

## HIGHWAYS.

## CHAPTER XIII.

AN ACT TO PROVIDE FOR THE OPENING, VACATING AND CHANGE  
OF HIGHWAYS.

*Be it enacted by the Legislative Assembly of the Territory of  
Dakota:*

## HIGHWAYS RUNNING INTO MORE THAN ONE COUNTY.

What necessary  
to be done in  
order to locate or  
change highway

Section 1. That if fifteen freeholders of any county shall petition the board of commissioners of such county for the location, change or vacation of any highway running into more than one county, six of which freeholders shall reside in the immediate neighborhood of such highway, setting forth in such petition the beginning, course, and termination of the highway proposed to be located or vacated, or of the change desired to be made, together with the names of the owners and occupants or agents of the lands through which the same may pass, the register of deeds of such county shall notify the register of deeds of all the counties in which such highway is to be run, vacated or changed, of the filing of such petition, accompanying such notice with a copy of such petition, which shall be by such register of deeds laid before their respective boards of commissioners at their next session thereafter, when such board shall appoint commissioners according to the regulations hereinafter provided.

Commissioners  
to be appointed  
to examine  
highway

Sec. 2. Upon the board of commissioners of the county, in which such petition is first filed, being satisfied that notice thereof has been given at least twenty days before the session of such board at which such petition is to be heard, by publication in a newspaper of each county in which such highway is to be run, vacated or changed, for three weeks successively, or by written or printed notices posted up in three of the most public

places in the neighborhood of such highway, in each of such counties, such board shall appoint a commissioner to examine such highway.

Sec. 3. Immediately upon the appointment of such commissioner, the register of deeds of such county shall notify the register of deeds of all the counties interested, specifying in such notice the time and place when such commissioners shall meet to commence the examination of such highway. When such last mentioned register of deeds and the register of deeds of the county where such petition is first filed, shall issue precepts to the sheriffs of their respective counties, directing them to notify such commissioners of such appointments, and the time and place of their meeting.

Register of deeds to give notice of appointment of commissioners

Sec. 4. Each of such board shall appoint one commissioner, and in case the number is equal and cannot agree, the commissioners thus appointed shall appoint another, who shall perform the same duties and receive the same fees as those first appointed.

Disagreement of commissioners

Sec. 5. At the time and place designated in the notice given by the register of deeds of the county in which such petition is first filed, such commissioners shall meet, and having first taken an oath, to be administered by some authorized officer, to faithfully perform their duties, shall proceed to examine the highway proposed to be located, vacated or changed, and in such examination may employ a surveyor, and a necessary number of chain carriers and markers.

Commissioners to take oath

Sec. 6. After such commissioners shall have completed their examination, they shall draw up a report of their proceedings setting forth the highway proposed to be located, vacated, or changed by course and distance, and recommending therein according to the opinion of the majority of such commissioners, either that the prayer of such petition shall be granted or rejected, a copy of which report shall be returned to the board of commissioners of each of the counties interested at their next session thereafter.

To make report

Sec. 7. Upon the return of such report, the board of commissioners shall proceed to determine the prayer of such petition, and if there shall be no remonstrance against the same, and it is recommended in such report, such board shall declare

Determining of the petition

it granted, and shall direct the register of deeds of such county to notify the register of deeds of all the other counties interested thereof. When, if there be no remonstrance pending in either county interested, the register of deeds of each of such counties, shall notify the supervisors of the road districts in his county through which such highway passes, or the change is made, when such supervisors shall open so much of such highway as lies in their respective districts:

*Provided*, That in case of a highway declared vacated, no notice to supervisors shall be necessary.

In case of not  
granting peti-  
tion

Sec. 8. If such commissioners do not recommend the prayer of such petition to be granted, the boards of commissioners of the counties interested, shall order it to be dismissed, but such order of dismissal shall not be a bar for other petitions thereafter concerning the same subject matter.

In case of re-  
monstrance

Sec. 9. If at the session of the board of commissioners at which the report of the commissioners appointed to examine such highway, is presented, any person shall remonstrate against granting the prayer of the petition, setting forth in writing that he is damaged in a sum mentioned, by the location, vacation or change of such highway, to the truth of which he shall take and subscribe an oath, such board shall appoint three persons, residents of such county, to review that part of such highway whereof such complaint is made, and shall direct the register of deeds of such county to notify all the registers of deeds of the other counties interested, of such remonstrance, when further proceedings touching such petition shall be continued until the ensuing term of such boards.

Reviewers to  
assess damages  
and make report

Sec. 10. Such reviewers, at the time and place designated by the board of commissioners to whom such remonstrance is presented, shall meet, and having taken an oath before some officer authorized to administer oaths, to faithfully perform their duties as such reviewers, shall proceed to examine that part of such highway, or the change thereof complained of, and having done so, shall at the next term of such board, report their proceedings to such board, in which report they shall specify the amount of damages sustained by the person remonstrating, if any; whereupon such board shall determine whether the damages assessed are greater than the utility of the proposed high-

way or change, and if they shall be of opinion that the prayer of the petition should not be granted they shall direct the register of deeds of such county to notify the register of deeds of the other counties interested thereof, and continue further proceedings in the premises until the next term thereafter, but if they shall be of opinion that the damages should be paid and the prayer of the petition granted, they shall direct such register of deeds to notify the register of deeds of the other counties interested, of the amount of such damages, and shall continue further proceedings to the next term thereafter.

Sec. 11. If more freeholders residing along the highway proposed to be located, or vacated, or change to be made, than those of the same county petition therefor, remonstrate against granting the prayer of such petition therefor, the board of commissioners of such county shall decide against such petition, and shall direct the register of deeds of such county to notify the register of deeds of all the other counties interested thereof, and continue further proceedings in the premises until the ensuing term.

When petition  
not granted

Sec. 12. At the next term after the reception of notice of any remonstrance, and the proceedings thereon, the register of deeds of such counties shall lay the same before their respective boards of commissioners, who shall determine whether the prayer of the petition ought to be granted, and shall notify the register of deeds of each county interested thereof; and if the boards of commissioners of a majority of such counties decide in favor of such petition, at the term of such boards when the same is ascertained, such highway shall be declared located, vacated or changed, and such supervisors notified thereof as hereinbefore provided, but if a majority of such boards decide against such petition, it shall be declared dismissed whenever it is ascertained, and all damages declared assessed shall be paid equally by the counties interested; and if such reviewers shall fail to assess any damages, the person asking the same shall pay the costs of such review.

When petition  
granted

Sec. 13. Such commissioners appointed to examine such highway, and such reviewers, shall receive each two dollars for every day they may be necessarily employed, and such survey-

Fees of commis-  
sioners reviewers  
&c.

or, chain carriers and markers shall receive such compensation as the board of county commissioners, where such petition is first filed shall deem reasonable, to be paid equally by each county interested.

Location &c of  
highway to be  
recorded

Sec. 14. Whenever a highway is located, vacated or changed, the order therefor shall be entered of record in the order book of the board of commissioners of each county interested, in which county such highway or change thereof shall be particularly described by course and distance.

ROADS RUNNING IN BUT ONE COUNTY, AND THROUGH MORE THAN ONE  
TOWNSHIP.

Manner of  
procuring  
location &c of  
highway

Sec. 15. Whenever twelve freeholders of the county, six of whom shall reside in the immediate neighborhood of the highway proposed to be located, vacated, or of the change to be made, shall petition the board of commissioners of the county in which such highway is situate, for the location, vacation, or change of any highway, such board, if they shall be satisfied that notice of such application has been given by publication three weeks successively in a newspaper published in the county, or by posting up notices in three of the most public places in the neighborhood of such highway, or change, at least twenty days before the meeting of the board at which such petition is to be presented, shall appoint three persons to view such highway.

Sheriff to give  
notice of meet-  
ing

Sec. 16. The register of deeds of such county shall issue a precept to the sheriff thereof, commanding him to notify such viewers of the time, place and object of their meeting, and such viewers, at such time and place, after having taken an oath, before some officer authorized to administer oaths to faithfully perform their duties, shall proceed to view the highway, or such change; and if they shall deem the highway to be located, or the change to be made, of public utility, they shall lay out and mark the same on the best ground, not running through any person's enclosure of one year's standing, without the owner's consent, unless upon examination, a good way cannot otherwise be had:

*Provided*, That where the road is laid out upon the line dividing the land of two individuals, each shall give half the road.

Sec. 17. Such viewers, or a majority of them, shall make a report of their proceedings at the ensuing session of the board of commissioners of the county in which such location, change or vacation may be made, giving a full description of such location, change or vacation, by routes and bounds and by its course and distance, except that in case of the vacation of a road, or any part thereof, such description only as will designate it clearly, shall be required; and in such case, a copy of the order vacating such highway shall be recorded by the proper register of deeds of the county, and shall cause the supervisors of the road district to be notified accordingly.

Viewers of to  
make report of  
proceedings

Sec. 18. If no objections be made to such proposed highway, vacation or change, such board shall cause a record thereof to be made, and shall order the same to be opened and kept in repair, which order shall be transmitted to the trustees of any of the townships in which such location or change is made; and shall cause notice thereof to be given to the proper supervisor, to work such location or change.

In case no  
objection is  
made what to be  
done

Sec. 19. If any person through whose land such highway or change may pass, shall feel aggrieved thereby, such person may at any time before final action of the board thereon, set forth such grievances by way of remonstrance, and the said board shall thereupon appoint three disinterested freeholders, as reviewers, and assign a day and place for them to meet.

Appointment of  
reviewers

Sec. 20. Such reviewers, having five days' notice, to be given by the party remonstrating, shall meet at the time and place designated, and take an oath faithfully to discharge the duties assigned them, and shall then or on any other day, to which a majority may adjourn, prior to the next session of such board, proceed to review the proposed highway and assess the damages, if any, which such objector may sustain from such highway or change being opened, vacated or continued through his lands, and shall report the same to the ensuing session of such board.

Reviewers to  
take oath make  
reports &c,

Sec. 21. If a majority of the viewers assess and report damages in favor of the objector, and the board shall consider the proposed highway, vacation or change, to be of sufficient importance to the public, they shall order the costs and damages to be paid out of the county treasury; but if a majority report

On report of  
majority what to  
be done

against the claim for damages, the objector shall pay the costs; and when payment of damages is made as herein provided, such highway shall be recorded and ordered to be opened and kept in repair, as hereinbefore provided.

Setting aside  
assessment

Sec. 22. If it shall be made to appear to the board that the damages assessed are unreasonable, they may set aside such assessment and order another review, under the same regulations as provided in case of the first review.

Reviewers  
appointed

Sec. 23. If any one or more freeholders residing in such county, along such proposed highway, vacation or change, shall object to the same at any time before final action thereon, as not being of public utility, other viewers may be appointed, who shall proceed, on a day to be by them designated, after having taken an oath faithfully to discharge the duties assigned them, to examine the proposed highway, and shall make report to such board at their next session, whether or not, in their opinion, the said highway, vacation or change, will be of public utility.

Report of  
Reviewers

Sec. 24. If a majority of the viewers last named report against the public utility of such highway, the same shall not be established, unless the petitioners will open and maintain the same at their own expense; but if they report favorably thereto, the objector shall pay the costs of the review, and the highway shall be recorded and ordered to be opened and kept in repair; but in no case shall a highway be opened, vacated, or a change be made, if a majority of the freeholders residing along such proposed highway, or along such change, or along the highway proposed to be vacated, shall remonstrate against the same.

Payment of  
damages

Sec. 25. No such highway shall be opened, worked, or used, until the damages assessed therefor shall be paid to the persons entitled thereto, or deposited in the county treasury for their use, or they shall give their consent thereto in writing filed with the register of deeds of such county.

In case of ap-  
peal to District  
court

Sec. 26. Any person aggrieved by any decision of any board of commissioners, may appeal therefrom to the district court of such county, upon his filing a bond, with surety and penalty, to be approved by the register of deeds of such county, conditioned for the due prosecution of such appeal, and the payment

of costs, if costs be adjudged against him; and in case proceedings shall be had in more than one county, the register of deeds of each county, on being notified of such appeal by the register of deeds of the county in which the appeal is taken, shall transmit to the clerk of the court to which the appeal is taken, all the proceedings in such county; and upon the determination of such appeal, such clerk shall notify the register of deeds of all the counties interested thereof.

GENERAL PROVISIONS CONCERNING HIGHWAYS.

Sec. 27. No road shall be less than eighty feet wide; and the order for laying out of any highway shall specify the width thereof. Width of roads

Sec. 28. Public highways established on the county or township line, shall be opened and repaired by the supervisor of the proper road districts on each side thereof, and by the joint labor of the hands in each of such districts in each county or township. Highways on county or town lines

Sec. 29. Whenever any public highway shall have been laid out through any enclosed land, the supervisor shall give the occupant of such land, or the owner, if a resident of the road district, sixty days' notice in writing, to remove his fence; but such owner or occupant shall not be compelled to move such fence between the first day of April and the first day of November; and if such fence is not removed pursuant to such notice, such supervisor shall cause the same to be done. Highway running through enclosed field

Sec. 30. If the owner or occupant shall not have been allowed damages for the laying out of such highway upon his land, the supervisor shall give the person removing such fence credit on his highway tax for any amount that the supervisor shall deem just, subject to the approval of the county commissioners. In case of non allowance of damages

Sec. 31. Every public highway already laid out, or which may hereafter be laid out, and which shall not be opened and used within six years from the time of its being laid out, shall cease to be a highway for any purpose whatever; but if any distinct part thereof shall have been opened and used within six years, such part shall not be affected by the provisions of this section, nor shall this section be applied to streets and alleys in any town: When highway shall cease to exist

*Provided, however,* That the board of county commissioners shall decide that public necessity does not require such road kept open, which decision shall be recorded by the clerk of the court, whereupon said vacated highway shall vest in the rightful owner who may have the title thereof according to law, of the property on each side of said highway.

Rights of  
settlers on  
public lands

Sec. 32. In all applications for the location, change, or vacation of any public highway, actual settlers upon any public lands in any county in this Territory shall have and possess all rights in this act granted to freeholders.

What deemed  
public highway

Sec. 33. All public highways which have been or may hereafter be used as such, for twenty years or more, shall be deemed public highways.

Who to act as  
commissioners  
reviewers &c

Sec. 34. No person owning lands, or who is related by consanguinity to any person owning lands, along any proposed highway or change, shall be competent to act as commissioner, viewer, or reviewer thereof.

Fees of viewers  
and reviewers

Sec. 35. Viewers and reviewers appointed under this act shall receive two dollars for every day they shall be necessarily employed as such.

Planting hedges

Sec. 36. The board of county commissioners of any county, on petition of an individual desiring to plant a hedge on his land adjoining a public highway, may grant such individual the privilege of placing his fence seven feet on such highway:

*Provided,* Said fence will not be an obstruction to the highway.

When persons  
may lay out  
private roads

Sec. 37. Any person may have a private road laid out, changed or vacated, upon presenting a petition to the board of county commissioners [of the county] in which such petitioner may reside, under regulations hereinbefore provided for roads running through one county only:

*Provided,* That such board may order such private road to be laid out, changed or vacated, without any view, if there be no remonstrance against such petition; and the petitioner shall open and keep in repair such road at his own expense.

When persons  
debarred from  
recovering  
damages

Sec. 38. Whenever any road has heretofore been laid out, and used as a highway under any law of the Legislative Assembly of the Territory of Dakota, any person damaged thereby shall make known his claim for damages, by petition to the

board of county commissioners of the county in which such road is located within one year from the taking effect of this act, and in case of failure for that length of time so to do, shall thereafter be debarred from recovering any damages whatever, by reason of such road having been so laid out and opened, and in case any such petition shall be presented to a board of county commissioners, the same proceedings shall thereafter be had to ascertain and pay such damages, as is provided for in this act upon a remonstrance being presented.

Sec. 39. When any person shall acquire the title to gov- Settlers on public lands claiming damages  
ernment lands over which any road has been or may hereafter be duly laid out, subsequent to the laying out of such road, the person so acquiring such title, shall within three months after receipt of his patent therefor, assert his claim for damages in the manner provided in the preceding section, and such road shall remain and be a public highway, but his damages, if any, shall be paid, and in case of a failure for that length of time, to assert his claim for damages as aforesaid, he shall thereafter be debarred from asserting such claim.

Sec. 40. All public land in this Territory settled upon and occupied by settlers thereon, shall be subject to all the provisions of this act, so far as the rights and liabilities of such settlers are concerned. Who subject to the provisions of this act

Sec. 41. That chapter one of the session laws of 1866-7, be, Certain law repealed  
and the same is, hereby repealed.

Sec. 42. This act shall take effect and be in force from and after its passage and approval. When to take effect

Approved, January 8, 1868.