

James C. Child
35
THE

PUBLIC STATUTES

OF THE

STATE OF MINNESOTA.

(1849—1858.)

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

PUBLISHED BY STATE AUTHORITY.

SAINT PAUL:
THE PIONEER PRINTING COMPANY.

1859.

coroner, no officer duly authorized to execute the duties thereof, some suitable person may be appointed by the county commissioners, to perform the duties of either of said offices for the time being.

Persons appointed to fill vacancies to qualify, &c.

(8.) SEC. VIII. Each of the persons appointed, in pursuance of either of the two last preceding sections, shall, before proceeding to execute the duties assigned them, qualify in the same manner as required by law of the officer in whose place he shall be appointed; and he shall continue to exercise and perform the powers and duties of the office to which he shall be so appointed, until such vacancy shall be regularly supplied, as provided by law.

CHAPTER 11.

COUNTY ROADS.

SECTION

1. County roads under supervision of commissioners.
2. Applications for laying out or altering roads, how made.
3. Proof of notice must accompany petition.
4. Upon petition and proof of notice, commissioners to appoint board of examiners.
5. Examiners to take oath; duties of examiners.
6. Examiners to report to commissioners, report what to contain.
7. Register of deeds, when to issue order for survey of roads; duty of surveyor.
8. Register of deeds to record plot of road, and notify supervisors to open same.
9. When road is vacated, owners of land may inclose the same.
10. County roads to be sixty-six feet wide.
11. Compensation of examiners.
12. When section line divides two counties, commissioners of either county may locate road.
13. Commissioners may cause to be opened a cartway.
14. If remonstrance be made, commissioners to deliver the same to surveyor; his duties.
15. Provides for the election of two road commissioners in each county.
16. Requires the commissioners to take an oath of office.
17. In connection with the county surveyors to constitute the board of road commissioners.
18. Upon application of twelve freeholders, they may lay out, alter or discontinue roads.
19. Manner of deciding upon applications.
20. Shall examine personally the roads, and hear reasons.

SECTION

21. Duties prescribed in laying out and altering, or discontinuing a road.
22. Required to record and describe all roads laid out.
23. Damages may be determined by agreement, not exceeding \$200.
24. When damages are not satisfactory, they may be submitted to a jury.
25. Bond for costs to be executed, and provisions governing the costs in certain awards of the jury.
26. Twelve disinterested freeholders to be summoned as the jury.
27. Jury to be sworn, view the road, hear the statements, and make their appraisal.
28. Mileage and jury fees.
29. Damages against the county to be presented to the county board, and paid out of county treasury.
30. Authority to alter roads.
31. Relates to the removal of fences obstructing roads laid out.
32. All roads to be surveyed within one year from the passage of the act granting them; and roads laid out to be completed in one year.
33. Trees may be planted on each side of public roads; damages for their injury.
34. Provisions of this act to be general.
35. Roads hereafter to be laid out, shall be in accordance with this act.
36. County commissioners authorized to appoint road commissioner when not elected.
37. Repeal of conflicting laws.
38. Roads previously located declared valid.
39. Act takes effect on passage.

An Act relating to County Roads. (a)

[Chapter 13, Revised Statutes.]

by C. W. 33-1860

(1.) SEC. I. All county roads shall be under the supervision of the board of county commissioners of the county, wherein the said roads are

County roads under supervision of commissioners.

(a) This chapter from the revised statutes is published, although the act of May 23, 1857, which follows, in a great measure supersedes it. They must be read together. The township act of 1858 seems to except state and county roads from its operation; of which see sec. 1, art. 23.—[Chap. 8, ante.]

located, and no county road or cartway shall be hereafter established, nor shall any road be altered or vacated in any county in this territory, except by the authority of the board of commissioners of the proper county.

(2.) SEC. II. All applications for laying out, altering, or vacating county roads, shall be by petition to the board of commissioners of the proper county, signed by at least twelve householders of the county residing in the vicinity where said road is to be laid out, altered, or vacated, which petition shall specify the place of beginning, the intermediate points, if any, and the place of termination of said road.

Applications for laying out or altering roads, how made.

(3.) SEC. III. When any petition shall be presented for the action of the said board, for the laying out, alteration, or vacation of any road, it shall be accompanied by satisfactory proof, that notice has been given by posting up advertisements in three public places, of said road or proposed road, or by publication three successive times in any newspaper published in the county, thirty days previous to the presentation of said petition to the board, notifying all concerned, that application would be made to the said board at their session, for laying out, altering, or vacating said road, (as the case may be.)

Proof of notice must accompany petition.

(4.) SEC. IV. Upon the presentation of such petition, and proof of notice being given as above provided, it shall be the duty of the board of commissioners to appoint two disinterested householders residing in the vicinity of said road, who in connection with the county surveyor, shall constitute a board of examiners, who shall meet at a time and place to be designated by the said board of commissioners, not less than ten days from the date of the appointment of said examiners.

Upon petition and proof of notice, commissioners to appoint board of examiners.

(5.) SEC. V. The said examiners, or a majority of them assembled at the time and place appointed, shall each take an oath or affirmation faithfully and impartially to discharge the duties of their appointment, and shall forthwith proceed to select and mark said road as proposed to be laid out or altered according to the prayer of the petitioners, as near as in their opinion, a good road can be made without unreasonable expense, or causing the farms or inclosures through which it may pass, to be unnecessarily damaged; and in all cases where roads can be laid out on township, section, or quarter section lines, it is hereby made the duty of all examiners so to locate roads hereafter to be located in this territory, when the land has been surveyed and the face of the country and the interests of the settlers along the line of said road will permit.

Examiners to take oath.

(6.) SEC. VI. The said examiners, after having made the necessary examination, shall report to the board of commissioners, at their next meeting, in writing, stating the general face of the country over which said road passes, its general necessity and utility, and whether in their opinion, said road should be laid out, altered, or vacated, as prayed for by the petitioners; and if the said examiners, or a majority of them, shall report unfavorably, or if there shall be a remonstrance presented to the board of commissioners at any time previous to the final decision of said board, against the laying out, altering, or vacating any road, signed by twelve householders, residing on or near said road, then said road shall not be laid out, altered, or vacated, as prayed for by the petitioners, until a majority of householders residing within one mile of the line of said road, shall have petitioned the board of commissioners, for the laying out, altering, or vacating of said road, which fact shall be proved to the satisfaction of said board of commissioners, in which case the prayer of the petitioners shall be granted.

Duties of examiners.

Examiners to report to commissioners; report what to contain.

(7.) SEC. VII. Whenever after any examination as above prescribed, the board of county commissioners shall authorize any road to be located or altered, the register of deeds shall forthwith issue an order under the

Register of deeds, when to issue order for survey of road.

Duty of surveyor.

seal of the board of commissioners, directing the county surveyor, forthwith to survey said road, as located and marked by the road examiners; and the said surveyor shall take to his assistance two chain bearers, and one marker, and proceed to survey such road, and cause the same to be conspicuously marked throughout, noting the courses and distances, and at the end of each mile, shall cause the number of the same, and also the commencement and termination of said road or survey, to be marked on a tree or monument erected for that purpose; and he shall make out a correct and certified return of the survey of said road, and a plot of the same, and deliver said return and plot to the register of deeds of his proper county, on or before the day of the first regular meeting of the board of commissioners, next ensuing after the date of the order for the survey of said road, and shall also furnish at the same time, a true and certified account of the time necessary and consumed in making the survey of the said road; and the board of commissioners shall immediately thereupon direct orders to be drawn on the county treasurer for the payment of the same, allowing the surveyor two dollars and fifty cents per day, for each day necessarily employed in said survey, and two dollars for the return and plot of said survey, and allowing one dollar and fifty cents per day, for each day each of the chain bearers and marker were necessarily employed by said surveyor, or in the survey of said road.

Register of deeds to record plot of road, and notify supervisors to open same.

(8.) SEC. VIII. Upon receiving the return and plot of any road, the register of deeds shall thereupon record the same, and notify the several supervisors of roads, through whose precincts said road passes, that the said road has been legally established as a public road and highway; and the said supervisors shall proceed to open said road as prescribed by law.

When road is vacated, owners of land may inclose the same.

(9.) SEC. IX. Whenever any public road is vacated in this territory, it shall be competent for the owners of any land from which said road was taken, to inclose, cultivate and dispose of the same, in the same manner as if said road had never been established; and the board of commissioners of any county shall have authority to vacate any portion or the whole of any county road, in the manner and under the restrictions herein prescribed, within the limits of their proper county.

County roads to be sixty-six feet wide.

(10.) SEC. X. All county roads laid out and established in this territory, shall be sixty-six feet in width; and it shall not hereafter be considered legal to locate a territorial road when said road does not pass the line of a county, or without a petition for the location of said road from at least twelve householders in each county in which said road is proposed to be located; residing in the vicinity of the line of the proposed road.

Compensation of examiners.

(11.) SEC. XI. All road examiners appointed under the provisions of this chapter, shall receive two dollars per day, for each and every day necessarily employed in the examination of any road.

When section line divides two counties, commissioners of either county may locate road.

(12.) SEC. XII. Whenever a township or section line divides two counties, and it becomes necessary for the location of a road along said line, it shall be competent for the board of commissioners of either county, to authorize the location of said road in every respect, as provided by this chapter for the location of roads, and the supervisors at the several precincts in which said road shall be located, shall open and keep in repair so much of said road as lies within their respective county; and whenever a territorial road runs on the line between two counties, no such vacation of such road shall be legal, unless authorized by both the said counties, as provided by this chapter.

Commissioners may cause to be opened a cartway.

(13.) SEC. XIII. Any person who shall be so located that his land has no connection with any public road, or cartway, may apply to the board of commissioners of his county, in writing, at any regular or special session, and the said board of commissioners shall thereupon issue an order

to the county surveyor, directing him to locate and mark a cartway from the premises of said applicant, to some convenient public road or cartway, so located as to be most beneficial to all through whose land it may pass, and the said surveyor shall notify the occupant of any and every cultivated or inclosed farm or tract of land, through which said cartway is located, and report his doings therein, to the board of commissioners at their next regular session, when, if there is no remonstrance against said cartway, the county surveyor shall forthwith be directed to survey said cartway, and file a plot thereof, for record in the same manner, in every respect, as required for the survey of county roads, except that it shall be surveyed thirty-three feet in width.

(14.) SEC. XIV. If the owner or owners of any land in which said cartway shall be located, shall remonstrate previous to the survey thereof in writing to the board of commissioners, showing cause why said cartway should not be established as located by the surveyor, it shall be the duty of said commissioners to furnish the surveyor with a copy of said remonstrance, and direct him to review said location, and if practicable, and the ends of justice can be better served, to re-locate said cartway, and give notice to all concerned, that they may appear before the board of commissioners at their next regular session, when if no person appears to remonstrate, the last location made, shall be ordered to be surveyed as provided in the foregoing section; but if any person or persons shall appear to remonstrate against the second location, as reported by the surveyor, then the said board shall decide from the reasons laid before them, which of the cartways so located shall be surveyed and established, and give their order to the county surveyor accordingly.

If remonstrance be made, commissioners to deliver the same to surveyor; his duties.

An Act relating to Public Roads. (a)
[Passed May 28, 1857.] c. 62

(15.) SEC. I. *Be it enacted by the legislative assembly of the territory of Minnesota:* At the first general election held in this territory after the passage of this act, there shall be elected two road commissioners in each organized county, and the persons having the highest number of votes, shall serve for the period of two years; the person having the next highest number of votes, shall serve one year; and at each annual election thereafter, there shall be elected one road commissioner in each county to serve two years, or until his successor is duly elected and qualified: *provided*, that if at said first election, two or more persons shall have an equal number of votes, their grade shall be determined by lot, by the sheriff, in presence and under the direction of the judge of probate for the county; and *provided further*, that such commissioners may be appointed to hold their offices until the next general election; such appointment to be made as in case of vacancies in county offices.

Elect two road commissioners.

(16.) SEC. II. Each person elected or appointed as a commissioner, shall within ten days after being notified of his election or appointment, take and subscribe an oath, to support the constitution of the United States, the organic act of this territory, and faithfully and impartially to discharge the duties of his office as such commissioner, before the judge of probate or some other person authorized to administer oaths, and such oath shall be administered without fee, and certified by the officer before whom it was taken, with the date of taking the same, and such person before entering upon the duties of his office shall cause said oath so certified, to be

Oath of office.

(a) This act is published in consequence of doubts concerning the jurisdiction of boards of supervisors over county roads. See sec. 1, art. 23, township act of 1858. The control of all roads, however, was probably intended to be conferred on the boards of supervisors.

filed within ten days, in the office of the register of deeds of the county for which he is elected.

Board of road commissioners.

(17.) SEC. III. Said commissioners, when so elected and qualified as hereinbefore provided, shall, together with the county surveyor, constitute a board of road commissioners, who shall have power in the manner, and under the restrictions hereinafter provided, to lay out and establish upon actual survey, such new roads in their respective counties as they may deem necessary and proper, and to alter the same, or discontinue such old roads, as shall appear to them to have become unnecessary.

Proceedings to have road laid out or discontinued.

(18.) SEC. IV. [*As amended by general laws of 1858, page 48:*] Whenever any twelve or more freeholders residing in any county, shall wish to have a road laid out, altered or discontinued in such county, they may make application in writing to the road commissioners of the county in which they reside, for that purpose; and the said commissioners shall proceed to lay out, alter or discontinue such [road,] if, in their opinion, the public good will thereby be promoted; and whenever said road shall be proposed to extend through more counties than one, the said commissioners shall notify the commissioners of such counties of the time and place of meeting, and one commissioner from each county shall meet at such time and place, and shall proceed to lay out, alter or discontinue such road, if in their opinion, the public good will thereby be promoted.

Public notice of application.

(19.) SEC. V. Upon application made to the commissioners for the laying out, altering or discontinuing any road, they shall 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 the occupants of the lands through which such road may pass; which notice shall be served personally or by copy left with, or at the usual place of abode of each occupant of such lands; and such notice shall also be posted up in three or more public places in said county at least twenty days before the time of such meeting of the commissioners; every such notice shall specify as near as practicable, the road proposed to be laid out, altered or vacated, and the several tracts of land through which the same may pass.

Commissioners to examine road.

(20.) SEC. VI. The commissioners, upon being satisfied that the notices required in the preceding section have been duly given, proof of which may be shown by affidavit or otherwise, as they may require, shall proceed to examine personally such proposed road, and shall hear any reasons that may be offered for or against laying out, altering or discontinuing the same, and decide upon the application as they shall deem proper.

Report of commissioners to be filed.

(21.) SEC. VII. Whenever the commissioners shall lay out, alter or vacate any road, they shall cause an accurate survey thereof to be made when necessary, and they shall make out a description of the road so laid out, altered or vacated, and incorporate the same in an order to be signed by them, which, with a copy of the field notes and plat of the survey of the same attached, together with the application, copy of notice and affidavits, or other proof of notice required as aforesaid, shall be filed and recorded in the office of the register of deeds, within ten days after the completion of the survey of the same, who shall note the time of recording the same in the record-book kept for that purpose; and the commissioners shall receive for their services the sum of three dollars per day, to be paid out of the county treasury if the application be granted; otherwise, to be paid by the applicants.

Describe more fully roads laid out.

(22.) SEC. VIII. The commissioners shall have power, and it shall be their duty to cause such of the roads used as highways, as have been lawfully laid out but not sufficiently described, and such as have been lawfully laid out and used as such up to the present time, but not fully and

sufficiently recorded, to be ascertained, described, and entered of record in the office of the register of deeds.

(23.) SEC. IX. [*As amended by general laws of 1858, page 49:*] ⁰²⁵² Upon the laying out or altering any road in this state, or in case any road has already been laid out or altered, if damages shall be claimed therefor by any owner through whose land the same shall be laid, the amount of such damages may be determined by agreement between the commissioners and such owner, provided the damages thus allowed by the commissioners, shall not, in the aggregate, exceed two hundred dollars in any county, upon any one road so laid out or altered, or heretofore laid out or altered by them. Every such agreement shall be reduced to writing and signed by such owner and the commissioners, and filed in the office of the register of deeds of the proper county; and every such agreement and every release of damages given, shall forever preclude such owner from all further claim for damages.

Damages may be determined by agreement.

Agreement to be in writing and filed with register.

(24.) SEC. X. [*As amended by general laws of 1858, page 49:*] ⁰²⁵¹ If any owner of land through which a road shall be laid out or altered, or has heretofore been laid out or altered, shall not be satisfied with the sum offered for damages by such commissioner, or if no sum be offered, he may, within thirty days thereafter, apply to a justice of the peace of the same, or adjoining precinct, for a jury to assess and appraise such damages, which application shall be in writing, describing the premises; and any number of persons claiming damages on account of such road may join in such application. The road commissioners shall have at least six days notice of the time and place of such meeting.

Party desiring damages may demand jury to assess.

Notice to commissioners.

(25.) SEC. XI. Any person applying for a jury as mentioned in the preceding section, shall by himself or agent, execute to the road commissioners and file with the justice a bond with one or more sureties, to be approved by such justice conditioned to pay all costs arising from such appeal and appraisement damages, provided such jury shall not award a larger amount of damages than were offered by the commissioners; or in case the commissioners shall not have made any offer of damages, then conditioned to pay all such costs if the jury shall not award any damages; and where damages are allowed by the commissioners, and appeal is taken to a jury, the award of which shall not exceed the amount allowed by the commissioners, then all costs arising from such appeal and appraisement of damages shall not constitute an offset pro rata, against the amount of damages allowed, and if the costs exceed the damages, then judgment shall be rendered for the excess.

Bond required for costs.

(26.) SEC. XII. Upon the filing of such bond, the justice shall issue a precept to some constable of an adjoining precinct, neither interested nor of kin to any person through whose land such road is laid, directing him to summon twelve disinterested freeholders of his precinct, not of kin to the owner or occupant of such land, to meet at a time and place to be specified in such precept, to appraise the damages sustained by the laying out or altering of such road.

Summoning the jury.

(27.) SEC. XIII. At the time and place appointed for the appearing of such a jury, they shall be sworn by the justice, justly and impartially to make such appraisal, and shall proceed to view such road, and hear the statements and proofs of the parties if they deem necessary, and they shall make return of their appraisal to the justice, which shall be certified by such justice and filed with the register of deeds, and if the amount of the appraisal by such jury shall exceed the amount offered by the commissioners, or in case no sum shall have been offered by the commissioners, then, if the jury award any damages, the costs and expenses shall be paid by the county; but if the jury shall not award any damages, or more than

Jury sworn; shall hear the proof; and make appraisal.

was offered, the costs and expenses shall be paid by the applicant, and the justice shall render judgment and issue execution for the same.

Juror's fees.

(28.) SEC. XIV. Each person duly summoned, who shall attend as a juror, shall be allowed six cents a mile for each mile necessarily traveled from his place of abode to the place of meeting, and fifty cents for his services on such jury, and the justice shall be entitled to one dollar for his fees.

Charges against the counties.

(29.) SEC. XV. All damages consequent upon laying out or altering any road as finally settled upon, pursuant to the provisions of this act, and all lawful charges against a county for the services of any jury in the assessment of damages, or for the fees of any justice or constable provided for in this act, shall be laid before the county board and allowed, and the amount allowed shall be paid from the county treasury.

(30.) SEC. XVI. The road commissioners of each county through which any United States or territorial road shall pass, may alter the same within the limits of their county; but they shall not so alter any such road as to increase the distance thereby, except in avoiding obstacles which render a direct course impracticable; neither shall the connection of United States or territorial roads be broken at county lines.

Removal of fences.

(31.) SEC. XVII. Whenever the commissioners shall have laid out or altered any road through any enclosed, cultivated or improved lands, they shall give the owner or occupant of such lands notice in writing, to remove his fences within such time as they shall deem reasonable, not less than thirty days after giving such notice; but no person shall be required to remove such fence between the first day of April and the first day of November in any year, and if such owner or occupant shall not remove his fence within the time required in such notice, the commissioners shall cause such fences to be removed, and shall direct such road to be opened.

Survey of roads granted by law.

(32.) SEC. XVIII. The survey and platting of all territorial roads shall be completed within one year from the passage of the act granting them, and every road already laid out, except such roads as were laid out on land before it was pre-empted or entered, no part of which shall have been opened within one year from the time of its being so laid out, and every such road hereafter to be laid out, no part of which shall be opened within the like period, shall cease to be considered as a public road.

Trees may be planted; penalty for injury.

(33.) SEC. XIX. Any person owning or occupying land adjoining any public road, may plant or set out trees on each side of said road contiguous to his land, which trees shall not be set in the road more than ten feet from the margin thereof, and if any person shall maliciously cut down, destroy or injure any tree that may have been, or shall be so planted or set out, or which shall have been left on the side of such road within ten feet of such margin, he shall be liable to treble damages to the owner or occupant of such adjoining land.

This act is general.

(34.) SEC. XX. The provisions of this act relating to roads shall be construed to extend to all parts of the territory, except where special provisions, inconsistent therewith, have been, or shall be made by law in relation to particular towns, counties, cities or villages, and all acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

All roads to be laid out according to this act.

(35.) SEC. XXI. All public county roads hereafter to be laid out, shall be laid out in accordance with the provisions of this act, and the laws not inconsistent therewith.

County commissioners author-

(36.) SEC. XXII. (a) If any organized county or counties shall have failed or neglect to elect the road commissioners mentioned in the first

section [of this act], at the first general election after the passage thereof, the board of county commissioners of such county or counties shall be, and they are hereby authorized to appoint said road commissioners, who shall hold their offices until the next general election subsequent to such appointment; and for such time till such election shall take place; and the appointment of any road commissioners of any organized county where no election of such road commissioners have been held, is hereby declared legal and valid to all intents and purposes.

ized to appoint road commissioners when not elected.

(37.) SEC. XXIII. Anything in said act, or any act heretofore passed, inconsistent hereunto, is hereby repealed.

Repeal of inconsistent provisions.

(38.) SEC. XXIV. All roads which have been located under former existing laws by county authorities, within this state, since the passage of the law authorizing the election of road commissioners, approved May twenty-third, A. D. eighteen hundred and fifty-seven, all roads so located are hereby declared valid under the provisions of this act.

Roads previously located declared valid.

(39.) SEC. XXV. This act shall be in full force from and after its passage.

Take effect.

CHAPTER 12.

SALVAGE.

SECTION

1. Person taking vessel may hold the same until salvage be paid.
2. When vessel worth more than ten dollars, taker-up to make oath before justice of the peace, and post up notices.
3. When owner proves property, and pays charges, the same to be delivered up.
4. Property how recovered by owner when it shall not be delivered up.
5. Where property is not claimed within thirty days, taker-up how to proceed; notices to be published in newspaper.
6. After thirty days from date of notice, justice to certify his doings to clerk of district court; property how sold.
7. Proceeds of sale to be paid into county treasury, after costs and charges are paid.
8. Justice of the peace how to proceed where property is of less value than one hundred dollars.

SECTION

9. Where property not worth ten dollars, taker-up to give notice.
10. Indian canoes and lumber not subject to the provisions of this chapter; proviso.
11. Owner may redeem property any time before sale.
12. Penalty for detaining or embezzling property.
13. Officer receiving money under the provisions of this chapter, and secreting the same, how punished.
14. Justice of the peace to issue search-warrant for lost property.
15. Penalty for taking up saw-logs.
16. When logs lodge, owner may remove the same.
17. Where logs are not claimed for two years, owner of land may use the same.
18. Penalty for injuring saw-logs.

An Act concerning Salvage.

[Chapter 12, Revised Statutes.]

(1.) SEC. I. When any boat, canoe, or other vessel, or raft, shall be lost, wrecked, or found adrift and in a perishable condition, on or in any river in this territory, any person may take up and secure the same at or near the place where found, and may retain the same against the rightful owner or owners thereof, until salvage be paid; or may have and maintain a civil action against such owner or owners for the amount of salvage due under the provisions of this act.

Person taking vessel, may hold the same until salvage be paid.

(2.) SEC. II. Whenever any boat, canoe, or other vessel, or raft, shall be taken up and secured, if the same shall exceed the value of ten dollars,

When vessel worth more than ten dollars,