

such account, the court may proceed against him as provided herein.

§ 30. Each of the following sections, to-wit: Sections 85, 148, 150, 155, 170, 171, 174, 175, 176, 177, 178, 179, 194, 216, and 266 of said act, being sections 6244, 6307, 6309, 6314, 6329, 6330, 6333, 6334, 6335, 6336, 6337, 6338, 6353, 6375 and 6425, of the Revised Codes, are hereby repealed.

§ 31. All acts and parts of acts in conflict with this act or any part thereof are hereby repealed.

§ 32. [EMERGENCY.] *Whereas*, an emergency exists in this that the Probate Code of this State is in part inadequate and many estates cannot be settled and distributed as the probate law now is, therefore, this act shall take effect and be in force from and after its passage and approval.

Approved March 13th, 1897.

PUBLIC HIGHWAYS.

CHAPTER 112.

[H. B. 83.]

OPENING AND VACATING HIGHWAYS.

AN ACT Relating to Opening and Vacating Highways, Prescribing the Duties of Supervisors and County Commissioners in Relation Thereto and Regulating Appeals from the Awards Thereof, and for the Repeal of Sections 1050 to 1075, Both Inclusive, of the Revised Codes of North Dakota.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. WHAT ARE PUBLIC ROADS.] All public roads and highways within this state which have been open and in use as such, and included in a road district in the town in which the same are respectively situated during twenty 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.

§ 2. 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,

§ 3. SECTION LINES CONSIDERED PUBLIC ROADS, WHEN.] 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.

§ 4. BEFORE WHOM PROCEEDINGS BROUGHT.] In the opening, vacating or changing of a highway outside of the limits of incorporated cities, villages or towns, all proceedings relating thereto to acquire right of way and to all other matters connected therewith shall be under the charge and in the name:

1. Of the board of county commissioners, if the county is without a civil township organization, or if the road is in territory not organized into a civil township.

2. Of the board of township supervisors of organized townships.

3. Of the board of county commissioners of each county in case the road is between or in two or more counties.

4. Of the board of township supervisors of each organized civil township in which any part of the road is situated if the road is situated between two civil townships or in more than one civil township.

5. Of the board of township supervisors of each organized township and of the board of county commissioners in case the road is situated partly in an organized township and partly in an unorganized township.

§ 5. PETITION FOR LAYING OUT, ALTERING OR 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 law of the United States, or under contract from the State of North Dakota, in the vicinity of the road to be altered, discontinued or laid out; 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 lands, it 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; *Provided*, that all roads, or parts thereof heretofore or hereafter laid out by township supervisors and not open to public use within ten years from the time they were laid out are hereby declared vacant.

§ 6. COPY OF PETITION TO BE POSTED.] Whenever any number of legal voters, as aforesaid, determine to petition the supervisors for the alteration or discontinuance of any road, or for laying out any new road, they shall cause a copy of their petition to be

posted up in three of the most public places of the town twenty days before any action is had in relation thereto.

§ 7. NOTICE TO ALL PARTIES TO BE GIVEN.] When 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 that 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 a copy left at the abode of each occupant. The supervisors shall also cause copies of such notice to be posted in three public places in said town at least ten days previous to such meeting; every such notice shall specify as near as practicable, the highway proposed to be laid out, altered or discontinued, and the several tracts of land through which the same may pass.

§ 8. EXAMINATION OF PROPOSED HIGHWAY.] 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 highways 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.

§ 9. PROCEEDINGS WHEN ROAD IS LAID OUT, ALTERED OR DISCONTINUED.] 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 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, altering 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 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 or county clerk, who shall file and preserve all such papers thus transmitted to him. And in case the supervisors shall fail to file such order within twenty days they shall be deemed to have decided against such application.

§ 10. ORDER OR CERTIFIED COPY—COMPETENT 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.

§ 11. DAMAGES—HOW ASCERTAINED.] The damages sustained by reason of laying out, altering or discontinuing any road may be ascertained by the agreement of the owners and 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 owner 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.

§ 12. WHEN DAMAGES NOT ALLOWED.] No damages shall be assessed or allowed under the provisions of this chapter to any person, persons or corporation, by the reason of laying out of 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.

§ 13. SUPERVISORS' DETERMINATION 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 shall be appealed from as is hereinafter 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 again be 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.

§ 14. NOTICE TO PARTY TO REMOVE FENCES.] Whenever the supervisor 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; if such owner does not remove his fences within twenty days the supervisors shall cause such fences to be removed, and direct the road to be opened and worked; *Provided*, that no inclosure shall be ordered opened between the first day of April and the first day of October.

§ 15. NOTICE TO ROAD SUPERVISORS.] When any highway is to be changed or laid out, the county auditor or the clerk of the board, as the case may be, must notify the road supervisor or overseer of highways, as the case may be, of the proper district and furnish him with a certified copy of the proceedings of the board.

§ 16. REPAIR OF HIGHWAYS ACROSS RAILROADS, ETC.] Whenever highways are laid out across railroads, canals or ditches on public lands, the owners must at their own expense so repair their roads, canals or ditches that the public highway may cross the same without damage or delay, and when the right of way for a public highway is obtained through the judgment of any court, over any railroad, canal or ditch, no damages must be awarded for the simple right to cross the same.

§ 17. APPEALS.] 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.

§ 18. BOND, APPLICATION, ETC.] 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 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 com-

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

§ 19. FILING RETURN, COSTS, ETC.] The justice shall file the return of the jury in the office of the town clerk if the appeal was taken from the decision of the board of supervisors of the town, and in the office of the 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.

§ 20. WHEN APPEAL IS TAKEN TO DISTRICT COURT.] 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, and by the service of a written or printed notice of such appeal upon the chairman of the board of supervisors or 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, such 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.

§ 21. WHEN APPEAL SUSTAINED—DUTY OF BOARD.] When an appeal shall have been made from the determination of any board of supervisors or county commissioners, and such determination shall have been reversed or altered, the supervisors or commissioners from whose determination such appeal was taken, shall proceed to lay out, alter or discontinue such highway, in conformity with the decision of such appeal, and the proceedings thereon shall be the same as if they had originally so determined to lay out, alter or discontinue such highway the amount of damages finally determined and awarded 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 individuals, shall be duly issued and deposited with 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 a town be compelled to pay any damages that may be awarded in laying out and altering or discontinuing any county road.

§ 22. Sections 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074 and 1075 of the Revised Codes of North Dakota be and the same are hereby repealed.

§ 23. EMERGENCY.] *Whereas*, inasmuch as the road work of this state is chiefly done prior to July 1st, and the present laws governing road work are inconsistent with the provisions of this act, an emergency exists; *therefore* this act shall take effect and be in force from and after its passage and approval.

Approved March 9th, 1897.

CHAPTER 113.

[S. B. 116.]

HIGHWAYS, BRIDGES AND FERRIES.

AN ACT to Amend Section 1128 of Article 7 of Chapter 17 of the Revised Codes of 1895, Entitled "Highways, Bridges and Ferries.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. That section 1128 of article 7 of chapter 17 of the Revised Codes of 1895, Entitled "Highways, Bridges and Ferries" be amended so as to read as follows:

§ 1128. COMMUTATION OF ROAD LABOR.] Each 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 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; such overseer shall pay over such commutation money to the county or township treasurer taking his receipt therefor, stating the district wherefrom received, which receipt shall be filed with the township clerk within thirty days from the date such commutation money is collected. Such commutation money shall be expended by the township board of supervisors in improvements upon the roads and bridges in the same district wherein collected. Overseers of highways when such road tax is paid either in money or labor, shall write in their list the word "Paid" opposite the name, tract of land or personal property on which the same is paid.

Approved March 10th, 1897.