

collecting a county revenue " being carried into effect in all respects.

SECTION 19. *And be it further provided,* That the foregoing provisions of this act shall take effect as soon as they shall have been accepted by the inhabitants of said village, and not before, in manner following, viz.: an election shall be held at the court house in said village at any time hereafter for that purpose, and to be conducted by the board of trustees as before named in this act; and any three of said trustees shall be considered a board to conduct said election. A notice of said election shall be published in one or more of the newspapers printed in said village, at least ten days previous to the day of election provided for in this section, and if a majority of all the votes given are for the charter, it shall be sufficient grounds for the trustees as named in the first section of this act, to declare this act in full force and effect, and provide accordingly; but if this said charter shall not be accepted as aforesaid, the said trustees may from time to time, whenever they shall be petitioned by at least seventy-five legal voters of said village, to cause an election to be held as provided in this section, until this charter shall be accepted. And all fines and forfeitures accruing under the provisions of this act, shall be collectable before any court having jurisdiction over the same in said village.

Charter not to go into effect until accepted.

Approved, January 16, 1838.

No. 57.

AN ACT for opening and repairing or vacating public roads and highways.

SECTION 1. *Be it enacted by the council and house of representatives of the territory of Wisconsin,* That all public roads and highways shall be opened, amended and repaired agreeably to the directions of this act, and the board of county commissioners shall have authority to make and enforce all orders necessary, as well for establishing and opening new roads, as to change or vacate any public road or part thereof, in their respective counties.

Power of the county commissioners in relation to roads.

Mode of applying for new roads.

SECTION 2. Applications for new roads shall be made by petition, signed by at least fifteen householders of the township or townships in which such road is desired, (six of whom shall be of the immediate neighborhood) specifying the proposed beginning, course and termination thereof.

SECTION 3. Notice of each intended application shall be given by advertisement, in three or more public places in said township, at least thirty days prior thereto.

Viewers.

SECTION 4. The said board, when the petition is presented and publicly read, and upon proof of notice as above, shall, if they deem the road prayed for necessary, appoint three disinterested electors of the county as viewers thereof.

To lay out the road.

SECTION 5. The said viewers, or a majority of them, having taken an oath or affirmation faithfully and impartially to discharge their duties, shall proceed to view the route proposed, and, if they deem it of public utility, lay out and mark such road on the best ground that can be obtained, not running through any person's enclosure of one year's standing without the owner's consent, unless a good way cannot otherwise be had.

And make report.

SECTION 6. The said viewers, or a majority of them, shall make and certify a copy of their proceedings to the ensuing session of the board when the same shall be publicly read, and if no objections be made to such proposed highway, the said board shall cause a record thereof to be made, and order the said road to be opened and repaired a necessary width, not exceeding sixty-six feet, which shall thenceforth be a public highway.

Remonstrances how made.

SECTION 7. If any person through whose land the said road may run, feels aggrieved thereby, such person may set forth his, her or their grievances by way of remonstrance, and the said board shall thereupon appoint three disinterested electors and assign a day and place for them to meet.

SECTION 8. The said electors having had five days notice from either of the parties, shall meet and take an oath or affirmation, faithfully and impartially to discharge the duties assigned them. They shall then, or on any other day (prior to the next session) to which the majority may adjourn, proceed to review the pro-

posed road, and assess the damages, if any, which such objector or objectors will sustain from such road being opened and continued through his, her or their lands, and shall report the same to the ensuing session of the board.

SECTION 9. If the majority of said reviewers assess and report damages in favor of the objector or objectors, the cost and damages shall be paid out of the county treasury; but if the majority report unfavorably, the objector or objectors shall pay the costs, and in either case said road shall be opened and recorded.

SECTION 10. If any three electors of any township or townships through which the proposed road may run, shall object at the time and in the manner aforesaid, to the same, as not of public utility, other viewers shall be appointed, who shall proceed as before directed. When other viewers to be appointed.

SECTION 11. If a majority of said reviewers report against the utility of said road, the same shall not be established, unless the petitioners will open and maintain the same at their own expense, and in either case the petitioners shall pay the costs that shall have accrued; but if they report favorably thereto, the objectors shall pay the costs of the review, and the road ordered to be opened and recorded.

SECTION 12. Any person or persons wishing to cultivate land through which any road may run, may petition the board for permission to turn such road on his, her or their land, or the land of any other person consenting thereto, at his, her or their expense. When the direction of the road to be changed, and how.

SECTION 13. Three viewers shall thereupon be appointed, who shall proceed to view the same and report the respective distances and situation of the ground of the established and proposed road.

SECTION 14. If, upon the report, the board being satisfied that the public will not be materially injured by such change, they shall order the same, and upon satisfactory assurance of said road being opened equally convenient for travellers, the board shall vacate so much of the former road as lies between the different points of intersection, and record said reviewer's report.

SECTION 15. Any person or persons, desiring to change any territorial road passing through his, her or their lands, may apply for that purpose to the board In case of territorial roads.

of county commissioners of the proper county, by petition, signed by fifteen householders of the proper township or townships, particularly setting forth the part so prayed to be altered.

SECTION 16. The said board shall thereupon appoint three disinterested electors of the proper county as commissioners, who shall meet within thirty days thereafter, and, having taken an oath or affirmation faithfully and impartially to discharge the duties assigned, proceed to view the established and proposed road; and if justice and the public good require such alteration, they shall lay off and mark such new way, and report their proceedings in writing, under their hands and seals to said board which shall be a part of said territorial road and opened accordingly, and the old part vacated.

SECTION 17. That when any territorial road is opened, it may be changed agreeably to the two foregoing sections, but the old road shall not be vacated, until the person or persons applying for such alteration shall cut open and repair the new fully equal to the old road.

When the
change extends
into two coun-
ties.

SECTION 18. When any alteration as aforesaid, shall be proposed to extend from one county into another, thirty householders of either county may file their petition, setting forth the part of the road proposed to be altered, with the clerk of the board of commissioners of the proper county, at least thirty days before the term at which they may make such application.

SECTION 19. The clerk of said board, shall forthwith notify the clerk of the board of the adjacent county, in writing, that such petition has been filed and transmit him a copy thereof.

SECTION 20. The clerk, receiving such information and copy, shall lay the same before the board of commissioners of his county on the first day of its next term.

SECTION 21. The said boards respectively, shall appoint on the part of each county three disinterested electors as commissioners, and the board receiving the copy shall set a time (not under thirty days) for the meeting of the respective commissioners, at the dividing line of said counties, and as near as may be to the point where the proposed road crosses.

SECTION 22. The clerk of the said last mentioned board, shall forthwith give written information to the sheriff of the county, where the original petition was filed, of the time and place of meeting of said commissioners, and the sheriff of said counties shall notify respectively the commissioners, at least ten days before the meeting.

SECTION 23. The commissioners appointed as aforesaid, shall meet at the time and place specified, and, after taking the proper oath or affirmation, proceed to discharge the duties assigned them, being governed by the requisitions of the sixteenth section of this act, except that the commissioners shall report their proceedings at the next term of the board of county commissioners respectively.

SECTION 24. If the majority of said commissioners report in favor of an alteration of such road, the said board, upon being satisfied that the provisions of the seventeenth section of this act have been complied with, by opening the new way, shall cause so much of said road as lies in each county, to be recorded as a territorial road and vacate the old one.

SECTION 25. That the commissioners appointed under the provisions of this act, and the surveyors, chain bearers and markers, they may necessarily employ, shall severally receive such reasonable pay, as the board may allow, which, together with all legal cost, shall be paid by the person or persons applying for such alteration.

Compensation,
by whom paid.

SECTION 26. Any fifteen householders of a township or townships, may make application to the proper board, by petition, signed by them, for the vacation of any road or highway as useless, and the repairing thereof an unreasonable burden to the township or townships.

How roads to be
discontinued.

SECTION 27. The said petition shall be publicly read on two different days of the session at which it is presented, and the matter continued without further proceedings to the next session.

SECTION 28. At the ensuing session the same shall be again publicly read, and if no remonstrance be made thereto in writing, signed by fifteen householders, the board may proceed to vacate such road or any part thereof, and the costs and charges shall be defrayed by the county.

SECTION 29. If a remonstrance in manner aforesaid be made, the board shall appoint reviewers, who shall be governed as those appointed in similar cases. The judgment of the board shall be conclusive in the premises.

Cart ways may be laid out.

SECTION 30. Any person, for his convenience, may have a cart way, not exceeding thirty feet in breadth, laid out from or to any plantation, dwelling house, or public highway, on petition to the proper board, having advertised his intentions as required by this act; which board shall cause the same to be publicly read, and if they think proper order a view of the same.

SECTION 31. Said cart way, shall, in the discretion of said board, be recorded and declared a common cart way, for the use and convenience of the public, and shall be opened by the persons petitioning therefor.

SECTION 32. If the said road shall be laid out through any person's land objecting thereto, the damages shall be assessed, as is provided in case of objection to public roads and highways; which being paid by the person applying for such way, he may proceed to open the same agreeably to the order of said board.

When direction may be changed and how.

SECTION 33. If the owner or owners of any land through which such way passes be desirous of improving the same, he, she or they may be permitted to turn the same on as good ground, not increasing the distance more than one twentieth, on application to said board.

Swinging gates may be put up.

SECTION 34. Any person may be permitted by said board, to hang swinging gates upon said cart way, but shall keep the said gate or gates in good order and repair, under a penalty of one dollar for every offence, to be recovered before a justice of the peace of the proper county, by any person prosecuting for the same to be appropriated towards keeping the said way in repair.

Who shall work on public roads.

SECTION 35. That all male inhabitants between the ages of twenty-one and fifty years, persons exempted by law, or excused by the board of commissioners for good cause shown excepted, shall work public roads and highways two days in each year, and all persons, except those as before excepted, found in any district, at the time the supervisors notify or warn the different individuals to labor on the public roads in the county

or territory, for ten days immediately preceding the notification or warning as aforesaid, shall be liable to labor as before named. And it shall be the duty of the supervisors in their respective districts, to enroll the names of all such persons, and cause the same to perform the labor to be performed, agreeably to the provisions of this act.

SECTION 36. All real estate, as well the property of non-residents as residents, shall be subject to be taxed annually, for the purpose of opening and working the public highways, which tax shall not exceed one per cent, and shall be levied by the board of county commissioners, as other taxes are. And said board shall proceed to assess all such taxes, as above provided, at their session in January, and shall cause a copy thereof to be delivered by the sheriff, to each of the supervisors of the road district, within their county, within thirty days from such assessment: *provided*, that each person so assessed may discharge the tax thus imposed, in labor upon the highways, under the direction of the supervisor of the road district in which he may reside, or the property so assessed shall be located; and the person so laboring on the highway shall be credited for all labor so performed, at the rate of two dollars per day.

Real estate to be taxed.

Provido:

SECTION 37. Each person made liable to work by this act, who shall fail to attend in person or by satisfactory substitute, at the time and place appointed within said district, with the designated tool or instrument, having had three days notice thereof, or having attended, shall spend his time in idleness or disobey the supervisor, shall forfeit two dollars for each such delinquency, to be recovered by action of debt in the name of the supervisor, before any justice of the peace of the proper county.

Penalty for refusing to work.

SECTION 38. The said supervisor shall be accountable for the sums recovered as aforesaid, and shall expend the same in repairing the roads in his district. And in suits brought by the supervisor, in pursuance of this act, he shall be a competent witness, and on any suit as aforesaid, he shall not be liable for costs.

SECTION 39. Where the supervisor has not an opportunity of giving personal notice of the time and place allotted for such work, a written notice thereof,

Notice.

left at the dwelling house or usual place of residence of the party shall be deemed sufficient.

SECTION 40. Every person, who shall at the request of the supervisor of his road district, furnish a plough, or wagon, with a pair of horses or oxen and driver, and perform one or more days' work with them, shall, for each day's work, so performed, receive a credit of three days' work, and so in proportion for services of a similar kind with greater or less force.

SECTION 41. The said supervisors, before entering upon their duties as such, shall take an oath or affirmation, before some person duly authorized to administer the same, faithfully and impartially to discharge the duties enjoined upon them.

Penalty for refusing to act as supervisor.

SECTION 42. Any householder or elector refusing to accept said appointment of supervisor, or to take the oath required, shall forfeit and pay the sum of six dollars, to be recovered by presentment or indictment: *provided*, no person shall be compelled to accept said appointment oftener than once in four years.

SECTION 43. To each of the supervisors, elected or appointed, the board of commissioners shall assign his road district, together with the number of hands allotted, and cause to be forwarded to him a certificate of his election or appointment, setting forth the boundaries of his district and hands.

SECTION 44. The sheriffs of the several counties, shall deliver to the supervisors respectively, their certificate of election, or appointment, and make return thereof to the clerk of said board, who shall enter the same on the records of said board.

Duty of supervisor.

SECTION 45. As often as the roads and highways, within the district of a supervisor, shall require opening or repairing, he shall call out the hands allotted him, oversee and keep them close to their business, and work upon, open, clear, and repair the same. And to keep them so in repair, he shall, when the hands shall have worked the number of days required by this act, if the roads require it, call out the hands assigned in proportion to the tax on them already assessed.

Authority to build dams, &c.

SECTION 46. It shall be lawful for any supervisor, or any person or persons by his order, to enter upon any lands adjoining or lying near the road in his district and cut or open such ditches or drains and construct such dams as shall be necessary for the making

or preservation of said road, doing, however, as little injury to the owner of such land as possible.

SECTION 47. Any person who shall willfully break down or destroy such dams or stop or fill said ditches or drains, shall forfeit five dollars for every such offence, to be recovered in the name of the said supervisor before any justice of the peace of the proper county, and applied to the opening and repairing of roads in said districts. Penalty for willful injury to dams, &c.

SECTION 48. Every supervisor shall have full power to enter upon any unimproved lands, adjoining or near the roads, and gather, dig or cause to be dug any gravel, sand or stone, or cut down any wood or trees and carry off the same, that shall be necessary for the making or reparation of said road, doing, however, as little damage as may be to the owner of such land. May take materials.

SECTION 49. If any person feels himself aggrieved by the removal of such timber, stone or gravel from his, her or their land, such person may apply to the board of commissioners, who shall appoint three disinterested electors, who after taking the proper oath or affirmation, shall proceed to assess the damages, if any there be, which shall be paid out of the county treasury.

SECTION 50. Every supervisor shall erect and keep a post at the forks of every road or highway within his district, containing a legible inscription directing the way and showing the distance to the most remarkable place on each road, respectively, under a penalty of five dollars. Must erect guide posts.

SECTION 51. Any person who shall intentionally demolish such post or deface or alter any inscription thereon shall for every such offence forfeit and pay to said supervisor ten dollars, to be recovered before any justice of the peace of the proper county for the use of the roads in said district. Penalty for injury thereto.

SECTION 52. If any person shall obstruct any public road unnecessarily and to the hindrance of passengers, such person shall forfeit a sum not exceeding ten dollars, to be recovered in the name of the proper supervisor.

SECTION 53. The supervisors respectively shall as often as informed of such obstructions commence suit against the person obstructing as aforesaid before any justice of the peace of the proper county or township;

which suit shall be prosecuted as for debts of a similar amount.

SECTION 54. Every person fined as aforesaid shall forfeit one dollar for each day he may suffer such obstruction to remain, to the hindrance of passengers, to be recovered as aforesaid.

SECTION 55. When a public road or highway shall run through or border on any plantation and become obstructed by the falling of trees or otherwise, it shall be the duty of the owner of such plantation to remove such obstruction as soon as the same shall come to his knowledge, for which the supervisor of such road shall give him a reasonable compensation by a credit on his liability to work on roads.

Pay of supervisor.

SECTION 56. Each supervisor shall be allowed one dollar and fifty cents per diem for each day he may be necessarily employed in the discharge of his duties, to be paid out of any moneys by him collected for road purposes in the district over which he presides, except two days for his personal liabilities and the amount of his road tax assessed at one dollar per day.

Penalty for neglect of duty.

SECTION 57. In all cases when the supervisor shall willfully fail or neglect to keep his said road in good repair or to faithfully appropriate moneys collected or received for the use of his road or in any manner to comply with the duties required of him by this act he shall forfeit and pay a sum not exceeding ten dollars, to be recovered before any justice of the peace of the proper township to the use of his said road district.

How bridges to be built.

SECTION 58. Whenever in the opinion of the board of commissioners the public convenience shall require that a bridge should be built over any water course, they shall direct the supervisor to build the same if they deem it expedient or they may appoint three resident persons of the proper township as superintendents of the building thereof.

SECTION 59. The said superintendents shall take an oath or affirmation before some person duly authorized to administer the same, faithfully to discharge their duties; a certified copy of which shall be filed in the clerk's office of said board.

SECTION 60. The said superintendents shall advertise in the most public places in the county the time and place they will contract with some fit person to build such bridge, which contract shall be in writing

signed by the parties contracting and filed in the proper clerk's office.

SECTION 61. The board shall allow the said superintendents a suitable compensation for their services out of the county treasury.

SECTION 62. Bond and security shall be required from the undertaker of such bridge which shall be approved of by the board of commissioners.

SECTION 63. The board may receive from individuals subscriptions and donations as a contribution towards the building of such bridge, which shall be applied accordingly.

SECTION 64. If in the opinion of the board it would be of public utility to have a bridge built over any creek or water course where money cannot be obtained by donation or taxation without oppressing the people to build the same, they are hereby authorized to empower any individual or individuals to build the same under the rules and regulations that ferries are established: *provided*, the person or persons building such bridge shall always be bound to transfer the same to the county at ten per cent. on cost when the board shall be willing to purchase the same. Toll bridges.

SECTION 65. The board may appropriate any money that may be in the county treasury belonging to the road funds, to the building of bridges in said county. Rate of compounding for labor.

SECTION 66. Each supervisor shall cause all the hands in his district to work the number of days required by law, or collect for each person two dollars for each day he fails to work, and keep an exact account of the work done by each man, and money collected for the use of roads, and return an accurate copy thereof to the clerk of the board of commissioners on the first Monday in January after his election, and pay to his successor when elected and qualified, on demand, all money collected as aforesaid, not expended upon his roads; which account he shall attest under oath: *provided*, that in all cases when the hands, allotted to any roads or road district shall have performed the number of day's work required of them by law, if such road shall remain unfinished, or shall at any time be found out of repair, it shall be the duty of the supervisor of such road to call the hands assigned him to complete such road, or to keep the same in repair. Proviso.

SECTION 67. If any supervisor shall fail to compel

Penalty on supervisor for failure of duty.

the hands of his district to work out the full time required of them by law, or pay the money required by this act, or shall fail to keep or return an accurate account of the work done or money collected as aforesaid, or shall fail to pay over to his successor the money which may remain in his hands unexpended as aforesaid, he shall, for each offence, pay not less than ten nor more than fifty dollars, to be recovered in the name of the board of commissioners, before any justice of the peace, for the use of his road district, which shall be paid by the justice collecting the same to the successor of said supervisor, and give him therein a list of all judgments obtained by his predecessor, not collected, who is hereby authorized to collect the same as if they were obtained in his own name.

May purchase tools.

SECTION 68. Each supervisor shall be authorized to purchase, with moneys in his hand arising from fines collected from delinquents in his district, ploughs, scrapers, crow-bars, hammers and other necessary implements.

SECTION 69. When any public road shall be established, or has heretofore been established, on a county line, the board of commissioners in their respective counties, shall cause the same to be opened and repaired in the same manner as if the whole of said road was in the limits of the county.

When applicant to deposit money with commissioners.

SECTION 70. *Be it further enacted,* That in all cases where application is made for the vacation of any road or the location of any new road or cart way, under the provisions of this act, such applicant or applicants shall deposit, in the hands of the clerk of the board of commissioners, a sufficient sum of money to pay all expenses of the viewing of such road or roads; and if the report of the viewers be favorable or unfavorable, the money so deposited shall be appropriated to the payment of such costs, and view of such road, or refunded to the person or persons depositing the same, agreeably to the foregoing provisions of this act. And every person applying for such new road, shall contribute two days' labor in addition to the number of days assessed to him by the board of county commissioners towards the making of such road. The clerk of the board of commissioners, shall furnish each of the supervisors, through whose road districts each new road shall pass, with a list of the persons

Petitioners taxed two days extra labor.

who petitioned for the same, and any such petitioner who shall not reside within some district through which such new road shall pass, shall be required to perform the two days' labor herein required of him, under the direction of the supervisor of the nearest road district, and for failing so to do he shall be fined after being duly notified as provided in the foregoing provisions of this act.

SECTION 71. *Be it further enacted*, That in all cases where a supervisor is unable to collect the road tax from any person within his district, from the goods and chattels of such person, or property assessed, agreeably to the foregoing provisions of this act, it shall be the duty of such supervisors to return a list of such delinquents to the board of commissioners of the proper county, which list shall be certified under oath by said supervisor to be correct. And the said commissioners at their next session shall furnish the sheriff of the proper county with a true copy of the list of all such delinquents, who shall thereupon proceed to sell any property real or personal upon which such tax has been assessed by said board of commissioners, or so much thereof as will pay the tax and all costs accrued thereon, in the same manner, and under the provisions, that the county revenue is collected in such cases. And when such collection is made, the county commissioners shall order the same to be paid to the supervisor in the district in which such delinquent property has been returned, and said supervisor shall appropriate the money so collected as hereinbefore provided; *and further*, in case of collection of any tax assessed as before provided, there shall be no stay of execution, any other law to the contrary notwithstanding.

Proceeding where supervisor is unable to collect road tax.

SECTION 72. *Be it further enacted*, That from and after the organization of the board of commissioners in the several counties in this territory, all acts and parts of acts contravening any of the provisions of this act are hereby repealed and of no effect.

Repealing clause.

Approved Jan. 15, 1838.