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Territorial Laws.

AN ACT

To Provide for Locating and Working Highways.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas:

SECTION 1. The supervisors of the several towns in this Territory shall, by virtue of their office, be the commissioners of highways in their respective towns, and shall have the care and superintendence of the highways and bridges therein; and it shall be their duty, 1, To give directions for the repairing of the roads and bridges within their respective towns. 2, To regulate the roads already laid out, and to alter such of them as they shall deem inconvenient. 3, To cause such of the roads used as highways as have been laid out, but not sufficiently described, and such as have been lawfully laid out and used as such, up to the present time, but not fully and sufficiently recorded, to be ascertained, described, and entered on record in the town clerk's office. 4, To cause bridges, which are or may be erected over streams intersecting highways, to be kept in repair. 5, To divide their respective towns into so many road districts as they shall Judge convenient, and specify every such division in writing under their hands, to be recorded in the office of the town clerk, in a book kept for that purpose; but no such division shall be made within ten days next preceding the annual town meeting. 6, To assign to each of the said road districts, such of the inhabitants, liable to pay taxes on highways, as they shall think proper, having regard to the nearness of residence as much as practicable. 7, To require the overseer of highways, from time to time, and, as often as they shall deem necessary, to perform any of the duties required of them by law. 8, To assess the highway taxes in their respective towns, in each year, as provided by law.

SEC. 2. The supervisors shall have power, in the manner and under the restrictions hereinafter provided, to lay out and establish, upon actual survey, such new roads in their respective towns as they may deem necessary and proper; and to discontinue such old roads as shall appear to them to have become unnecessary.

SEC. 3. The supervisors of each town shall render to the board of auditors, authorized by law to settle their accounts, at the annual meeting of such board, in each year, a statement in writing, containing, 1, The amount of highway taxes assessed, and the amount which has been collected in their town. 2, The amount of tax collected in money, and the amount paid in labor. 3, The manner in which any moneys, raised by the town for the improvement or building of roads or bridges therein, have been disbursed, and the particulars of such disbursement; and, 4, An estimate of the sum necessary to be raised by the town for the improvement of roads and bridges therein for the ensuing year, specifying the improvements required.

SEC. 4. The said board of auditors shall cause such statement to be presented at the then next annual town meeting, and such meeting may vote for the raising of such sum, for the improvement of the roads and bridges within the town, as a majority of the electors present shall deem necessary; and the sum so voted, shall be levied and collected in the same manner as other town taxes.

SEC. 5. It shall be the duty of the overseers of the highways, 1, To repair and keep in order the highways within the several districts for which they shall have been elected or appointed respectively.—2, To notify all persons assessed to pay highway taxes, of the time when and where labor will be received in payment for such taxes. 3, To collect all highway taxes as required by law, and to execute all lawful orders of the supervisors.

SEC. 6. Whenever the amount of highway tax assessed by the supervisors in any district shall be deemed insufficient to keep the roads therein in repair, the overseer of such highway may, upon an application in writing, signed by a majority of the inhabitants liable to pay highway taxes in such district, make another assessment on the taxable property in said district, in the same proportion and not exceeding one-third of the amount assessed in the same year by the supervisors on the inhabitants of the district; and the taxes so assessed by an overseer, shall be collected and expended in like manner as highway taxes assessed by the supervisors are required to be collected and expended.

SEC. 7. The supervisors in each town shall cause guide posts, with proper directions, to be erected at the intersection of all public roads in their town.

SEC. 8. It shall be the duty of the overseers of highways in each town to maintain and keep in repair, at the expense of the town, such guide posts as may have been erected by order of the supervisors, within the limits of the district for which they shall have been respectively elected or appointed.

SEC. 9. Any overseer of highways may, if he shall deem it necessary, procure a good and sufficient scraper and plow, or either of them, for the use of his road district, and pay for the same out of the highway taxes by him collected.

SEC. 10. If any overseer shall be employed more time in executing the several duties enjoined on him in this chapter, than shall be necessary for the payment of his highway tax, he shall be paid for the excess at the rate of one dollar per day, and be allowed to retain the same out of the moneys that may come into his hands on account of highway taxes.

SEC. 11. It shall be lawful for any overseer of highways, or any persons acting under his direction, to enter upon any lands adjoining to or near the highway in his district, to construct such drains or ditches as may be necessary for the improvement or preservation of such highway; and any such overseer, or other persons as aforesaid, may enter upon any lands adjoining to or near the highway in his district, and gather or dig any stones, gravel or sand, and cut any wood or trees, and take away the same for the purpose of making or improving such highway; but any overseer or other person so entering upon such lands shall carefully avoid doing any unnecessary injury upon the same.

SEC. 12. If any owner or occupant of lands, so entered upon for any of the purposes mentioned in the preceding sections shall feel himself aggrieved, he may apply to the supervisors of the town, who shall appoint three disinterested electors of such town to appraise the damages, and such electors, being first duly sworn justly and impartially to appraise the damages done upon such lands, shall proceed to estimate the same, and the damages, if any, allowed by them, shall be certified under their hands, and the same shall be audited by the town board, and paid out of the town treasury; said appraisers shall take into consideration the advantage as well as the damages done to said land by reason of any improvement made on said road by such material so taken.

SEC. 13. Whenever any highway shall become impassable, by reason of any casual interruption from the falling of timber, the destruction of any bridge, or the washing away or injuring of any part of such highway, it shall be the duty of the overseer of said highway to cause such highway to be put in passable repair as soon as practicable.

SEC. 14. If any person, for the purpose of putting such highway in repair, shall expend in labor, material or money, an amount greater than he is assessed to pay on the highway in such year, such person shall be entitled to receive from the overseer of such district, a certificate for the amount of such expenditure above his highway tax, which shall be a good credit, and shall be allowed to the holder thereof, on account of any subsequent highway tax assessed in said district.

SEC. 15. If any person chosen to the office of overseer of highways shall refuse to serve, or if his office shall become vacant, the supervisors shall, by warrant under their hands, appoint some other person in his stead; and the overseer so appointed shall have the same duties, and be liable to the same penalties as overseers chosen at town meetings.

SEC. 16. The supervisors making such appointment shall cause such warrant to be forthwith filed in the office of the town clerk, and such clerk shall immediately give notice to the person appointed.

SEC. 17. Every overseer of highways who shall refuse or neglect to perform any of the duties required of him by law, or which may be lawfully enjoined upon him by the supervisors of his town, and for the omission of which, a penalty is not hereinafter provided, shall, for any such neglect or refusal, forfeit the sum of ten dollars.

SEC. 18. It shall be the duty of the supervisors of each town, whenever any overseer of highways in such town, has refused or neglected to perform any of the duties required of him by law, forthwith to prosecute such overseer for the recovery of such penalty.

Of Persons liable to work on Highways and making Assessments therefor.

SEC. 19. The supervisors in each town shall meet within eighteen days after the annual town meeting, at such time and place in the town as they may agree upon, and proceed then, or at a subsequent meeting, to assess the highway tax in their town for the ensuing year; but the supervisors shall not extend the time for assessing such highway tax, beyond the second Monday in May, in any year.

SEC. 20. Each overseer of highways shall, within sixteen days after his election or appointment, deliver to the town clerk a list, subscribed by him, of the names of all the inhabitants of his road district, who are liable to pay taxes on the highways; and the town clerk shall deliver all such lists received by him to the supervisors. If the overseer shall neglect or refuse to deliver such list to the town clerk, as aforesaid, the supervisors shall have power to issue a warrant under their hands, directed to any constable in the town, requiring him forthwith to bring such overseer before them, to show cause why said list has not been filed with the town clerk, according to law. The constable's fees for such service, shall be paid by said delinquent overseer.

SEC. 21. The supervisors in each town shall make out separate lists of the names of all persons liable to pay highway taxes in each road district, in such township, which list shall also contain a statement of all the taxable personal property, and a description of all lots, or parcels of land, within each such district, with the value of each lot or parcel set opposite to such description, as the same shall appear on the assessment roll, and if any such lot or tract was not separately described in such roll, then in proportion to the valuation which shall have been affixed to the whole tract, of which such lot or parcel forms a part.

SEC. 22. In making an assessment of highway tax, the supervisors shall proceed as follows: 1, Every male inhabitant in each road district, being over the age of eighteen years, and under the age of fifty years, excepting persons of color, paupers, idiots and lunatics, shall be assessed to pay a poll tax of four dollars, for road purposes; *Provided*, that when a majority of the lands in the district are not subject to taxation, the poll tax may be increased at the discretion of the board of town supervisors, to such an extent as they may deem expedient. 2, The residue of the highway tax, to an amount of not less than twenty, nor more than thirty mills on the dollar, shall be assessed on the valuation of the real and personal property in each district. 3, The supervisors shall set opposite to each person, and corporation, and to each description of taxable property, the amount of tax charged to each respectively.

SEC. 23. The town clerk shall, under the direction of the supervisors, make duplicates of the several lists, which shall be subscribed by them, one of which lists for each road district, shall be filed by such clerk, in his office, and the other shall be delivered to the overseers of highways of the district in which the highway labor therein specified is assessed.

SEC. 24. The supervisors shall annex to each such tax list a warrant signed by them, which shall be in substance, in the following form: "To A B, overseer of road district number in the town of : You are hereby required to collect from the several persons and corporations named in the annexed tax list, and from the owners of the real estate described therein, the taxes set opposite to such persons, corporations and property, within the time limited by law, and to apply the taxes by you collected, and make due returns, as the law requires.

Dated the day of ,18 .

C——D——, }
E——F——, } Supervisors."
G——H——, }

Of the duties of Overseers in regard to the Collection and Application of Highway Taxes.

SEC. 25. Every overseer of highways shall cause at least two-thirds of the amount of highway tax assessed in his district, to be collected and expended as the law requires, before the first day of July, and the residue by the first day of November, in each year.

SEC. 26. It shall be the duty of every overseer of highways, to give at least three day's notice to all persons residing in his district, assessed to pay taxes therein, either personal, or in writing, left at their usual place of abode, of the time when, and the place where they may appear and pay their highway tax in labor, and with what implements.

SEC. 27. All persons assessed to pay highway taxes in such district, may appear at such times and places therein, in person, or by a substitute or substitutes, and with such team and implements as the overseer, in the notice mentioned in the preceding section, may direct; *Provided*, that no substitute will be allowed unless he lives in the family of the principal, or is his tenant upon some land within the district, or adjacent district.

SEC. 28. Every overseer of highways may require of all persons offering to pay their highway taxes in labor, to furnish a spade, shovel, axe, or hoe; and any person offering to pay such tax in labor, and who is the owner of a team, plow, wagon, or cart, or other instruments useful for working the highways, may be required by such overseer, to furnish such team, plow, wagon, or cart, or other implement, if the assessment of such person on such highway, be not less than ten dollars.

SEC 29. Every person intending to pay any highway tax assessed against him, or any part thereof, in labor, and who shall, upon the notice required to be given by the overseer, appear and work agreeably to the direction of such overseer, shall be credited on his tax four dollars, for every day he shall actually work eight hours on such highway, and four dollars a day for every cart, wagon, plow, scraper, yoke of oxen or span of horses he shall furnish according to the requirements of said overseer.

SEC. 30. If any person assessed to pay a highway tax shall neglect to appear and work on the highway at the time and place specified in the notice required to be given by the overseer, unless satisfactory cause shall appear to such overseer for such neglect, such person shall not thereafter be entitled to pay his highway tax assessed for that year, or any part thereof, in labor.

SEC. 31. It shall be the duty of the overseer of highways, whenever any person shall have become liable to pay the highway tax assessed against him in money, as prescribed in the preceding section, to collect such tax; and for that purpose such overseer shall call at least once on the person taxed, or at the place of his residence if in such district, or the town in which such overseer has been chosen, and demand payment of the taxes charged to such person.

SEC. 32. In case such person shall refuse or neglect to pay the tax charged against him, such overseer shall levy the same by distress and sale of the goods and chattels of the person who ought to pay the same.

SEC. 33. Such overseer shall give public notice of the time and place of sale, and of the property to be sold, at least six days previous to the time of sale, by advertisement to be posted up in at least three public places in the district or town where such sale shall be made; the sale to be by public auction.

SEC. 34. If the property levied upon shall be sold for more than the amount of tax and costs, the surplus shall be returned to the person from whom the property was taken.

SEC. 35. Every overseer shall be entitled to retain five per cent. for his fees, out of all moneys collected by him on his warrant, and in case of a levy and sale by him of goods and chattels for the payment of any tax, he shall be entitled to collect and receive for the same, such fees as constables are authorized to receive for levying upon and selling goods under execution.

SEC. 36. It shall be lawful for any overseer of highways, for the purpose of collecting any unpaid highway taxes on his tax list, against any person or persons who shall have become liable to pay the same in money, to place such tax list in the hands of any constable of the same town in which such overseer shall have been elected; and such constable shall possess the same powers in the collection of such tax, and be entitled to receive the like compensation as overseers of highways in like cases.

SEC. 37. Whenever any overseer of highways shall place his tax list in the hands of a constable for collection, as provided in the preceding section, he shall designate the persons named therein, from whom taxes are due in money, and he shall endorse, over his signature, on such tax list, in substance, as follows: "I hereby authorize A B (naming the constable,) to collect the unpaid taxes due in money on the within tax list. Dated 18 , C——D——, Overseer."

SEC. 38. Every constable who shall receive any such tax list to be collected, shall, to the best of his ability, collect the sums due in money, on such tax list, from the persons who ought to pay the same, and shall, within thirty days from the date of such endorsement on said tax list, return to the said overseer his doing therein, and pay over all moneys so collected, to such overseer; and any overseer, if he shall deem it necessary, may once re-issue such warrant and tax list in the manner specified in the preceding section, and when so re-issued, the constable shall proceed thereon, as herein above provided.

SEC. 39. Moneys collected or received by any overseer of highways, on account of highway taxes, in his district, shall be faithfully applied and expended by such overseer, in the procuring of labor and in the purchase of implements and materials as, in the opinion of the overseer, will most benefit the highways and bridges in his district. All implements purchased by the overseer, shall be carefully preserved by him and his successors, and shall be used only upon the roads and highways, and for no other purpose; and any person who shall use such implements for any other purpose, shall forfeit and pay the sum of ten dollars for each offence, one-half for the use of the road district to which the implements belong, and the other half to be paid to the person who shall sue for the same, to be sued for in the name of the township, before some justice of the peace.

SEC. 40. Every overseer of highways shall, on or before the first Monday in November in each year, make out and deliver to the town clerk of his town, a statement in writing, containing a description of all the real estate taxed, in his tax list, upon which the taxes remain unpaid, together with the amount of tax assessed to each such description of land, and the names of the owners thereof, if known; and he shall make and subscribe an affidavit thereon, before some justice of the peace, or other person authorized to administer oaths, that the taxes mentioned in such statement remain unpaid. If the said overseer shall neglect or refuse to make out and deliver to the town clerk, such statement as aforesaid, the supervisors, or a majority of them, shall, upon application of the town clerk, issue a warrant under their hands, to any constable of the town, commanding him forthwith to bring such overseer before them, to show cause why such statement has not been made as the law requires. The constable's fees, for such service, shall be paid by such delinquent overseer.

SEC. 41. The town clerk shall, in making out the duplicate assessment roll of the town next thereafter, enter such unpaid taxes therein, opposite to the description of the land, upon which the taxes so remain unpaid; and such taxes shall be collected in the same manner as town taxes are collected, and when so collected, shall be paid over as hereinafter provided, for the use of the district in which they were originally assessed.

SEC. 42. It shall be the duty of each town treasurer, between the fifteenth and thirtieth days of April, in each year, to notify the overseers of highways of every road district in his town, which may be entitled to any moneys in the town treasury, accruing from returned highway taxes in such district, or from any balance received from a former overseer; and the said treasurer shall pay to the order of the overseer of each such road district, all moneys in his hands belonging to such district, for the construction and improvement of roads and bridges therein.

SEC. 43. Every overseer of highways shall, on or before the third Monday in March in each year, render to the supervisors of the town, an account in writing, verified by his affidavit subscribed thereon before some person authorized to administer oaths, containing: 1, The names of all persons assessed to pay a highway tax in his district. 2, The amount of tax collected from each such person, and from other sources, distinguishing the taxes which have been paid in labor, from those which have been paid in money. 3, The amount of moneys received from the town treasurer, on account of returned taxes on real estate, or paid into the town treasury by a former overseer in such district. 4, The manner in which all taxes collected and received by him have been disbursed, and the particular items of such disbursement. 5, A statement of the highway taxes assessed upon real estate in his district, which remain unpaid.

SEC. 44. If, upon rendering such account, any moneys shall remain unexpended in the hands of such overseer, he shall immediately pay over the same to the town treasurer.

SEC. 45. If any overseer shall neglect or refuse to pay over any money remaining unexpended in his hands, as required in the preceding section, it shall be the duty of the town treasurer forthwith to sue for the same, in the name of his office, in an action for money had and received to the use of such treasurer; which money, when collected, shall be applied as provided in the forty-sixth section.

Of laying out, altering and discontinuing Highways.

SEC. 46. Whenever any six or more freeholders residing in any town, shall wish to have a highway laid out, altered or discontinued in such town, they may make application in writing to the supervisors of the town, in which they reside, for that purpose, and the said supervisors shall proceed to lay out, alter or discontinue such highway, if in their opinion, the public good will thereby be promoted.

SEC. 47. No public or private road shall be laid out through any orchard or garden, without the consent of the owner thereof, if such orchard has been set out two years or more, or if such garden has been cultivated as such for two years or more; nor shall any such road be laid out through any buildings or any fixtures, or erectures for the purpose of trade or manufactures, or any yards or enclosures necessary to the use and enjoyment thereof, without the consent of the owner.

SEC. 48. Whenever any highway shall be laid out through any enclosed, improved or cultivated lands, without the consent of the owner thereof, the damage, if any, sustained by such owner, in the opening of such highway, shall be appraised and awarded as hereinafter provided.

SEC. 49. Upon application made to the supervisors for laying out, altering or discontinuing any highway, they shall make out a notice and fix therein a time and place at which they will meet and decide upon such application; and the applicant shall, at least five days previous to such time, cause such notice to be given to all the occupants of the lands through which such highway may pass, which notice shall be served personally, or by copy left with, or at the usual place of abode of each occupant of such lands; and such notice shall also be posted up in three public places in said town, at least ten days before the time of such meeting of the supervisors; every such notice shall specify, as near as practicable, the highway proposed to be laid out, altered or discontinued, and the several tracts of lands through which the same may pass.

SEC. 50. The supervisors, upon being satisfied that the notices, required in the preceding section, have been duly given, proof of which may be shown by affidavit, or otherwise, as they may require, shall proceed to examine, personally, such highway, and shall hear any reasons that may be offered for or against laying out, altering, or discontinuing the same, and shall decide upon the application as they shall deem proper.

SEC. 51. Whenever the supervisors shall lay out, alter, or discontinue any highway, they shall cause an accurate survey thereof to be made when necessary, and they shall make out a description of the highway so laid out, altered, or discontinued, and incorporate the same in an order to be signed by them, and shall cause such order to be filed and recorded in the office of the town clerk, who shall note the time of recording the same in the record.

SEC. 52. Upon the laying out or altering of any highway, if damages shall be claimed therefor by any owner through whose land the same shall be laid, the amount of such damages may be determined by agreement between the supervisors and such owners; every such agreement shall be reduced to writing, and signed by such owner and the supervisors, and filed in the town clerk's office; and every such agreement, and every release of damages given, shall forever preclude such owner from all further claim for damages.

SEC. 53. If any owner of lands, through which a highway shall be laid out or altered by the supervisors, shall not be satisfied with the sum offered for damages by such supervisors, or if no sum be offered, he may, within thirty days thereafter, apply to the justice of the peace of the same or an adjoining town, for a jury to assess and appraise such damages, which application shall be in writing, describing the premises, and any number of persons, claiming damages on account of such highway, may join in such application; the supervisors of such town shall have at least six days' notice of the time and place of such meeting.

SEC. 54. Any persons applying for a jury as mentioned in the preceding section, shall, by himself or agent, execute to the supervisors of the town, and file with the justice a bond with one or more sureties, to be approved by such justice, conditioned to pay all costs arising from such appeal and appraisement of damages, provided such jury shall not award a larger amount of damages than were offered by the supervisors of the town; or in case the supervisors shall not have made any offer of damages, then conditioned to pay all such costs if the jury shall not award any damages.

SEC. 55. Upon the filing of such bond, the justice shall issue a precept to some constable of an adjoining town, neither interested nor of kin to any person through whose land such road is laid, directing him to summon five disinterested freeholders of his town, not of kin to the owner or occupant of such land, to meet at a time and place to be specified in such precept, to appraise the damages sustained by the laying out or altering of such highway.

SEC. 56. At the time and place appointed for the appearing of such jury, they shall be sworn by the justice, justly and impartially to make such appraisal, and shall proceed to view such highway, and hear the statements and proofs of the parties if they deem necessary; and they shall make return of their appraisal to the justice, which shall be certified by such justice, and filed with the town clerk; and if the amount of the appraisal by such jury shall exceed the amount offered by the supervisors, or in case no sum shall have been offered by the supervisors, then if the jury award any damages, the costs and expenses shall be paid by the town; but if the jury shall not award any damages, or more than was offered, the costs and expenses shall be paid by the applicant.

SEC. 57. Each person duly summoned, who shall attend as a juror, shall be allowed six cents a mile for each mile necessarily traveled from his place of abode to the place of meeting, and fifty cents for his services on such jury; and the justice shall be entitled to one dollar for his fees.

SEC. 58. All damages consequent upon laying out or altering any highway, as finally settled upon, pursuant to the provisions of this chapter, and all lawful charges against a town for the services of any jury in the assessment of damages, or for the fees of any justice or constable provided for in this chapter, or for the services of any commissioners appointed in the manner herein provided, shall be laid before the town board to be audited, and the amount allowed shall be levied and collected in the same manner as other town charges.

SEC. 59. Whenever it shall be deemed necessary to lay out a highway upon the line between two towns, such highway shall be laid by the supervisors of each of said towns, either upon said line, or as near thereto, as the situation of the ground will admit; and they may vary the same either to the one side or the other of such line, as they may deem necessary.

SEC. 60. The supervisors of each adjoining town, upon laying out a highway upon the line between such towns, shall determine what part of such highway shall be made and kept in repair by each town, and what share of the damages, if any, shall be paid by each.

SEC. 61. The supervisors of each such adjoining town shall proceed in all things as is required of the supervisors of one town in laying out highways in such town; and their proceedings, or a duplicate thereof, shall be returned to the town clerk of each town, and their order, including the survey, shall be recorded in each town clerk's office, and each town shall have all the rights, and be subject to all the liabilities, in relation to the part of such highway to be made or repaired by such town, as if the same were wholly located in such town.

SEC. 62. Whenever application shall be made by any freeholder, whose residence is excluded from the highway, to the supervisors of the town to lay out a private road, the supervisors may lay out such road, and the damages thereof to any owner of the lands through which such road may be laid, shall in like manner be ascertained and determined, and in case of appeal, the like proceedings shall be had thereon, as is provided in this chapter for the laying out and altering of public highways; except that that the applicant for such private road shall, in all cases, pay the damages and costs arising from the laying out of such road.

SEC. 63. Every such private road, when so laid out, shall be for the use of such applicant, his heirs and assigns, but not to be converted to any other purpose than that of a road, nor shall the occupant or owner of the land through which such road shall be laid out, be permitted to use the same as a road, unless he shall have signified his intention of so making use of the same to the supervisors, or the jury, who ascertained the damages sustained by laying out such road, and before such damages were so ascertained.

SEC. 64. Whenever any person or persons shall apply for, and obtain according to law, a private road or cartway from his or her dwelling to any public road, and through the lands of others, the person or persons for whose benefit and at whose request such private road or cartway was granted, shall immediately, upon the opening thereof, make and keep in good repair, all fences required by the opening of such road.

SEC. 65. All applications, certificates and other papers relating to the laying out, altering or discontinuing any public or private road, shall be filed in the office of the town clerk as soon as the supervisors shall have decided thereon.

SEC. 66. All public roads to be laid out by the supervisors of the town shall not be less than four rods wide, nor shall any private road be laid more than three rods wide.

SEC. 67. No supervisor shall act as commissioner of highways, in laying out, altering or discontinuing any public or private road, in which he may be personally interested.

SEC. 68. The supervisors of the several towns are, by virtue of their offices, authorized to administer any oaths required by the provisions of this chapter.

SEC. 69. Any person who shall consider himself aggrieved by any determination of the supervisors of any town, either in laying out, altering or discontinuing, or in refusing to lay out, alter or discontinue any highway, may, within thirty days after such determination, appeal therefrom, and apply to a justice of the peace of the town, for the appointment of commissioners to whom an appeal from such determination of the supervisors may be taken.

SEC. 70. Every application for an appeal from the determination of the supervisors shall be made in writing, to such justice of the peace, and shall briefly state the grounds upon which it is made, and whether it is brought to reverse entirely the determination of the supervisors, or only to reverse a part thereof, and in the latter case it shall state what part.

SEC. 71. Upon the filing of such application, and a bond executed to the supervisors of the town, with sufficient sureties, to be approved by the justice, conditioned to pay all costs arising from such appeal, *provided*, the determination of the supervisors in laying out, altering, or discontinuing, or refusing to lay out, alter, or discontinue such highway, as the case may be, shall not be reversed, such justice shall issue a notice, specifying therein a time and place for the appointment of commissioners, which notice shall be served on one or more of the supervisors, at least six days before such time, and at the time and place so appointed, the justice shall make a list of eighteen disinterested freeholders of the county; each party may object to six on such list, and in case none of the supervisors shall be present, the justice shall strike off the names for the supervisors, and out of the number not struck off, the justice shall by lot select three for such commissioners.

SEC. 72. The justice shall then annex to the application, a warrant under his hand, appointing a time and place for the meeting of such commissioners, and issue the same to the persons so appointed, directing them to view and examine the highway described in the application, and the determination of the supervisors in laying out, altering or discontinuing, or in refusing to lay out, alter or discontinue the same, as the case may be, and to make return of their decision thereon to him, within twenty days after the date of the warrant; and before proceeding to make such view and examination, they shall be duly sworn justly and impartially to discharge their duties as such commissioners.

SEC. 73. The decision of such commissioners shall be reduced to writing, and signed by them and filed with the town clerk, and if the determination of the supervisors shall be affirmed by the commissioners, the party appealing shall pay the expense of the proceedings had in the matter; but if such determination shall be reversed, then the expense shall be a charge against the town. Each of such commissioners shall be entitled to one dollar a day for their services, and the justice shall be entitled to one dollar for his fees.

SEC. 74. When an appeal shall have been made from the determination of the supervisors, for refusing to lay out, alter or discontinue a highway, and such determination shall be reversed by the commissioners, the supervisors shall proceed to lay out, alter or discontinue such highway, in the same manner, and the proceedings thereon shall be the same as if they had originally determined to lay out, alter or discontinue such highway.

SEC. 75. Whenever the supervisors shall have laid out or altered any public highway, through any enclosed, cultivated or improved lands, and their determination shall not have been appealed from, they shall give the owner or occupant of such lands notice in writing, to remove his fences within such time as they shall deem reasonable, not less than thirty days after giving such notice; but no person shall be required to remove such fence between the first day of April and the first day of November in any year; and if such owner or occupant shall not remove his fences within the time required in such notice, the supervisors shall cause such fences to be removed, and shall direct such road to be opened; but if the determination of the supervisors shall have been appealed from, then such notice shall be given after the final decision of such appeal.

SEC. 76. Every public highway already laid out, no part of which shall have been opened and worked within four years from the time of its being so laid out, and every such highway hereafter to be laid out, no part of which shall be opened and worked within the like period, shall cease to be considered as a public highway; and all public highways now in use, heretofore laid out and established pursuant to law, and all roads not recorded, which have been used as public highways twenty years or more, and all roads not recorded, which shall hereafter be used ten years or more, shall be deemed public highways.

SEC. 77. When any highway shall be discontinued, the same shall belong to the owner or owners of the adjoining lands; if it shall be located between the lands of two or more different owners, it shall be annexed to the lots to which it originally belonged, if that can be ascertained; if not, it shall be equally divided between the owners of the lands on each side thereof.

SEC. 78. If any discontinued highway shall be set to a tract of land through which a new highway shall be laid out, the same may be taken into consideration in estimating the damages sustained by any person owning or interested in lands, by reason of laying out or altering any highway, the benefits which such person may receive thereby, shall be taken into consideration.

SEC. 79. All United States and Territorial roads, and all State roads which shall hereafter be laid out, shall be opened and worked the same as other highways; and whenever any such Territorial or State road shall be laid out through enclosed, improved or cultivated lands, without the consent of the owner, the damages claimed therefor may be determined by agreement between the commissioners authorized to lay out such road, and the owner; or the same proceedings may be had for the appraisal and collection of damages therefor, as if such road were laid out under the provisions of this Chapter, provided application for a jury to appraise such damages shall be made within thirty days after the return of the commissioners establishing such road, shall have been filed in the office of the clerk of the board of supervisors of the county where such damages are claimed.

SEC. 80. The supervisors of each town, through which any United States, Territorial or State road shall pass, may alter the same within the limits of their town, in the same manner they are authorized to alter other highways, but they shall not discontinue or obstruct any such road.

SEC. 81. Whenever any road, specified in the preceding section, shall be altered as therein provided, any person conceiving himself aggrieved by such alteration, may appeal from the decision of such supervisors, within thirty days thereafter, to the county board of supervisors of the same county, upon filing with the town clerk of the proper town, a bond, executed to the supervisors of such town, with sufficient sureties, to be approved by such clerk, conditioned to pay all costs arising from such appeal, provided the determination of the town supervisors, in altering such road, shall not be reversed; and the said board shall hear and determine such appeal; and if the determination of the town supervisors shall not be reversed, the appellants shall pay such costs; but if the same shall be reversed, then the town where such road shall be so altered, shall pay the same.

Of Obstructions to Highways, Encroachments thereon, and Penalties.

SEC. 82. Whoever shall wilfully obstruct any highway, or fill up, or place any obstruction in any ditch constructed for draining the water from any highway, shall forfeit for every such offence a sum not exceeding twenty-five dollars; and the overseer of the proper district shall cause such obstruction immediately to be removed.

SEC. 83. In every case where a highway shall have been laid out and opened, and the same has been or shall be encroached upon by any fence, building, or other fixture, the supervisors shall make an order, under their hands, requiring the occupant of the land through or by which such highway runs, and to which such fence, building or other fixture shall be appurtenant, to remove the same beyond the limits of such highway, within thirty days, and they shall cause a copy of such order to be served upon such occupant; and every such order shall specify the width of the road, the extent of the encroachment, and the place or places in which the same may be, with reasonable certainty.

SEC. 84. If the fence, building, or other fixture causing such encroachment, shall not be removed within thirty days after the service of a copy of such order, such occupant shall forfeit the sum of fifty cents for every day after the expiration of that time, during which such encroachment shall continue.

SEC. 85. If the occupant, upon whom a copy of such order shall be served, shall deny such encroachment, the supervisors or some one of them, shall apply to some justice of the peace of the county for a precept, which shall be issued by such justice, directed to any constable of the county, commanding him to summon six disinterested freeholders thereof, to meet at a certain day and place, and not less than four days after the issuing thereof, to inquire into the premises; and the constable to whom such precept shall be directed, shall give at least three days' notice to one of the supervisors of the town, and to the occupant of the land, of the time and place at which such freeholders are to meet.

SEC. 86. On the day specified in the precept, the jury so summoned shall be sworn by such justice, well and truly to inquire whether any such encroachment has been made as described in the order of the supervisors, and by whom; and the witnesses produced by either party shall be sworn by the justice, and the jury shall hear the proofs and allegations which may be produced and submitted to them; and in case any person summoned as a juror shall not appear, or shall be incompetent, his place may be supplied by talesman as in other cases.

SEC. 87. If the jury find that any such encroachment has been made by the occupant of the land, or any former occupant thereof, they shall make and subscribe a certificate in writing of the particulars of such encroachment, and by whom made, which shall be filed in the office of the town clerk; and the occupant of the land, whether such encroachment shall have been made by him, or by any former occupant, shall remove the fence, building, or other fixture causing such encroachment within thirty days after the filing of such certificate, under penalty of fifty cents for each day, after the expiration of the time, during which such encroachment shall continue.

SEC. 88. If the jury find that any such encroachment has been made as aforesaid, the occupant shall pay the costs of such inquiry, and if the same shall not be paid in ten days, the justice shall issue an execution for the collection thereof, directed to any constable of the county, commanding him to levy such costs and his fees thereon, of the goods and chattels of such delinquent, and make return thereof to such justice within thirty days from its date; and the justice, constables, jurors and witnesses, shall be entitled to the same compensation as for other similar services in proceedings before justices of the peace.

SEC. 89. If the jury find that no encroachment has been made, they shall so certify, and shall also ascertain and certify the damages which the then occupant shall have sustained by such proceedings; which damages, together with the costs of the proceedings, shall be paid by the supervisors, and shall be a charge in their favor against the town in which they shall have been elected.

SEC. 90. No person shall be required to remove any fence under the above provisions, except between the first day of November and the first day of April, unless the same shall have been made within three months next before the making of the order of the removal thereof.

SEC. 91. If any tree shall fall, or be felled, by any person, from any occupied land into any highway, any person may give notice to the occupant of the land from which such tree shall have fallen, to remove the same within twenty-four hours; and if such tree shall not be removed within that time, but shall continue in such highway, such occupant shall forfeit the sum of fifty cents for every day thereafter until such tree shall be removed; but the amount so forfeited shall not exceed ten dollars for one tree.

SEC. 92. In case any person shall cut down, or fall any tree on enclosed land, not occupied by him, so that it shall fall into any highway, unless by the order or consent of the occupant, such person shall pay to the occupant of such land the sum of one dollar for every day the same shall remain in such highway, together with all damages which such occupant may sustain; but the amount so to be recovered shall not exceed twenty dollars for one tree.

Of the Erection, Repairing and Preservation of Bridges.

SEC. 93. Whenever it shall appear to the board of supervisors of any county, that any one of the towns in such county would be unreasonably burthened, by erecting or repairing any necessary bridge or bridges in said town, such board of supervisors may cause such sum to be raised and levied upon the county as will be sufficient to defray the expenses of erecting or repairing such bridge or bridges, or such part of such expense as they may deem proper; and such moneys, when collected, shall be paid to the town treasurer of the town in which the same are to be expended, to be applied by the supervisors of such town to the purposes for which the same were raised.

SEC. 94. The supervisors of any town may put up and maintain, at the expense of their town, in conspicuous places at each end of any bridge in such town, maintained at public charge, and the length of whose span is not less than twenty-five feet, a notice, with the following words in large characters: "One dollar fine for riding or driving on this bridge faster than a walk."

SEC. 95. Whoever shall ride or drive faster than a walk on any bridge upon which such notice shall have been placed, and shall there be, shall forfeit for every such offence, the sum of one dollar.

SEC. 96. Whoever shall wilfully injure any bridge maintained at the public charge, shall, for every such offence, forfeit treble damages; and he may be indicted and punished as provided by law.

Miscellaneous Provisions of a General Nature.

SEC. 97. If any damage shall happen to any person, his team, carriage, or other property, by reason of the insufficency or want of repairs of any bridge, or sluiceway, or road in any town in this Territory, the person sustaining such damages shall have a right to sue and recover the same against such town, in any court having jurisdiction thereof; and if such damages shall accrue by reason of the insufficency or want of repairs of a bridge erected or maintained at the expense of two or more towns, the suit shall be brought against all the towns liable for the repairs of the same; and, upon recovery of judgment, the damages and costs shall be paid by such towns in the proportion in which they are liable for such repairs; and the court may, in its discretion, issue execution against each town for its proportion only.

SEC. 98. If any such bridge, or sluiceway, or road, shall have been out of repair in consequence of the neglect or default of the overseer of highways, of the district in which the same may be situated, then the town against which any judgment shall have been recovered by reason of such defective bridge, or sluiceway, or road, may bring an action against such delinquent overseer, and recover the amount of such judgment.

SEC. 99. All trees standing or lying on any land over which any highway shall be laid out, shall be for the proper use of the owner of such land, or person otherwise entitled thereto, except such of them as may be requisite to make or repair the highways or bridges on the same land, or within one mile of the same; but no trees reserved for shade or ornament, shall be used for such purpose.

SEC. 100. Any person owning or occupying land adjoining any highway, may plant or set out trees on each side of said highway contiguous to his land; which trees shall not be set in the highway more than ten feet from the margin thereof; and if any person shall cut down, destroy, or injure any tree that may have been, or shall be so planted or set out, or which shall have been left on the side of such highway for shade, he shall be liable to treble the damages to the owner or occupant of such adjoining land.

SEC. 101. Whoever shall wilfully destroy, remove, injure, or deface any milestone or mile-board erected on any highway, or shall wilfully injure or deface any inscription or device upon any guide-post or guide-board on any highway, or remove, destroy or injure any such guide-post or guide-board, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined not exceeding fifty dollars, or imprisoned in the county jail, not exceeding three months, in the discretion of the court.

SEC. 102. Whoever shall injure any highway, by obstructing or diverting any creek, water course or sluiceway, or by drawing logs or timber on the surface of any road or bridge, or by any other act, shall be liable in treble damages, to be recovered by the overseer of highways of the road district within which the injury was done, in his name of office, to be expended by him in the repair of the roads in his district.

SEC. 103. The provisions of this Chapter relating to highways and bridges, shall be construed to extend to all parts of the Territory, except where special provisions therewith have been or shall be made by law in relation to particular towns, counties, cities or villages.

SEC. 104. This Act to take effect and be in force from and after its passage; and an Act entitled "AN ACT to provide for the opening, vacating and changing of highways," approved twelfth day of February, 1858, is hereby repealed, and all other Acts or parts of Acts, inconsistent with the provisions of this Act.