is proposed to be devoted to steam traction transportation, and shall ascertain, as near as may be, the amount of improvement necessary to put said road in proper condition for steam traction transportation, and the probable cost of the same; and having obtained satisfactory information upon these points, the board of county commissioners shall authorize a special election to be held in the proper county, at which election the legal voters of the county will determine whether the road shall be constructed at the expense of the county or not; the notice of the time and place of holding said election, the qualification of voters, the opening and closing of polls, and the counting, canvassing and return of votes, shall be in conformity to the law regulating special elections in the several counties in this state: *provided*, that the notice calling such election shall contain a full statement of the terms of the agreement entered into for steam traction transportation over the proposed road, the location and points on the road, the estimated cost of constructing the road, and the probable amount of freight belonging to citizens of the county that will pass over the road per annum.

1870, ch. 20, § 5.

SEC. 1750. Vote by ballot — Form of.— At all elections to be held under the provisions of this act, the voters voting in favor of constructing any road at the expense of the county, as specified in the notice for holding the election, shall deposit a ballot, with the words written or printed, or partly written and partly printed thereon, "Construction of steam traction road from (designating the point of beginning) to (designating the terminus), yes," and the voters opposed to the construction of said road, voting at said election, shall deposit ballots with the words written or printed, or partly written and partly printed thereon, "Construction of steam traction road from (designating the place of beginning) to (designating the terminus), no."

1870, ch. 20, § 6.

SEC. 1751. Ratification.— If a canvass of the votes polled in any county at any election as herein provided shall show that a majority of the voters of such county voting at such election voted in favor of the construction of such road for steam traction transportation, then the agreement entered into, as provided in section four of this act, shall be countersigned by the auditor of the county, sealed with the seal of the board of county commissioners, and recorded by the register of deeds, and being stamped in accordance with the revenue laws of the United States, shall thereafter be and remain binding upon the parties thereto in all its provisions: *provided*, said agreement shall not

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contravene the provisions of this act or of the constitution of the state of Minnesota; and the board of county commissioners shall forthwith proceed to have the road as designated for steam traction transportation opened and improved for such transportation, in conformity to the survey and estimates embraced in the notice for holding the election at which the construction of the road was authorized.

1870, ch. 20, § 7.

SEC. 1752. **Bonds for construction.**— To provide means for constructing any road authorized to be constructed as provided by this act in any county in this state, the board of county commissioners of the county in which said road so authorized to be constructed may be located are hereby authorized and empowered to issue the bonds of the county, for the amount necessary to defray the expense of improving and constructing said road so authorized to be improved and constructed: *provided*, that said bonds shall not exceed in the aggregate the amount of the estimated expense of improving and constructing said road as set forth in the notice for holding the election at which the improvement and construction of said road was authorized by the votes of a majority of the voters of the county voting at said election.

1870, ch. 20, § 8.

SEC. 1753. **Same — Limitations.**— Said bonds shall be made payable in the city of New York, not less than ten nor more than twenty years after the date thereof, with interest coupons attached, providing for the semi-annual payment of interest at the rate of ten per cent. per annum; and said bonds shall be disposed of at par in payment for material furnished and for labor performed for the improvement and construction of the road so authorized to be constructed and improved for steam traction transportation, and for no other purpose whatever: *provided*, that not more than three thousand dollars shall be paid for the improvement or construction of any one mile of any road to be improved or constructed under the provisions of this act, to include the improvement or construction of bridges, causeways, putting down wooden rails or trams, cutting, filling, or any other improvement or work whatever.

1870, ch. 20, § 9.

SEC. 1754. **Same — Tax to pay.**— For the purpose of providing for the punctual payment of the maturing interest and principal [on] all bonds issued under the authority of this act, a tax upon the taxable property in the several counties in which such bonds shall be issued, as heretofore provided, shall be assessed and levied each year, sufficient to pay all the interest and principal of such bonds as may mature and become payable before the time fixed by law for the collection of any such tax for the next succeeding year. All such taxes authorized by this act shall be levied and collected at the same time and in the same manner that other county taxes are levied and collected; and such taxes levied and collected for the payment of the principal and interest of the bonds so issued shall be applied to such payment and to no other purpose.

1870, ch. 20, § 10.

SEC. 1755. **Construction.**— Road-beds for steam traction transportation may be constructed with timber causeway foundations for clay, gravel or other material, or clay, gravel or other material may be used without causeway foundations for the purpose of making a good, substantial and hard road over soft ground, or wooden rails or trams may be used in constructing any such road when the same may be deemed proper; and where the character of the country demands it, the road-bed may be cut down or filled in to make the grade of the road suitable to the requirements of the steam traction motors. All bridges for the use of steam traction motors shall be constructed with a separate track for said motors from that used for a general track.

1870, ch. 20, § 3.

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SECS. 1756-1760.]

FREE TURNPIKES.

SEC. 1756. **Width.**— All roads laid out and opened under the provisions of this act, for steam traction transportation, shall be a uniform width of twenty feet; and where steam traction transportation shall be used on the line of and in connection with any existing road, twenty feet in width on one side of said road may be appropriated exclusively to steam traction transportation, and said twenty feet may be separated from the portion appropriated to general use by a division fence, if deemed expedient.

1870, ch. 20, § 2.

SEC. 1757. **Construction, when not ratified.**— If, upon canvassing the votes polled at any election in any county in this state, held in pursuance of sections five and six of this act, it shall appear that a majority of the votes cast at said election was cast against the construction of the road designated at the expense of the county, then, and in that case, the said road shall not be constructed at the expense of the county; but at the request of a majority of the freeholders, and persons living on United States lands who have filed their declaratory statement for the same in the proper land office, and residing at the time within one mile of the line of said road as surveyed and marked, it shall be lawful for the county commissioners of the county to cause the road to be opened; and the road may be improved and constructed with private means, and be operated in all respects as is provided by this act for improving, constructing and operating county roads for steam traction transportation, except that no agreement between the board of county commissioners of the county and the person or association of persons operating said road shall be binding.

1870, ch. 20, § 11.

TITLE 4.

FREE TURNPIKES.

SEC. 1758. **Authorized.**— That whenever it is desirable to construct or build a free turnpike road in any part of this state, it shall be lawful to proceed as hereinafter provided.

1867, ch. 27, § 1: "An act to legalize the building of free turnpikes in this state." Approved February 28, 1867.

SEC. 1759. **Petition — Subscriptions — Survey.**— That whenever the county commissioners of any county in this state shall be petitioned to construct a free turnpike on any proposed route therein named, accompanied with a certified statement of at least three freeholders, which statement shall be verified by oath or affirmation, that said petition contains thereon the names of at least a majority of the legal voters in the territory affected by taxation in the building of said road, as hereinafter provided, and also a similar statement that at least two hundred dollars per mile for each and every mile proposed to be built has been subscribed to such enterprise, it shall be their duty to have said proposed route surveyed by a competent corps of engineers, under the supervision of one of their number, or person appointed living along the proposed route.

1867, ch. 27, § 2.

SEC. 1760. **Surveyor's report.**— The engineer appointed to make surveys of any proposed route shall make a return of the same, with the estimated cost of the construction of a turnpike road, as hereinafter provided, to the county commissioners, at their next regular meeting after said survey and estimate shall have been made and completed.

1867, ch. 27, § 3.

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FREE TURNPIKES.

[SECS. 1761-1766.]

SEC. 1761. **Tax for construction.**— When the survey and estimate shall have been returned, the county commissioners shall levy annually one-third of the estimated cost of constructing said road, (less one-third of the subscription) for three years, or until said road shall be completed, a tax on the taxable property contiguous to the line of said road as follows, to wit: The incorporated city, town or village at the beginning of the line of said road, or to the limits thereof, whether incorporated or not; one-half mile on each side of the first mile of said route; one mile on each side of the second mile of such route; one mile and a half on each side of the third mile of such route; two miles on each side of the fourth mile of such route; two miles and a half on each side of the fifth mile of such route; and three miles on each side of the sixth and remaining miles of such route, which levy shall be placed on the tax duplicate by the county auditor, and collected as other county and state taxes.

1867, ch. 27, § 4.

SEC. 1762. **Subscriptions.**— Subscriptions to the building of such road as is required in section two of this act may be made in cash, labor or material furnished, and shall be made payable to the county commissioners in instalments not to exceed twenty per cent. every sixty days. And the county commissioners shall have power to collect the same as other debts.

1867, ch. 27, § 6.

SEC. 1763. **Contract to construct.**— Whenever in the opinion of the county commissioners, that a sufficient amount of money has been collected to commence the construction of such road, they may place such part thereof under contract as they may think best; but in all cases such contract shall be awarded to the lowest responsible bidder, and the letting of the building of such road or any part thereof, shall be advertised in some newspaper having general circulation in the county, or by posting notices thereof in at least five of the most public places in the county, at least four consecutive weeks prior to such letting. Such notice or advertisement shall state the amount and manner in which such work shall be done, and the time and place of awarding the contract.

1867, ch. 27, § 7.

SEC. 1764. **Width and construction.**— Every turnpike road constructed by virtue of this act shall be laid out at least four rods wide, and shall be bedded with stone, gravel, or such other material as may be found on the line thereof, and faced with broken stone or gravel so as to form an even hard surface, with good and sufficient ditches on each side whenever the same is practicable; the arch or bed of such road shall be at least eighteen feet wide, and shall be so constructed as to permit carriages and other vehicles conveniently to pass each other, and to pass on and off of said turnpike where it may be intersected by other roads.

1867, ch. 27, § 5.

SEC. 1765. **Law regulating proceedings.**— The county commissioners, surveyors, engineers and others appointed under this act, shall in the location of such road be governed by sections one hundred and twenty-seven, one hundred and twenty-eight, one hundred and twenty-nine and one hundred and thirty, title seven, chapter thirty-four of the general statutes.

1867, ch. 27, § 8.

SEC. 1766. **Tax for keeping road in repair.**— After such road is completed, the county commissioners shall levy and cause to be collected annually a sufficient amount of tax to keep such road in good repair. And the several overseers of roads along the line of such road shall have the poll and other taxes assessed by the town supervisors, worked and applied on such road. And, further, such road shall be free to travel, the same as other highways.

1867, ch. 27, § 9.

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SECS. 1767, 1768.]

DRAINING PUBLIC HIGHWAYS.

TITLE 5.

DRAINING PUBLIC HIGHWAYS.

SEC. 1767. Application — Notice, etc.— Whenever any overseer of highways shall file with the chairman of the board of supervisors of the town in which his road district is located, his affidavit stating that a certain road passing through or into the district of which he is overseer runs into or through swamp, bog or meadow or other low land, and that it is necessary or expedient that a ditch or ditches should be opened through land belonging to any person, stating the probable length of such ditch or ditches, and the width and depth of the same, as near as possible, the point at which it is to commence, its general course, and the point near which it is to terminate, and the names of persons owning the land, if known, and a description of the land over which said ditch or ditches must pass, and that the road at that point cannot be made passable without extraordinary expense, unless such ditch or ditches are laid out and opened, thereupon it shall be the duty of the chairman of the board of supervisors immediately to make out a notice, and fix therein a time, not less than six nor more than sixty days from the date thereof, the board of supervisors will meet at the place described in said affidavit, and personally examine the premises; which notice, together with the affidavit, he shall cause to be filed in the office of the town clerk; and the clerk shall make true copies of said notice, and deliver them to the overseer of highways making the affidavit, whose duty it shall be to personally serve the same upon each of the owners of the land, if residents of the county, or upon the occupants of the land if the owners are not residents of the county through which it is proposed to open such ditch or ditches, which notice may be in the following form:

STATE OF MINNESOTA, County of ——. Mr. ——. Notice is hereby given, that, whereas it appears by the affidavit of overseer of road district No. —, in the town of —, that the road running from — to — runs into or passes through a swamp, bog, [pond] or low land, which swamp, bog, pond or low land is situated on section —, in said town, and that it is the opinion of said overseer that a ditch or ditches should be opened through land belonging to —, for the purpose of draining said swamp, therefore you are hereby notified that the board of town supervisors will, on the — day of —, A. D. 18—, personally examine the premises over which said ditches are to pass, and decide upon said application, and will also hear any objections which may be made in the matter, and will consider the amount of damages which, in their opinion, will be just compensation to the owners of land in consequence of the opening of such ditch or ditches. Signed, —, chairman of the board of supervisors. —, clerk of town of —: *provided*, that such ditch or ditches shall be laid out upon the lines that the owner or owners of the land over which they are to pass may desire, whenever it can be so done without extra cost.

1874, ch. 57, § 1: "An act to authorize the board of town supervisors to open, lay out and construct ditches for the purpose of draining public highways." Approved March 2, 1874.

SEC. 1768. Publication of notice.— The overseer serving such notice shall make return thereon to the town clerk, stating the facts; and if it shall appear from the return of the overseer that the owners of said lands do not reside in the county, and that no occupant resides thereon, the town clerk shall order the publication of the notice for three successive weeks in a newspaper printed and published in said county; or, if there be no paper printed and published in said county, then he shall post or cause to be posted up the notice in three of the most public places in the county, for three weeks prior

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DRAINING PUBLIC HIGHWAYS.

[SECS. 1769-1772.]

to the meeting of the supervisors; and such publication shall be considered as sufficient notice to all parties.

1874, ch. 57, § 2. 38 M. 441.

SEC. 1769. Examination, hearing and assessment.— At the time specified in the notice the supervisors shall proceed to examine the road and premises over which such ditch must pass, and hear any reasons for or against laying out the same, and shall decide upon the application as they deem proper, and shall assess the amount of damages which, in their judgment, will be an equitable compensation to the owners of the land for the opening of said ditch or ditches through their land; and in all cases they shall estimate the advantage and benefits the laying out and opening of such ditch or ditches will confer upon the owner of any land through which such ditch may run, as well as the disadvantages: *provided*, the damages sustained by reason of laying out and opening such ditch or ditches may be ascertained by the agreement of the owners and the supervisors, in which case every agreement and release shall be in writing, and filed in the town clerk's office, and shall forever preclude such owners of lands from all further claims for damages.

1874, ch. 57, § 3.

SEC. 1770. Order to construct ditches to drain.— If, after taking all the circumstances into consideration, the supervisors shall be satisfied that the opening of such ditch or ditches is necessary or advantageous to the public interest, they shall cause the same to be laid out and opened, and shall give such directions in the matter as shall be necessary for the effectual draining of said swamp, pond, bog or low land, and shall file a statement in writing of all their doings, including the amount of damages allowed, in the office of the town clerk, who shall copy the same into a book to be kept by him especially for that purpose; and if the order and proceedings be not appealed from within ten days from the filing thereof, as hereinafter provided for, then said judgment, order and findings shall be final, and the overseer may proceed to open the ditch or ditches, in accordance with the directions and under the instructions of the said board of supervisors.

1874, ch. 57, § 4.

SEC. 1771. Appeal from order.— Any party through whose land said ditch shall pass may appeal from the decision of the supervisors to the district court of the county in which the premises are situated, by filing with the town clerk within ten days after the decision of the supervisors shall have been made and filed, a recognizance of the appellant, with sureties to be approved by the said board or chairman, in a sum not less than one hundred dollars, conditioned that the appellant will appear at the next term of the district court, and prosecute his suit to final judgment, if the court shall not otherwise order for good cause; and further, that he will abide the decision of the court, and pay all costs and damages that may be assessed against him therein; or, if the appeal shall be dismissed or discontinued, that he will pay the costs of appeal. The proceedings of the district court in the appeal shall be the same as an appeal in civil action from a justice of the peace, as nearly as practicable, and costs shall be awarded for or against either party in the same manner as upon an appeal in civil actions.

1874, ch. 57, § 5.

SEC. 1772. Payment of damages.— When the amount of damages or compensation to be paid by [to] any one or more of the owners of land taken for such ditch or ditches shall have been finally determined by proceedings under the provisions of this act, the board of town supervisors shall provide for the payment of and pay the same in the manner provided by law for the payment of like damages or compensation for land taken for a public highway, and may, in their discretion, deduct the amount so paid from money

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SECS. 1773-1778.]

FERRIES.

belonging to or to be paid over to the road district in which such ditch or ditches shall have been constructed.

1874, ch. 57, § 8. This act also contained section 9, providing that "the county of Winona is excepted from the provisions of this act," which was repealed by acts 1877, ch. 55. Approved February 17, 1877.

SEC. 1773. **Ditches to be kept open.**— At any time after such ditch or ditches shall have been opened, it shall be lawful for the overseer of highways of the road district, from time to time as it may become necessary, to enter upon the lands through which such ditch or ditches have been opened, for the purpose of clearing out and scouring the same, and then and there to clear and scour the same, in such manner as to keep them open and in good order and condition.

1874, ch. 57, § 6.

SEC. 1774. **Penalty for obstructing.**— Any person who shall dam up, obstruct, or in any way injure any ditch or ditches as opened, shall be liable to pay to the overseer of highways of such road district double the damages which shall be assessed by the jury or court trying the case for such injury, and shall further be deemed to have committed a misdemeanor, and shall, upon conviction thereof, be punished by imprisonment of not more than three months, or by fine of not more than one hundred dollars; and such sums of damages and fines shall be by such overseer expended on the roads in his district.

1874, ch. 57, § 7.

TITLE 6.

FERRIES.

SEC. 1775. **License.**— That the board of county commissioners of any county in this state may grant a license to any person applying therefor, to keep a ferry across any stream within their respective counties, upon being satisfied that the party applying is a suitable person to keep it, and that a ferry is necessary at the point applied for; but no ferry shall be established within one-half mile of any established ferry.

1867, ch. 26, § 1: "An act to authorize the establishment and regulation of ferries." Approved February 28, 1867.

SEC. 1776. **Same.**— No person shall be allowed to establish, run or maintain upon any water in this state, any ferry upon which to convey, carry or transport any persons or property, for hire or reward, without first obtaining a license therefor as hereinbefore provided: *provided*, this act shall not be so construed as to prevent the establishing, maintaining and running free ferries.

1867, ch. 26, § 8.

SEC. 1777. **Notice of application for.**— All persons intending to apply for a license shall give notice of their intention to apply for a license for a ferry at a certain point, by posting up at least three notices in the most public places in the neighborhood where the ferry is proposed to be kept, and filing a copy thereof with the county auditor, at least ten days prior to the presentation of such application to the county commissioners: *provided*, that when application shall be made for a renewal of license where a former license has expired, the same may be granted or renewed without previous notice or petition.

1867, ch. 26, § 6.

SEC. 1778. **To be sealed.**— All licenses granted under the provisions of this act shall be sealed with the seal of the county commissioners and signed

by the chairman of the board, and attested by the county auditor, and may be granted for any period not exceeding ten years.

1867, ch. 26, § 3.

SEC. 1779. Licensee to give bond.— Any person obtaining a license to run a ferry under the provisions of this act shall first execute a bond, to be approved by the county board, in a penalty not less than five hundred dollars, with conditions that he will keep the ferry in proper condition for ferrying, and attend the same at all times fixed by law for running the same; that he will neither demand nor take illegal tolls, and that he will perform all the other duties which are or may be enjoined on him by law, which bond shall be filed with the county auditor.

1867, ch. 26, § 10.

SEC. 1780. License in unorganized counties.— Any person desiring to obtain a ferry license for a ferry across any stream in any unorganized county in this state shall apply to the county commissioners of the county to which they are attached for judicial purposes; and the commissioners of such county shall have as full jurisdiction as though the said stream was wholly within the county of which they are commissioners.

1867, ch. 26, § 11.

SEC. 1781. Limitation of license.— The foregoing provisions of this act shall not apply to any stream, as far as the same is bordered by any city, village, borough or incorporated town in this state; but the common council or board having the management or control of the public affairs of such city, village, borough or incorporated town shall have the sole and exclusive right to grant ferry licenses across such stream, as far as the same is bordered by such city, village, borough or incorporated town respectively, and to make and enforce such regulations for such ferries and ferry licenses as such common council or board may deem proper: *provided*, that such license shall not be granted for any period exceeding ten years: *and provided further*, that this section shall not be so construed as to affect or abridge the rights of the county commissioners in any county other than the one in which such city, village, borough or incorporated town is situated: *provided*, however, that any ferry established by the council or board of any city, village, borough or incorporated town, shall have the same rights and effect as if established by the county commissioners of the county in which the city, village, borough or incorporated town is situated.

1867, ch. 26, § 12.

SEC. 1782. Ferries between two counties.— In all cases where the stream over which a ferry is sought to be licensed runs between two counties, the board of county commissioners of either county shall have as full jurisdiction in the premises as though the stream was wholly within the county of which they are commissioners; and when the commissioners of either county shall have exercised jurisdiction under this act, and shall have established any ferry thereunder, the county commissioners of no other county shall have any power to exercise any jurisdiction over such ferry, while the same is in legal existence: *provided*, that when the stream forms any portion of the boundary line of the state of Minnesota, the board of commissioners in their respective counties shall grant license and exercise all the powers conferred upon them by the provisions of this act, so far as the same does not conflict with the rights of other states: *provided, further*, that when application shall be made in two counties for license for ferries at the same point, the county commissioners of the county in which notice of the intention of such application was first filed with the county auditor shall exercise jurisdiction in the matter.

1867, ch. 26, § 2.

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SECS. 1783-1788.]

BRIDGES.

SEC. 1783. **Duty of keeper.**— Any person obtaining a license to keep a ferry shall provide and keep in complete repair the necessary boats for the safe conveyance of persons and property, and shall keep a sufficient number of hands to give due attendance from daylight in the morning until dark in the evening, and shall, moreover, attend at any hour of the night or day, when called upon, for the purpose of conveying the United States mail, or any person or persons desiring to cross the same, with or without a team or vehicle, across said ferry: *provided*, that when the stream is impassable from the high stage of water, wind and storm, or drift ice in the river, or when the river is frozen over, no damages shall be recovered by a failure or refusal to convey any person or property across said stream.

1867, ch. 26, § 5.

SEC. 1784. **Rate of ferriage.**— Whenever the board of county commissioners of any county shall grant a license to keep a ferry across any stream, the said board shall establish the rate of ferriage which may be demanded for the transportation of persons or property; and any person who shall demand or receive more than the amount so designated for ferrying, shall pay such sum, not exceeding twenty dollars, as any court having competent jurisdiction shall determine, to be recovered by an action of debt by any person suing for the same.

1867, ch. 26, § 7.

SEC. 1785. **Taxation of ferries.**— The county commissioners shall tax such sums as may appear reasonable, not less than five nor more than two hundred dollars per annum; and the person to whom such license shall be granted shall pay to the county treasurer the tax for one year in advance, and take duplicate receipts therefor, one of which he shall file with the county auditor within ten days thereafter.

1867, ch. 26, § 4.

SEC. 1786. **Same.**— Any ferry heretofore established under former laws, by license of county commissioners or charter from the legislature, across any stream in this state, shall be taxed the same as those granted by the provisions of this act; and all ferries shall be deemed situated in the county where the ferry house is situated, and no ferry shall be liable to pay tax to but one county.

1867, ch. 26, § 9.

TITLE 7.

BRIDGES.

SEC. 1787. **Corporations** for the purpose of erecting and maintaining free or toll bridges over any lake or stream of water in the state, may be formed, and continue to be a corporation under and subject to the provisions of chapter thirty-four, statutes of eighteen hundred and sixty-six, and acts amendatory thereto.

1875, ch. 108, § 3: "An act to provide for the construction of bridges over the Minnesota river." Approved March 9, 1875. See Const. art. 4, § 27.

SEC. 1788. **Avoiding or refusing to pay 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 wilfully 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

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BRIDGES.

[SECS. 1789-1794.]

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 offence, which fine shall be prosecuted and collected, together with costs, in the same manner as the penalties prescribed in the preceding sections.

1873, ch. 5, § 72. Same as § 75, ch. 13, G. S.

SEC. 1789. **Fast driving prohibited.**—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 offence.

1873, ch. 5, § 68. Same as § 71, ch. 13, G. S., as amended 1871, ch. 42.

SEC. 1790. **Same — Sign-board.**—No fine shall be imposed under the provisions aforesaid unless there was at each end of said bridge, at the time when such offence 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.

1873, ch. 5, § 71. Same as § 74, ch. 13, G. S.

SEC. 1791. **Same — Complaint.**—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 offence 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 offence 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.

1873, ch. 5, § 69. Same as § 72, ch. 13, G. S.

SEC. 1792. **Same — 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.

1873, ch. 5, § 70. Same as § 73, ch. 13, G. S.

SEC. 1793. **Number of animals.**—It shall be the duty of the county commissioners of each and every county in this state to cause notices to be posted at both ends of all bridges in their respective counties, where the span of such bridge shall be fifty feet or more, stating the number of cattle, horses or other animals that may be driven on, to or across said bridge at any one time.

1874, ch. 58, § 2: "An act providing for laying out side roads and ford crossings, and to prevent overcrowding cattle while crossing bridges." Approved March 9, 1874.

SEC. 1794. **Same — Penalties.**—Any person or persons driving or having charge of any drove of cattle, horses or other animals, who shall drive or permit more of said animals to enter upon or cross said bridge at one time than is specified in said notices provided for in section two of this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof before any court having jurisdiction, shall be fined in any sum not exceeding one hundred dollars, nor less than ten dollars.

1874, ch. 58, § 3.

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SECS. 1795-1798.]

BRIDGES.

SEC. 1795. Bridges on the Minnesota river.— Any company duly organized for the purpose, or any county or counties, town or towns, village or villages, interested therein, may erect a free or toll bridge over the Minnesota river, at any suitable point to be selected; but all such bridges shall be provided with a suitable draw, with an opening of not less than eighty feet, which, on seasonable signal or notice, shall be opened to allow the passage of boats navigating said river.

1875, ch. 108, § 1: "An act to provide for the construction of bridges over the Minnesota river." Approved March 9, 1875.

SEC. 1796. Same — Location and plan.— Before any such bridge is erected, the location and plan thereof shall be submitted to the governor, who shall examine the same, and if he deems the plan and location proper, he shall approve the same.

1875, ch. 108, § 2.

SEC. 1797. Same — Rates of toll.— Corporations owning and maintaining any bridges over said river may charge and receive the following rates of tolls from all persons using the same, to-wit:

For each foot passenger, five cents.

For each head of swine, sheep or calves, two cents.

For each head of cattle, five cents.

For each carriage, hack or sleigh, drawn by one horse, twenty cents.

For each carriage, hack or sleigh, drawn by two horses, twenty-five cents.

For each additional horse, five cents.

For each dray, sled or wagon, drawn by one horse, twenty cents.

For each dray, sled or wagon, drawn by two horses or oxen, twenty-five cents.

For each additional horse or ox, five cents.

For any other vehicle or animal not enumerated, a reasonable rate of toll.

1875, ch. 108, § 4.

SEC. 1798. Restriction of rates.— The rates of toll hereby fixed shall not be changed by the legislature until the company shall receive a net income equal to ten per cent. per annum on the fair and reasonable cost of any bridge built under this act, but may then be amended by any future legislature in such manner as will not reduce the net income to less than the per cent. named in this section.

1875, ch. 108, § 5.