

THE 79  
GENERAL STATUTES

OF THE  
STATE OF MINNESOTA

As Amended by Subsequent Legislation, with which are Incorporated  
All General Laws of the State in Force December 31, 1894

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AND A GENERAL INDEX BY THE EDITORIAL STAFF OF THE NATIONAL  
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COMPLETE IN TWO VOLUMES

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VOL. 1

CONTAINING THE CONSTITUTION OF THE UNITED STATES, THE ORDINANCE OF 1787,  
THE ORGANIC ACT, ACT AUTHORIZING A STATE GOVERNMENT, THE STATE  
CONSTITUTION, THE ACT OF ADMISSION INTO THE UNION, AND

Sections 1 to 4821 of the General Statutes

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1894

# MINNESOTA STATUTES 1894

Ch. 13]

ROADS, CARTWAYS, AND BRIDGES.

§§ 1775-1777

## CHAPTER 13.

### ROADS, CARTWAYS, AND BRIDGES.

1. Highways, §§ 1775-1914.
  - (1) Roads, Cartways, and Bridges, §§ 1775-1883.
  - (2) Roads in More than One County, §§ 1883-1893.
  - (3) Free Turnpikes, §§ 1894-1903.
  - (4) Watering Troughs and Roadside Wells, §§ 1904-1906.
  - (5) Draining Public Highways, §§ 1907-1914.
2. Bridges and Ferries, §§ 1915-1933.
  - (1) Ford Crossings and Bridge Notices, §§ 1915-1917.
  - (2) Bridges on the Minnesota River, §§ 1918-1921.
  - (3) Ferries, §§ 1922-1933.
3. Roads for Steam Traction Motors, §§ 1934-1944.

#### [TITLE 1.]

#### [HIGHWAYS.]

#### (1) ROADS, CARTWAYS, AND BRIDGES.

#### § 1775. Duties of town supervisors.

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 district 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, c. 5, § 1;<sup>1</sup> G. S. 1878, c. 13, § 1.)

See *Bank v. Brainerd School-Dist.*, 49 Minn. 106, 51 N. W. Rep. 814.

#### § 1776. To report at 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, c. 5, § 2; G. S. 1878, c. 13, § 2.)

#### § 1777. Duties of overseers of highways.

The overseers of highways in each town shall repair and keep in order the roads within their respective districts; warn all persons from whom labor is:

<sup>1</sup>An act relating to roads, cartways, and bridges. Approved March 8, 1873 (Laws 1873, c. 5).

1775	1775-1805
65-M - 5	95 . 46
67-M - 5	
	1775-1914
1775-1933	95 . 300
99 - 227	95 . 302
	1775
1775-1944	97 - 320
73-NW 629	69-NW 472
	1775-1914
	97 - 357
	1775-1788
	01 - 285
1775	
1914	'05 . 163

1777
99 . 107
65-M - 5

# MINNESOTA STATUTES 1894

§§ 1777-1784

ROADS, CARTWAYS, AND BRIDGES.

[Ch. 13

due to work on highways, at such times and places within their several districts as they may think proper; collect all fines and commutation money, execute all lawful orders of the supervisors, and deliver to the town clerk within sixteen days after election or appointment, a list, subscribed by such overseer, of the names of all the inhabitants in his road district who are liable to work on highways.

(1873, c. 5, § 3; G. S. 1878, c. 13, § 3.)

1778  
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## § 1778. Vacancy in office of overseer, how filled.

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, c. 5, § 4; G. S. 1878, c. 13, § 4.)

## § 1779. Appointee, how notified.

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, c. 5, § 5; G. S. 1878, c. 13, § 5.)

## § 1780. Neglect of duty by overseer—Penalty.

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

(1873, c. 5, § 6; G. S. 1878, c. 13, § 6.)

## § 1781. Supervisors' meetings.

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

(1873, c. 5, § 7; G. S. 1878, c. 13, § 7.)

## § 1782. Assessment of road tax.

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

(1873, c. 5, § 8; G. S. 1878, c. 13, § 8.)

## § 1783. Same—Persons and property liable.

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, c. 5, § 9; G. S. 1878, c. 13, § 9.)

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

## § 1784. Personal property assessment.

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

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# MINNESOTA STATUTES 1894

Tit. 1]

HIGHWAYS.

§§ 1784-1789

be subject to collection or commutation by labor, the same as land road tax assessed on real estate.

(1873, c. 5, § 10; G. S. 1878, c. 13, § 10.)

## § 1785. Copies of lists for overseers.

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

(1873, c. 5, § 11; G. S. 1878, c. 13, § 11.)

## § 1786. Overseers to correct 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, c. 5, § 12; G. S. 1878, c. 13, § 12.)

## § 1787. Notice to work out tax—Commutation.

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, c. 5, § 13; G. S. 1878, c. 13, § 13.)

## § 1788. Powers of overseers in special cases.

Road overseers have power, and it is hereby made their duty, whenever any public highway becomes obstructed or unsafe, from any cause whatever, to call upon any or all persons liable to poll tax in his district to come forth 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, c. 5, § 14; G. S. 1878, c. 13, § 14.)

## § 1789. Payment or commutation of labor tax.

Every person liable to work upon the highways shall work the whole number of days for which he is assessed; but every such person, other than the overseer of highways, may elect to commute for the same, or for some part thereof, at the rate of one dollar and fifty cents per day, in which case such commutation money shall be paid to the overseer of highways of the district in which the person commuting shall reside, to be applied and expended by the overseer in the improvement of the roads and bridges of the same district. Overseers of highways, when such land tax is paid either in money or labor, shall write the word "paid," against such name or tract of land in their list on which the same is paid.

(1873, c. 5, § 15; G. S. 1878, c. 13, § 15.)

(491)

1788

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1789

01 - 256

**§ 1790. Time of paying commutation money.**

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, c. 5, § 16; G. S. 1878, c. 13, § 16; as amended 1879, c. 51, § 1.)

**§ 1791. Overseers may require team.**

Every overseer of highways has power to require a team, or cart, wagon or plow, with a pair of horses or oxen and a man to manage them, from any person having the same within his district.

(1873, c. 5, § 17; G. S. 1878, c. 13, § 17.)

**§ 1792. Work by substitute.**

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

(1873, c. 5, § 18; G. S. 1878, c. 13, § 18.)

1793  
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**§ 1793. Penalties for neglecting road duty.**

Every person so assessed and duly notified who does not commute, and who refuses or neglects to appear as above provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof as hereinafter provided shall be fined for every day's refusal or neglect the sum of two dollars. If he was required to furnish a team, man, carriage, or implements, and refused or neglected so to comply, he shall be fined as follows: For wholly omitting to comply with such requisition, four dollars for each day; for omitting to furnish a cart, wagon, or plow, one dollar for each day; for omitting to furnish a pair of horses or oxen, one dollar and fifty cents for each day; for omitting to furnish a man to manage the team, one dollar and fifty cents for each day.

(1873, c. 5, § 19; G. S. 1878, c. 13, § 19; as amended 1883, c. 29, § 1.)

**§ 1794. Overseers to complain of delinquents.**

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, c. 5, § 20; G. S. 1878, c. 13, § 20.)

1795  
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**§ 1795. Justice to issue warrant of arrest.**

The justice to whom such complaint is made shall forthwith issue a warrant directed to the sheriff or any constable of the county, requiring him to arrest such delinquent and bring him before such justice to be dealt with according to law, and upon such complaint and warrant further proceedings shall be had as is provided for the trial and punishment of misdemeanors.

(1873, c. 5, § 21; G. S. 1878, c. 13, § 21; as amended 1883, c. 29, § 2.)

**§ 1796. Fines—Disposition.**

All fines imposed by the terms of section number nineteen of this chapter, shall, when collected, be paid to the overseer who entered complaint, to be by him expended in improving the roads and bridges in his district.

(1873, c. 5, § 22; G. S. 1878, c. 13, § 22; as amended 1883, c. 29, § 3.)

§ 23 of this act was repealed by Laws 1883, c. 29, § 4.

**§ 1797. Excuse for neglect does not exempt from tax.**

The acceptance by an overseer of any excuse for refusal or neglect shall not, in any case, exempt the person excused for commuting for or working the whole number of days for which he is assessed during the year.

(1873, c. 5, § 24; G. S. 1878, c. 13, § 24.)

**§ 1798. Overseers' compensation.**

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

(1873, c. 5, § 25; G. S. 1878, c. 13, § 25.)

**§ 1799. Road tax list and certificate.**

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, c. 5, § 26, as amended 1877, c. 49, § 1; G. S. 1878, c. 13, § 26.)

**§ 1800. Fine for neglect to deliver list.**

If any overseer refuses or neglects to deliver such list, with his certificate, as provided in the last section, he shall for every 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, c. 5, § 27; G. S. 1878, c. 13, § 27.)

**§ 1801. List of delinquent road tax for county auditor.**

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 of the town in the construction or repair of roads and bridges, to be paid by the town treasurer upon the order of the supervisors.

(1873, c. 5, § 28, as amended 1877, c. 49, § 2; G. S. 1878, c. 13, § 28.)

**§ 1802. Three-fourths of road labor to be done before August.**

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

(1873, c. 5, § 29; G. S. 1878, c. 13, § 29.)

**§ 1803. Overseer to render account—Contents.**

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.

# MINNESOTA STATUTES 1894

§§ 1803-1808

ROADS, CARTWAYS, AND BRIDGES.

[Ch. 13]

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

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

(1873, c. 5, § 30; G. S. 1878, c. 13, § 30.)

## § 1804. Overseer to 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, c. 5, § 31; G. S. 1878, c. 13, § 31.)

## § 1805. Penalty for 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, c. 5, § 32; G. S. 1878, c. 13, § 32.)

Laws 1887, c. 43, is not in conflict with Const. art. 1, § 13. State v. Rapp, 39 Minn. 65, 38 N. W. Rep. 926.

As to the power of the supervisors to vary from the line specified in the petition. State v. Thompson, 46 Minn. 302, 48 N. W. Rep. 1111.

The supervisors can vacate a highway only in the way prescribed. Miller v. Town of Corinna, 42 Minn. 391, 44 N. W. Rep. 127.

## § 1806. Laying out, altering, and discontinuing roads.

The supervisors of the town may alter or discontinue any road, or lay out any new road, upon the petition of not less than six legal voters who own real estate or who occupy real estate under the homestead or pre-emption laws of the United States, or under contract from the state of Minnesota, within two miles of the road to be altered, discontinued, or laid out; or upon the petition of eight legal voters, who are freeholders and residents of the town within three 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.

(1873, c. 5, § 33, as amended 1877, c. 51, § 1; 1878, c. 43, § 1; G. S. 1878, c. 13, § 33; 1881, Ex. S. c. 29, § 1; 1885, c. 29; 1887, c. 43; 1893, c. 169, § 1; Id. c. 183, § 1.)

## § 1807. Same—Petition to be filed, etc.

When 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 file their petition with the town clerk and 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.

(1873, c. 5, § 34; G. S. 1878, c. 13, § 34; as amended 1891, c. 68, § 1.)

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

## § 1808. Same—Notice of hearing on petition.

Whenever the supervisors receive a petition, in compliance with the preceding sections, for laying out, altering or discontinuing any highway, they shall, within thirty days, make out a notice, and fix therein a time and place at which they will meet and decide upon such application; and the applicant shall, at least ten days previous to such time, cause such notice to be given to all occupants of the land through which such highway may pass, which notice shall be served personally or by copy left at the usual place of abode of each of said occupants. The supervisors shall also cause copies of such notice to be posted

1806  
55-M . 227  
1806  
67-NW 662  
1806-1843  
97 - 199  
1806  
99 - 227  
1806  
01 - 204

1807 92-M . 57

1808 87-M . 7

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, c. 5, § 35; G. S. 1878, c. 13, § 35.)

The notice is jurisdictional, and must conform strictly to the statute. *Town of Lyle v. Chicago, M. & St. P. Ry. Co.*, Minn. 56 N. W. Rep. 820.

**§ 1809. Same—Proceedings at hearing.**

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, c. 5, § 36; G. S. 1878, c. 13, § 36.)

**§ 1810. Survey, description, and order —Filing papers.**

Whenever the supervisors shall lay out, alter, or discontinue any highway, they shall cause a survey thereof to be made when necessary; and they shall make out an accurate description of the highway so altered, discontinued, or laid out, and incorporate the same in an order to be signed by them, and shall cause such order, together with all the petitions and affidavits of the service of notices, to be filed in the office of the town clerk, who shall note the time of filing the same; but on the refusal of the supervisors to lay out, alter, or discontinue such road, they shall note the fact on the back of the petition, and file the same as aforesaid. All orders, petitions, and affidavits, together with the award of damages, shall be made out and filed within five days after the date of the order for laying out, alter[ing,] or discontinuing such highway; but the town clerk shall not record such order within thirty days, nor until a final decision is had, and not then unless such order is confirmed. And in case the supervisors shall fail to file such order within twenty days, they shall be deemed to have decided against such application. And after such order is confirmed, and such order, together with the award, has been recorded by such town clerk, the same shall be sent by him to the county auditor, who shall file and preserve all such papers thus transmitted to him, and give his receipt therefor to the town clerk, which said receipt shall be filed by such town clerk and an entry thereof be made by him in the road record, relating to such road.

(1873, c. 5, § 37, as amended 1877, c. 48, § 1; G. S. 1878, c. 13, § 37; 1883, c. 63, § 1.)

A highway can be vacated only by an order signed by the town supervisors, and, until signed, such order has no force or effect as an order. *Keyes v. Railway Co.*, 36 Minn. 290, 30 N. W. Rep. 833.

An order laying out a road must definitely describe its location. An order defective in description as to a part is defective as to the whole. *Sonnek v. Town of Minnesota Lake*, 50 Minn. 553, 52 N. W. Rep. 961.

**§ 1811. Survey—Distances to section lines, etc.**

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

(1879, c. 85, § 1; G. S. 1878, v. 2, c. 13, § 37a.)

See *Sonnek v. Town of Minnesota Lake*, cited in note to § 1810.

1809  
82-NW1099



# MINNESOTA STATUTES 1894

§§ 1812-1819

ROADS, CARTWAYS, AND BRIDGES.

[Ch. 13

**§ 1812. Highway boundaries—Duty of county surveyor.**

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, c. 175, § 1.2)

**§ 1813. Same.**

It shall be the duty of the supervisors of the several towns, whenever requested by any freeholder or freeholders whose lands are intersected by or adjoin 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.

(Id. § 2.)

**§ 1814. Same—Notice of time and place to be given.**

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 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 thirty-five of chapter thirteen of the general statutes of one thousand eight hundred and seventy-eight, 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.

(Id. § 3, as amended 1893, c. 171, § 1.)

**§ 1815. Same—Plat to be filed with register of deeds.**

When such survey is made, the surveyor shall, within twenty 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, c. 175, § 4.)

**§ 1816. Same—Entry in reception index.**

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 cents.

(Id. § 5.)

**§ 1817. Appeal, how taken.**

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 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.

(Id. § 6.)

**§ 1818. Appeal, how tried.**

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 dollars, shall not apply.

(Id. § 7.)

**§ 1819. Plat, evidence of what.**

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.

(Id. § 8.)

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<sup>2</sup>An act authorizing the county surveyors to establish the boundary lines of highways. Approved March 19, 1889.

**§ 1820. Effect of the order as evidence.**

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

(1873, c. 5, § 38; G. S. 1878, c. 13, § 38.)

**§ 1821. Damages and benefits—How determined.**

The damages sustained by reason of laying out, altering or discontinuing any road, may be ascertained by the agreement of the owners and the supervisors; and unless such agreement is made, or the owners shall, in writing, release all claim to damages, the same shall be assessed in the manner hereinafter prescribed, before the same is opened, worked or used. Every agreement and release shall be filed in the town clerk's office, and shall 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 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, c. 5, § 39; G. S. 1878, c. 13, § 39.)

The rule laid down in *Winona, etc., R. Co. v. Waldron*, 11 Minn. 515, (Gil. 392, 415.) that the advantages and benefits which are to be estimated in assessing the damages do not embrace the general advantages and benefits which are enjoyed by the claimant, in common with the other owners of real estate in the vicinity, but only such advantages and benefits as are direct and special to the land, a part of which is taken, followed *Arbrush v. Town of Onkdale*, 25 Minn. 61, 62, 9 N. W. Rep. 30.

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

**§ 1822. Supervisors' action final for one year.**

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, c. 5, § 40; G. S. 1878, c. 13, § 40.)

**§ 1823. 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

# MINNESOTA STATUTES 1894

§§ 1823-1829

ROADS, CARTWAYS, AND BRIDGES.

[Ch. 13

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, c. 5, § 41; G. S. 1878, c. 13, § 41.)

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

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

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

1824  
82-NW1099

## § 1824. Roads on line between towns.

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, c. 5, § 42; G. S. 1878, c. 13, § 42.)

See *State v. Rapp*, 39 Minn. 65, 38 N. W. Rep. 926.

## § 1825. Such highways to be 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, c. 5, § 43; G. S. 1878, c. 13, § 43.)

## § 1826. To what towns such districts belong.

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, c. 5, § 44; G. S. 1878, c. 13, § 44.)

## § 1827. Same—Existing roads between towns.

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, c. 5, § 45; G. S. 1878, c. 13, § 45.)

1828  
99 - 153

## § 1828. Same—Appeal from supervisors.

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, c. 5, § 46; G. S. 1878, c. 13, § 46.)

## § 1829. Road on line between town and city.

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

(1879, c. 101, § 1; G. S. 1878, v. 2, c. 13, § 46a.)

# MINNESOTA STATUTES 1894

Tit. 1]

HIGHWAYS.

§§ 1830-1833

## § 1830. Same—Appeal.

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

(1879, c. 101, § 2; G. S. 1878, v. 2, c. 13, § 46b.)

## § 1831. Same—What 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, c. 101, § 3; G. S. 1878, v. 2, c. 13, § 46c.)

## § 1832. Width of public roads—Dedication—Cart-ways—Laying out.

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

(1873, c. 5, § 47, as amended 1877, c. 50, § 1; G. S. 1878, c. 13, § 47; 1879, c. 51, § 2.)

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

That part of this section which provides that "when any road \* \* \* shall have been used \* \* \* for 6 years continuously, \* \* \* the same shall be deemed to have been dedicated to the public," is valid. *Miller v. Town of Corinna*, 42 Minn. 391, 44 N. W. Rep. 127.

When a highway is obtained by adverse user, its width is to be measured by the character and extent of the user. *Marchand v. Town of Maple Grove*, 48 Minn. 271, 51 N. W. Rep. 606.

This section does not supersede the common-law rule as to dedication to public use as a highway. *Klenk v. Town of Walnut Lake*, 51 Minn. 381, 53 N. W. Rep. 703.

The operation of this section in respect to the circumstances under which a road shall be deemed dedicated to the public is not affected by the fact that proceedings previously commenced to lay it out as a highway are still pending. *Elfelt v. Stillwater St. Ry. Co.*, 53 Minn. 68, 55 N. W. Rep. 116.

See *Ziebarth v. Nye*, 42 Minn. 541, 543, 44 N. W. Rep. 1027; *State v. Woll*, 51 Minn. 386, 53 N. W. Rep. 759; *Hall v. City of St. Paul (Minn.)* 57 N. W. Rep. 928.

## § 1833. Temporary cart-ways—How laid out.

That whenever any two or more owners of pine lands in the state shall wish to have a temporary public cart-way laid out, they may make application there-

(499)

1832  
56-M . 431  
1832  
62-M - 200  
64-NW 394  
67-NW 360

1832  
99 - 152  
99 - 221  
64-M - 459

1832  
80-NW 702

1832 '05 . 66

1833  
99 - 160

# MINNESOTA STATUTES 1894

§§ 1833-1835

ROADS, CARTWAYS, AND BRIDG S.

[Ch. 13

for in writing to the supervisors of the town in which such cart-way is desired; or, if the same be not within any organized town, then to the commissioners of the county; and such supervisors or commissioners shall thereupon proceed to lay out such temporary cart-way in all respects as provided by the law in force at the time of such applications, in relation to laying out permanent public cart-ways by town supervisors, except as hereinafter provided; and the cart-ways hereby authorized shall not be less than one nor more than two rods in width.

(1883, c. 119, § 1; <sup>3</sup> G. S. 1878, v. 2, c. 13, § 47a.)

1834  
99 - 160 **§ 1834. Same—Procedure.**

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

(1883, c. 119, § 2; G. S. 1878, v. 2, c. 13, § 47b.)

1835  
99 - 160 **§ 1835. Same—Expenses and damages—Repairs—Appeal.**

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

(1883, c. 119, § 3; G. S. 1878, v. 2, c. 13, § 47c.)

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

# MINNESOTA STATUTES 1894

Tit. 1]

HIGHWAYS.

§§ 1836-1839

## § 1836. Same—In unorganized town.

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

(1883, c. 119, § 4; G. S. 1878, v. 2, c. 13, § 47d.)

1836  
99 - 160

## § 1837. Same—Applicable to 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 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, c. 5, § 48; G. S. 1878, c. 13, § 48; as amended 1889, c. 85, § 1.)

1837  
56-M - 431

## § 1838. Roads in more than one town—Petition.

If twenty-four freeholders of any county containing one hundred or more legal voters, and twelve freeholders of any county containing less than one hundred legal voters, petition the board of commissioners of such county for the location, establishment, change or vacation of any highway or cartway running into more than one town, or on the line between two towns of said county, and not within the limits of any incorporated city, whether such highway or cartway is connected or to be connected with other roads or not, setting forth in such petition the beginning, course and termination of the highway or cartway proposed to be located, established, changed or vacated, together with the names of the owners of the land, if known, through which the same may pass, the auditor of such county shall lay such petition before the board of county commissioners at the next session thereafter.

(1873, c. 5, § 49; G. S. 1878, c. 13, § 49; as amended 1885, c. 14, § 1; 1891, c. 150,\* § 1.)

\*By § 2 of c. 150, Laws 1891, the provisions of that act shall not apply to Goodhue county, but as to that county Laws 1881, Ex. S. c. 58, shall remain in force. Laws 1891, c. 67, approved April 6th, amends G. S. 1878, c. 13, § 49, omitting all reference to the amendments of that section. This chapter appears to be superseded by Laws 1891, c. 150, approved April 18th.

A petition may be presented for hearing at an "adjourned" or "extra" session of the board, provided the 30 days' notice has been given. *Burkleo v. County of Washington*, 38 Minn. 441, 38 N. W. Rep. 108.

1838  
68-M - 298

1838  
82-NW1099

## § 1839. Same—Duty of county commissioners.

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, c. 5, § 50; G. S. 1878, c. 13, § 50.)

\*See Laws 1891, c. 150, § 3.

An order for laying out a road held void for variance between the line specified in it and that petitioned for, surveyed and platted. *Halverson v. Bell*, 39 Minn. 240, 39 N. W. Rep. 324.

1839  
99 - 202

# MINNESOTA STATUTES 1894

§§ 1840-1844

ROADS, CARTWAYS, AND BRIDGES.

[Ch. 13

## § 1840. Committee to examine road proposed.

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

(1873, c. 5, § 51; G. S. 1878, c. 13, § 51.)

\* See Laws 1891, c. 150, § 3.

1841  
99 - 202

## § 1841. Committee to report to the commissioners.

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

(1873, c. 5, § 52; G. S. 1878, c. 13, § 52.)

\* See Laws 1891, c. 150, § 3.

1842  
99 - 202  
68-M - 298  
71-NW 383

## § 1842. Commissioners to act on petition—Damages.

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

(1873, c. 5, § 53; G. S. 1878, c. 13, § 53.)

\* See Laws 1891, c. 150, § 3.

Cited, *State v. Leslie*, 30 Minn. 533, 535, 536, 16 N. W. Rep. 408.  
See *Burkleo v. County of Washington*, cited in note to § 1838.

## § 1843. Same—Hearing of remonstrances—Payment of damages.

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, c. 5, § 54; G. S. 1878, c. 13, § 54.)

\* See Laws 1891, c. 150, § 3.

1844  
97 - 208

## § 1844. County roads defined—Damages—Book of state and county roads.

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

\* See Laws 1891, c. 150, § 3.

1844-1850  
97 - 150

1844-1856  
97 - 199

# MINNESOTA STATUTES 1894

Tit. 1]

HIGHWAYS.

§§ 1844-1848

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

(1873, c. 5, § 55; G. S. 1878, c. 13, § 55; as amended 1887, c. 45.)

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

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

## § 1845. Vacating roads through public parks.

That in all cases where territorial or state roads have been heretofore laid out or traveled through or across land which has since been duly and legally embraced within the limits of any public park in any city in this state, which park contains walks and drives through the same, so much of said state and territorial roads as is embraced within the limits of any such public park is hereby vacated; Provided, however, that nothing herein contained shall apply to any portion of any road or street which has been designated as a park-way by any board of park commissioners.

(1891, c. 23, § 1.4)

§ 2 repeals all inconsistent acts.

## § 1846. Care of county roads—How opened and improved—How kept in repair.

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

(1873, c. 5, § 56; G. S. 1878, c. 13, § 56.)

\* See Laws 1891, c. 150, § 3.

## § 1847. Expenditure of county road and bridge fund.

That whenever any board of county commissioners of any county shall determine to expend any portion of the county "Road and Bridge Fund," not exceeding the sum of three hundred dollars, to aid in the construction or repair of roads and bridges in any town of such county, the same shall be appropriated and expended as hereinafter provided, and not otherwise.

(1891, c. 19, § 1.5)

## § 1848. Same—Warrant to be drawn in favor of town treasurer, when.

Whenever any board of county commissioners shall make any appropriation, not exceeding the sum of three hundred dollars, out of the "Road and Bridge Fund" of such county, to aid in the construction or repair of roads and bridges, or either, in any town of such county, the board of county commissioners making such appropriation shall direct the county auditor of such county to draw

<sup>4</sup> An act vacating state and territorial roads through public parks in certain cases. Approved March 31, 1891.

<sup>5</sup> An act authorizing the board of county commissioners of any county to appropriate moneys to aid in the construction or repair of roads and bridges in any town of such county, and providing that such appropriation shall be expended under the direction of the town supervisors. Approved April 9, 1891.

§ 5 repeals inconsistent acts.

1845  
95 - 167  
  
1845  
97 - 153

1846  
95 - 48  
  
1846  
69-NW 472  
1846 90-M 1  
  
1846-1848  
95 - 297  
97 - 150  
  
1846  
95 - 287  
97 - 199  
99 - 192  
67-M - 5  
69-M - 297  
72-NW 125

1847 1847  
99 - 211 74-M -  
69-M - 297

1847  
69-M - 297  
  
1847 '05 164

1848  
69-M - 297



# MINNESOTA STATUTES 1894

§§ 1848-1854

ROADS, CARTWAYS, AND BRIDGES.

[Ch. 13

a warrant on the treasurer of such county for the amount of such appropriation, making the same payable to the town treasurer of the town for which such appropriation is made.

(Id. § 2.)

## § 1849. Same—Bond to be taken from town treasurer.

Before any town treasurer shall be entitled to receive from the county treasurer any moneys so provided to be paid by section two of this act, he shall execute to the board of county commissioners of such county a good and sufficient bond in a sum equal to double the amount of the appropriation so to be received by him, with at least two sureties, to be approved by the county auditor; conditioned that he will not pay said moneys out for any purpose other than that for which the same shall have been appropriated by the board of county commissioners, and then only upon the order of the supervisors of such town.

(Id. § 3.)

1850

90-M

1

## § 1850. Same—Money to be expended by town supervisors.

All appropriations hereafter made by any board of county commissioners, not exceeding the sum of three hundred dollars, to aid in the construction or repair of roads or bridges, or either, in any town of such county, shall be expended under the supervision and direction of the supervisors of the town receiving such appropriation; Provided, That no part of such appropriation shall be expended in the payment of supervisors' fees or per diem in letting any contract or superintending any work for which such appropriation shall have been made.

(Id. § 4.)

1851

99-M - 297  
72-NW 124

## § 1851. Width of bridge or culvert.

Whenever the proper authorities of any town or county shall order a new bridge or culvert or the repair of any old bridge or culvert on any public highway in this state, such bridge or culvert and the approaches thereto shall be made at least fourteen feet wide; and whenever such bridge in the construction or repair thereof shall be raised three feet or more above the level of the bank on either side of any river, stream, gully or ravine, then such bridge and the approaches thereto shall be made at least sixteen feet wide.

(1891, c. 20, § 1.<sup>6</sup>)

## § 1852. Same—Penalty for neglect.

Any officer of any town or county whose duty it is to order or superintend the improvements mentioned in section one hereof, and who shall willfully neglect to comply with the provisions of said section, shall be guilty of a misdemeanor.

(Id. § 2.)

## § 1853. Roads in adjoining counties.

The county commissioners of any county in Minnesota shall have authority to appropriate and expend money for constructing, repairing and maintaining roads in any adjoining county when they may deem it advisable and for the best interests of the public so to do.

(1893, c. 161, § 1.<sup>7</sup>)

## § 1854. Same—Limit of expenditure.

The amount of money to be so appropriated and expended shall not exceed the sum of five thousand dollars in any one year.

(Id. § 2.)

<sup>6</sup> An act relating to roads and bridges and the repair of same. Approved April 9, 1891.

<sup>7</sup> An act to authorize county commissioners of any county to appropriate and expend money for constructing, repairing and maintaining roads in adjoining counties. Approved April 17, 1893.

# MINNESOTA STATUTES 1894 .

Tit. 1]

HIGHWAYS.

§§ 1855-1858

**§ 1855. No damages assessed in certain cases.**

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

(1873, c. 5, § 57; G. S. 1878, c. 13, § 57.)

1855  
68-M - 298  
71-NW 383

**§ 1856. Damages may be assessed within three years.**

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

(1873, c. 5, § 58; G. S. 1878, c. 13, § 58.)

1856  
69-M - 53  
71-NW 819

**§ 1857. Appeal to a 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, c. 5, § 59; G. S. 1878, c. 13, § 59.)

1857  
69-NW .976

1857-1859  
95 . 54

1857  
58-M - 98

1857-1859  
97 - 199

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

See, also, *State v. Barton*, 36 Minn. 145, 30 N. W. Rep. 454, and *State v. Holman*, 40 Minn. 369, 41 N. W. Rep. 1073.

The provisions for an appeal are not in conflict with Const. art. 6, § 8. *State v. Rapp*, 89 Minn. 65, 38 N. W. Rep. 926.

**§ 1858. Same—Requisites of appeal—Trial—View by jury.**

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

(1873, c. 5, § 60; G. S. 1878, c. 13, § 60.)

The bond is essential to the jurisdiction of the justice, and must have two or more sureties. Where the appeal is from the denial by county commissioners of a petition.

to lay out a highway, the commissioners are proper parties to prosecute a writ of *certiorari* to quash the proceedings before the justice. *State v. Fitch*, 30 Minn. 532, 16 N. W. Rep. 411.

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

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

Upon appeal, the supervisors, by consenting to a continuance before objecting to the bond, waive any defects in it. *State v. Shardlow*, 43 Minn. 524, 46 N. W. Rep. 74.

The application need not show that the party is so specially affected by the determination as to entitle him to appeal. *State v. St. John*, 47 Minn. 315, 50 N. W. Rep. 200.

**§ 1859. Return of the jury to be filed—Costs.**

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, c. 5, § 61; G. S. 1878, c. 13, § 61.)

The justice may enter judgment for costs of the appeal in favor of the prevailing party. *State v. Flaherty*, 46 Minn. 128, 48 N. W. Rep. 686.

**§ 1860. Appeal to district court—Trial.**

In case the amount of damages claimed exceed one hundred dollars, appeal may be taken within thirty days to the district court of the county in which said damages are sustained, by filing in the office of the clerk of such court a bond, to be approved by the judge of such district court, or the court commissioner, or the county auditor of the county, of the same nature as provided in the two preceding sections of this chapter, and by the service of a written or printed notice of such appeal, upon the chairman of the board of supervisors or the county commissioners, as the case may be, signed by the party making the appeal, or his attorney. Such appeal shall bring before the appellate court the propriety of the amount of damages, and all matters referred to in such notice of appeal. Unless the parties otherwise agree, the matter shall be submitted to a jury and tried as other appeal cases are tried, and the court or jury, as the case may be, shall reassess the damages aforesaid, and make the verdict conform to the justice and facts in the case; but the rule for ascertaining and fixing such judgment shall be based upon the same principles as the supervisors or commissioners were required to adopt in originally determining the same; and, upon judgment being rendered, the clerk of said court shall serve a certified transcript of such judgment upon the chairman on whom the notice of appeal was served as aforesaid. If the determination of the board of supervisors or commissioners appealed from be affirmed, or if the amount of damages allowed be reduced in said district court, the party appealing shall pay all costs and disbursements incurred in said court; but if the amount of damages allowed be increased, or if such determination shall be altered, modified, or reversed in said district court, otherwise than as to the amount of damages, said costs and disbursements shall be paid by the town or county, as the case may be, said costs and disbursements to be taxed and adjusted as in other cases in said district court, and judgment entered therefor in like manner.

(1873, c. 5, § 62; G. S. 1878, c. 13, § 62; as amended 1881, c. 23, § 1.)

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

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

The appeal is legally perfected if the appeal bond is filed and the notice of appeal

1859  
59-NW - 976

1850  
58-M - 98

1860  
95 - 54

1860  
97 - 199

1860

68-M - 207  
71-NW 382  
73-NW 629

1860

71-M - 48  
80-NW 886

# MINNESOTA STATUTES 1894

Tit. 1]

HIGHWAYS.

§§ 1860-1863

served within the prescribed thirty days, which ever may be done first. *Restad v. Town of Scambler*, 33 Minn. 515, 24 N. W. Rep. 197.

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

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

Notice of appeal, service, and proof. *Town of Haven v. Orton*, 37 Minn. 445, 35 N. W. Rep. 264.

## § 1861. Procedure after decision of appeal — Damages — Town orders.

1861  
59-NW . 976

1861  
58-M - 98

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

(1873, c. 5, § 63, as amended 1876, c. 27, § 1; G. S. 1878, c. 13, § 63; 1881, c. 26, § 1.)

## § 1862. What roads are public highways.

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, c. 5, § 64; G. S. 1878, c. 13, § 64.)

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

## § 1863. Obstruction of highway—Penalty.

1863  
99 . 43  
1863 '05 . 215

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 who ever 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, 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, c. 5, § 65, as amended 1878, c. 32, § 1; G. S. 1878, c. 13, § 65.)

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

**§ 1864. 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, c. 5, § 66; G. S. 1878, c. 13, § 66.)

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

Any further proceedings before the justice, after the title to real estate appears to be involved, should be had under G. S. 1878, c. 65, § 169. (See § 5123.) As to this latter point, *State v. Cotton* is overruled. *State v. Sweeney*, 33 Minn. 23, 21 N. W. Rep. 847.

1865

95 . 59

**§ 1865. Seeding public highways.**

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

(1879, c. 97, § 1; G. S. 1878, v. 2, c. 13, § 65a.)

**§ 1866. Obstructing highways by railway cars.**

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

(1883, c. 116, § 1; G. S. 1878, v. 2, c. 13, § 65b.)

**§ 1867. Same—Stopping trains across highway.**

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

(1883, c. 116, § 2; G. S. 1878, v. 2, c. 13, § 65c.)

**§ 1868. Same—Penalty.**

Whoever is guilty of violating any of the provisions of this act shall be deemed to be guilty of a misdemeanor, and shall, upon conviction thereof before any justice of the peace of the county in which such offense is committed, be punished by a fine of not less than five dollars nor more than fifty dollars, and costs of prosecution, for each and every such offense, and in default of payment of such fine and costs shall be imprisoned in the county jail until such fine and costs are paid, not exceeding thirty days.

(1883, c. 116, § 3; G. S. 1878, v. 2, c. 13, § 65d.)

**§ 1869. 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, c. 5, § 67; G. S. 1878, c. 13, § 67.)

**§ 1870. Penalty for fast driving on bridge.**

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

(1873, c. 5, § 68; G. S. 1878, c. 13, § 68.)

**§ 1871. Same—Complaint and proceedings.**

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, c. 5, § 69; G. S. 1878, c. 13, § 69.)

§ 1872. **Same—Proceedings on conviction.**

In all cases of conviction under the provisions aforesaid, the justice shall enter judgment for the fine and costs against the defendant, and may commit him until the judgment is satisfied, or issue execution upon the judgment to the use of the county.

(1873, c. 5, § 70; G. S. 1878, c. 13, § 70.)

§ 1873. **Sign-board on bridge required.**

No fine shall be imposed under the provisions aforesaid unless there was at each end of said bridge, at the time when such 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, c. 5, § 71; G. S. 1878, c. 13, § 71.)

§ 1874. **Penalty for running toll.**

Whenever any bridge or ferry company, or individual is authorized by law to collect toll for the crossing of any bridge or ferry belonging to such company or individual, any person who 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 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, c. 5, § 72; G. S. 1878, c. 13, § 72.)

§ 1875. **Section lines to be considered public roads.**

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, c. 5, § 73; G. S. 1878, c. 13, § 73.)

§ 1876. **Field-notes, plat, etc.—Furnishing copy.**

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

(Added 1881, c. 152, § 1; G. S. 1878, v. 2, c. 13, § 73a.)

See § 1810.

§ 1877. **Same—Record to be 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.

(Added 1881, c. 152, § 2; G. S. 1878, v. 2, c. 13, § 73b.)

1878  
97 - 208  
62-M - 200  
64-NW 394

**§ 1878. Public highways declared.**

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, c. 56, § 1; G. S. 1878, c. 13, § 74.)

**§ 1879. When claim for damages to be made.**

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, c. 56, § 6; G. S. 1878, c. 13, § 75.)

§§ 2-5 of this act provide proceedings for obtaining compensation for right of way.

**§ 1880. Use of railroad right of way by the public.**

The continued use of any road or way heretofore traveled or which shall hereafter be traveled by the public, upon and parallel to the right of way of any railroad company in this state, shall not be deemed to have constituted such road or way a legal highway, or a charge upon the town in which the same is situated; and no rights or benefits shall inure to the public or any individual by the use thereof.

(1891, c. 21, § 1.9)

§ 2 repeals all inconsistent acts.

**§ 1881. Gravel-beds and stone-quarries—Condemnation.**

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

(1885, c. 273, § 1; G. S. 1878, v. 2, c. 13, § 75a.)

**§ 1882. Same—Procedure.**

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

<sup>8</sup> An act to prevent the establishment of highways on the right of way of railroads by user, in the state of Minnesota. Approved April 21, 1891.

<sup>9</sup> An act empowering township and other officers to condemn certain lands to improve and repair the public highways and streets under their jurisdiction. Approved March 5, 1885.

# MINNESOTA STATUTES 1894

## Tit. 1] HIGHWAYS—ROADS IN MORE THAN ONE COUNTY. §§ 1882-1883

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

(1885, c. 273, § 2; G. S. 1878, v. 2, c. 13, § 75b.)

### (2) ROADS IN MORE THAN ONE COUNTY.

#### § 1883. Petition—Commissioners—Limit of jurisdiction.

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

(1872, c. 40, § 1; G. S. 1878, c. 13, § 76; as amended 1883, c. 21, § 2.)

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

This amendment was approved March 3, 1883. The act amended is referred to only by its title, the time of its passage not being given. The section, as amended, is set out in full as above. By the act approved February 17, 1883, (Laws 1883, c. 64, § 1, as amended 1889, c. 179,) "section 76 of chapter 13 of General Statutes of 1878" is "amended so as to read as follows: Whenever a petition praying that a road be laid out through, between, or into two or more counties in any judicial district in this state, signed by twenty legal voters and tax-payers, resident in said counties, shall be presented to the judge of the district court in said district, or whenever a petition praying that a road be laid out through, between, or into two or more counties in two or more judicial districts in this state, signed by twenty legal voters and tax-payers, resident in said counties, shall be presented to a judge of the district court of one of said districts, the said judge is hereby authorized to appoint three commissioners, whose duty it shall be to meet at such times and places as may be necessary, and to immediately proceed to lay

	1883
	72-NW 124
	1883-1893
	84-NW 301
	1883
01	213
1883	'05 . 245



# MINNESOTA STATUTES 1894

§§ 1883-1887

ROADS, CARTWAYS, AND BRIDGES.

[Ch. 13

out a road as directed by the judge, in accordance with the prayer of the petition: provided, that no road shall be ordered by any judge to extend more than six miles outside of the judicial districts in which the application is made, and such road shall be extended beyond the districts only for the purpose of commencing or ending at some village or public road." Provided, further, that in cases where said road is by said petition to run through or into two or more counties situated in two 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 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. [The proviso is added by Laws 1889, c. 179, to § 1, c. 64, Laws 1883.]

1884

01 - 213

## § 1884. Same—Public notice of petition.

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, c. 40, § 2; G. S. 1878, c. 13, § 77.)

1885

01 - 213

## § 1885. Appointment and pay of surveyors, etc.—Assessment and payment of 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 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, c. 40, § 3, as amended 1873, c. 6, § 1; G. S. 1878, c. 13, § 78.)

## § 1886. 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 registers 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, c. 40, § 4; G. S. 1878, c. 13, § 79.)

## § 1887. Report of commissioners to the district court.

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, c. 40, § 5; G. S. 1878, c. 13, § 80.)

1887

95 - 47

1887

01 - 213

Tit. 1] HIGHWAYS—ROADS IN MORE THAN ONE COUNTY. §§ 1888-1892

§ 1888. Appraisal of damages.

1888  
01 - 213

The commissioners appointed under and by virtue of section seventy-six of this act shall appraise and fix the amount of damages to be paid to each land-owner for the right of way of the road by them laid out over or across his lands, unless such right of way shall be by the owners duly and voluntarily released to the board of county commissioners in which such land is situated, and in their report said commissioners shall include and set forth separately each appraisal of such damages or compensation made by them, and all voluntary [re]leases of the right of way taken by them.

(1873, c. 70, § 1; G. S. 1878, c. 13, § 81; as amended 1883, c. 64, § 2.)

§ 1889. Trial by jury, how demanded.

1889  
84-NW 301

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 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, c. 70, § 2; G. S. 1878, c. 13, § 82.)

§§ 1888-1889 must be construed together, and the proceeding authorized to be instituted is in the nature of a special judicial proceeding, to be conducted under the authority and supervision of the district court. *State v. McDonald*, 26 Minn. 445, 1 N. W. Rep. 832.

§ 1890. 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 counties, each county shall pay one-half of the amount of damages as determined.

(1873, c. 70, § 3; G. S. 1878, c. 13, § 83; as amended 1883, c. 64, § 3.)

§ 1891. Extension of this act to 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, c. 70, § 4; G. S. 1878, c. 13, § 84.)

§ 1892. Roads in more than one judicial district.

Whenever a petition praying that a road be laid through two or more adjoining counties in this state, or along the county lines dividing said counties,

or partly along said county line and partly in one of said counties, signed by twenty legal voters resident in one of said counties, shall be presented to the judge of the district court of the judicial district in which one or more of said counties is located, the said judge is hereby authorized to appoint three commissioners, whose duty it shall be to meet at such times and places as may be necessary, and to immediately proceed to lay out a road as directed by said district judge in accordance with the prayer of the petitioners; Provided, that no road shall be ordered by any such district judge to extend more than six miles outside the judicial district in which the application is made, and such road shall be extended beyond the district only for the purpose of commencing or ending at some village or public road; and Provided further, That this limitation shall not be construed to apply to that portion of such road extending along the line of the county located in such judicial district. The same notice shall be given of the presenting of such petition as is now required for the presenting of a petition for a road in more than one county by section seventy-seven of Chapter thirteen of the General Statutes of the state of Minnesota, and all proceeding had hereunder shall conform as near as may be to sections seventy-seven, seventy-eight, seventy-nine, eighty, eighty-one, eighty-two, eighty-three and eighty-four of said Chapter thirteen of the General Statutes of the state of Minnesota; and the commissioners hereby provided for shall have the same powers, rights, duties and obligations as are provided for in said sections; and in addition to the reports now required by said sections to be filed by the commissioners therein referred to, it shall be the duty of said commissioners to file duplicate reports in each of the counties through which said road may pass, or in which the same may be partially located.

(1891, c. 24, § 1.10)

**§ 1893. Apportionment of damages.**

The damages sustained by any person by reason of said road, and the apportionment of the same between the counties through or along which said road may be located, shall be ascertained and paid in the same manner as is now provided for in said sections above referred to, except that the apportionment of the same between said counties shall be made by the unanimous decisions of a district judge from each of the judicial districts along or through which said road may pass.

(Id. § 2.)

(3) FREE TURNPIKES.<sup>11</sup>

1894-1902  
69-M - 297  
72-NW 124

**§ 1894. Free turnpikes.**

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, c. 27, § 1; G. S. 1878, c. 13, § 85.)

**§ 1895. Petition to commissioners—Survey to be made, when.**

That whenever the county commissioners of any county of 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, c. 27, § 2; G. S. 1878, c. 13, § 86.)

<sup>10</sup>An act to provide for the establishment of roads in more than one county in this state, where such counties are not in the same judicial district. Approved April 20, 1891.

<sup>11</sup>An act to legalize the building of free turnpikes in this state. Approved February, 28, 1867 (Laws 1867, c. 27).

# MINNESOTA STATUTES 1894

Tit. 1]

HIGHWAYS—FREE TURNPIKES.

§§ 1896-1901

## § 1896. Return of survey and estimate of cost.

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, c. 27, § 3; G. S. 1878, c. 13, § 87.)

## § 1897. Tax to be levied.

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, c. 27, § 4; G. S. 1878, c. 13, § 88.)

## § 1898. Width and construction of road.

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, c. 27, § 5; G. S. 1878, c. 13, § 89.)

## § 1899. 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, c. 27, § 6; G. S. 1878, c. 13, § 90.)

## § 1900. Letting of contract.

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, c. 27, § 7; G. S. 1878, c. 13, § 91.)

## § 1901. 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, c. 27, § 8; G. S. 1878, c. 13, § 92.)

(515)

1900  
72-NW 565  
72-NW 568

1901  
82-NW 686

# MINNESOTA STATUTES 1894

§§ 1902-1907

ROADS, CARTWAYS, AND BRIDGES.

[Ch. 13

## § 1902. 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, c. 27, § 9; G. S. 1878, c. 13, § 93.)

## § 1903. Cart-ways—Highway labor upon.

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

(1877, c. 96, § 1; G. S. 1878, c. 13, § 97; as amended 1879, c. 4, § 1.)

### (4) WATERING TROUGHS AND ROADSIDE WELLS.

## § 1904. Allowance for maintaining watering troughs.

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, c. 15, § 1; G. S. 1878, c. 13, § 98.)

## § 1905. Allowance for maintaining wells, etc.

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, c. 15, § 2; G. S. 1878, c. 13, § 99.)

## § 1906. Same—Supervisors to fix location, etc.

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, c. 15, § 3, as amended 1877, c. 43, § 1; G. S. 1878, c. 13, § 100.)

### (5) DRAINING PUBLIC HIGHWAYS.<sup>12</sup>

## § 1907. Affidavit of overseer—Notice of meeting of supervisors.

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

<sup>12</sup>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 (Laws 1874, c. 57).

1907

61-NW . 462  
60-NW . 675

1907-1914  
59-M - 6  
59-M - 440

# MINNESOTA STATUTES 1894

## Tit. 1] HIGHWAYS—DRAINING PUBLIC HIGHWAYS. §§ 1907—1909

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, c. 57, § 1; G. S. 1878, c. 13, § 101.)

### § 1908. 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 to the meeting of the supervisors; and such publication shall be considered as sufficient notice to all parties.

(1874, c. 57, § 2; G. S. 1878, c. 13, § 102.)

See *Burkleo v. County of Washington*, 38 Minn. 441, 38 N. W. Rep. 108.

### § 1909. Examination, hearing, and assessment of damages.

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, c. 57, § 3; G. S. 1878, c. 13, § 103.)

**§ 1910. Order for laying out and opening ditches, etc.**

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, c. 57, § 4; G. S. 1878, c. 13, § 104.)

**§ 1911. Appeal from order—Proceedings in district court.**

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, c. 57, § 5; G. S. 1878, c. 13, § 105.)

**§ 1912. 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, c. 57, § 6; G. S. 1878, c. 13, § 106.)

**§ 1913. Penalty for obstructing ditches.**

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, c. 57, § 7; G. S. 1878, c. 13, § 107.)

**§ 1914. Provision for 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 belonging to or to be paid over to the road district in which such ditch or ditches shall have been constructed.

(1874, c. 57, § 8; G. S. 1878, c. 13, § 108.)

[TITLE 2.]

[BRIDGES AND FERRIES.]

(1) FORD CROSSINGS AND BRIDGE NOTICES.

§ 1915. Side roads and ford crossings, how laid out.

1915-1921  
95 . 113

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, c. 58, § 1; G. S. 1878, c. 13, § 94.)

§ 1916. Regulating number of cattle to be driven over bridges.

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, c. 58, § 2; G. S. 1878, c. 13, § 95.)

§ 1917. Same—Penalty.

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, c. 58, § 3; G. S. 1878, c. 13, § 96.)

(2) BRIDGES ON THE MINNESOTA RIVER.<sup>13</sup>

§ 1918. Who may construct—Conditions.

1918  
01 . 243

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, c. 108, § 1; G. S. 1878, c. 13, § 109.)

§ 1919. Governor to approve 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, c. 108, § 2; G. S. 1878, c. 13, § 110.)

§ 1920. 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:

<sup>13</sup> An act to provide for the construction of bridges over the Minnesota River. Approved March 9, 1875 (Laws 1875, c. 108).



# MINNESOTA STATUTES 1894

§§ 1920-1925

ROADS, CARTWAYS, AND BRIDGES.

[Ch. 13

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, c. 108, § 4; G. S. 1878, c. 13, § 111.)

## § 1921. Restriction on change of above 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, c. 108, § 5; G. S. 1878, c. 13, § 112.)

## (3) FERRIES.<sup>14</sup>

See, also, § 6632 for punishment for maintaining ferry without authority by law.

## § 1922. License to keep ferry.

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, c. 26, § 1; G. S. 1878, c. 13, § 113.)

## § 1923. 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, c. 26, § 2; G. S. 1878, c. 13, § 114.)

## § 1924. Licenses 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, c. 26, § 3; G. S. 1878, c. 13, § 115.)

## § 1925. Taxation of ferry.

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

<sup>14</sup> An act to authorize the establishment and regulation of ferries. Approved February 28, 1867 (Laws 1867, c. 26).

# MINNESOTA STATUTES 1894

Tit. 2].

BRIDGES AND FERRIES.

§§ 1925-1931

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, c. 26, § 4; G. S. 1878, c. 13, § 116.)

## § 1926. Duty of keeper of ferry.

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 failure or refusal to convey any person or property across said stream.

(1867, c. 26, § 5; G. S. 1878, c. 13, § 117.)

## § 1927. Notice of application for license.

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, c. 26, § 6; G. S. 1878, c. 13, § 118.)

## § 1928. Rate of ferriage—Penalty for overcharge.

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, c. 26, § 7; G. S. 1878, c. 13, § 119.)

## § 1929. Ferries must be licensed.

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, c. 26, § 8; G. S. 1878, c. 13, § 120.)

## § 1930. Existing ferries to be taxed.

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, c. 26, § 9; G. S. 1878, c. 13, § 121.)

## § 1931. 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, c. 26, § 10; G. S. 1878, c. 13, § 122.)

# MINNESOTA STATUTES 1894

§§ 1932-1936

ROADS, CARTWAYS, AND BRIDGES.

[Ch. 13

## § 1932. Ferries in unorganized counties, how licensed.

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, c. 26, § 11; G. S. 1878, c. 13, § 123.)

## § 1933. Ferries in cities—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, c. 26, § 12; G. S. 1878, c. 13, § 124.)

## [TITLE 3.]

### [ROADS FOR STEAM TRACTION MOTORS.]<sup>15</sup>

## § 1934. Proceedings to lay out roads.

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, c. 20, § 1; G. S. 1878, c. 13, § 125.)

## § 1935. Width of roads.

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, c. 20, § 2; G. S. 1878, c. 13, § 126.)

## § 1936. Construction of roads and bridges.

Road-beds for steam traction transportation may be constructed with timber causeway foundations for clay, gravel or other material, or clay, gravel or

<sup>15</sup> An act to provide for the use of steam traction motors for purposes of transportation. Approved February 19, 1870 (Laws 1870, c. 20).

Tit. 3]                      ROADS FOR STEAM TRACTION MOTORS.      §§ 1936-1939

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, c. 20, § 3; G. S. 1878, c. 13, § 127.)

**§ 1937. Agreement to operate road—Grant of right 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 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, c. 20, § 4; G. S. 1878, c. 13, § 128.)

**§ 1938. Survey of road—Estimate of 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, c. 20, § 5; G. S. 1878, c. 13, § 129.)

**§ 1939. Vote by ballot—Form of ballot.**

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, c. 20, § 6; G. S. 1878, c. 13, § 130.)

**§ 1940. Execution of agreement by county—Road to be opened, etc.**

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 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, c. 20, § 7; G. S. 1878, c. 13, § 131.)

**§ 1941. County bonds for construction of road.**

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, c. 20, § 8; G. S. 1878, c. 13, § 132.)

**§ 1942. Character of bonds—Limit of amount.**

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, c. 20, § 9; G. S. 1878, c. 13, § 133.)

**§ 1943. Tax to pay interest and principal of bonds.**

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

# MINNESOTA STATUTES 1894

Tit. 3] ,                   ROADS FOR STEAM TRACTION MOTORS.    §§ 1943-1944

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, c. 20, § 10; G. S. 1878, c. 13, § 134.)

## § 1944. Construction of road with private means.

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, c. 20, § 11; G. S. 1878, c. 13, § 135.)

(525)