

upon application from the board of county commissioners of Des Moines county, audit and pay to the said board or their legally authorized agent, what shall be their legal and equitable proportion according to the law passed at Belmont session, of the Wisconsin legislative assembly, of eighteen hundred thirty-six.

SEC. 2. It is hereby made the duty of the board of county commissioners of Des Moines county, to present to the different counties herein named a fair exhibit of the debt due by the county of Des Moines in accordance with the above named law. And it is hereby made the duty of the several boards above named, to transmit to the board of county commissioners of Des Moines, the assessment value of the property in accordance with said law above recited, and after the reception thereof by the board of Des Moines, they shall make out a fair exhibit of the dividend due from each county and send it to the several boards herein named; and if they consider the same just they are hereby required to audit and pay the same as is directed in the first section of this act; but should they consider the same unjust, illegal, or not equitable, they shall send the same back, showing wherein the same is unjust, illegal, or not equitable. They shall each appoint an auditor, who shall meet at such time and place as they may agree upon, who shall choose a third one from some other county, and they shall proceed to settle the same, whose decision shall be final.

Approved January 17, 1840.

[Chap. 91.]

AN ACT for opening and regulating roads and highways.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That all county and territorial roads which have been or may hereafter be laid out and established agreeably to law within this territory, shall be opened and kept in repair in the manner hereinafter provided; and all county roads shall hereafter be laid out and established agreeably to the provisions of this act, and all county roads shall be sixty feet wide.

SEC. 2. That all applications for laying out or altering any county road, shall be by petition to the commissioners, signed by at least twelve house-

holders of the county residing in the vicinity where said road is to be laid out or altered, and said petition shall specify the place of beginning, the intermediate points, if any, and the place of termination of said road.

Notice.

SEC. 3. That previous to any petition being presented for a county road, or for the alteration of a county road, notice thereof shall be given by advertisement set up at the place of holding county commissioners' courts, and three public places in each township through which any part of such road is designed, to be laid out or altered at least thirty days' previous to the meeting of the commissioners, at which the petition shall be presented: and on the petition being presented and the commissioners satisfied that notice has been given as aforesaid, they shall appoint three disinterested house-holders of the county as viewers of said road, and a skilful surveyor to survey the same, and shall issue an order directing said viewers and surveyors to proceed on a day to be named in said order, or on their failing to meet on said day within five days thereafter, to view, survey, and lay out, or alter said road.

Duty of viewers.

SEC. 4. That it shall be the duty of the viewers and surveyor appointed as aforesaid, after receiving at least six days' previous notice by one of the petitioners, to meet at the time and place specified in the order of the commissioners aforesaid, or within five days thereafter, and after taking an oath or affirmation faithfully and impartially to discharge the duties of their appointments respectively, shall take to their assistance two suitable persons as chain carriers and one marker, and proceed to view, survey and lay out or alter said road as prayed for in the petition, or as near the same as in their opinion a good road can be made at a reasonable expense, taking into consideration the utility, convenience and inconvenience and expense which will result to individuals as well as to the public, if such road shall be established and opened or altered, and the surveyor shall survey such road under the direction of the viewers, and cause the same to be conspicuously marked throughout, noting the courses and distances, and at the end of each mile shall cause the number of the same and also the commencement and termination of said road or survey to be marked on a tree or monument erected for that purpose. He shall also make out and deliver to one of the viewers, without delay, a

correct certified return of the survey of said road and a plat of the same, and the viewers shall make and sign a report in writing, stating their opinion in favor or against the establishing or alteration of such road, and set forth the reasons of the same, which report, together with the plat and survey of said road or alteration, shall be delivered to the county commissioners' clerk by one of the viewers on or before the first day of the session of the county commissioners then next ensuing, and it shall be the duty of the commissioners on receiving the report of the viewers aforesaid, to cause the same to be publicly read on two different days of the same meeting, and if no legal application shall be made to them for a review of said road or alteration or petition for damages between the first day of their session, at which the report and survey are made, and the second day of their next stated session they shall cause said report, survey and plat to be recorded, and from thenceforth said road shall be considered a public highway, and the commissioners shall issue their order directing said road to be opened. But if the report of the viewers be against such proposed road or alteration, then no further proceedings shall be had thereon, and the obligor or obligors in the bond receiving the payment of costs and expenses shall be liable for the full amount of such costs and expenses: *Provided*, That in all cases where any oath or affirmation is required to be taken by any person under the provisions of this act, the same may be administered by the surveyor or by one of the viewers or reviewers who have previously been sworn or affirmed themselves.

SEC. 5. That after the viewers of any county road shall have made return in favor of the same agreeably to the preceding section and before said return shall be recorded and the road established, it shall be lawful for any land holder of the county to apply to the commissioners for a review of said road by petition signed by at least twelve house-holders residing in that part of the county through which said road is proposed to be established, and the commissioners shall, on such petition being presented and they satisfied it is just and reasonable, appoint five disinterested qualified voters of the county to view said road and issue their order to said viewers directing them to meet at a time speci-

fied in such order or within five days thereafter; and said viewers shall meet after having received six days' previous notice by one of the petitioners, and after taking the oath or affirmation required by the preceding section, shall proceed to examine the route surveyed for said road by the former viewers, and make a report in writing to the commissioners stating their opinion in favor of or against the establishment of said road and their reasons for the same, and if the report of the viewers be in favor of said road the same shall be established, recorded and opened agreeably to the provisions of this act, and the person or persons bound for the same shall pay into the county treasury the amount of the costs of such review, but if the report be against the establishment of such road, no further proceedings shall be had thereon before the commissioners and the persons executing the first bond shall pay into the county treasury the amount of costs and expenses of the first view and survey and review of said road.

Damages.

SEC. 6. That if any person or persons through whose land any territorial or county road may be laid out shall feel injured thereby, such person or persons may make complaint thereof to the county commissioners at any time between the session of the commissioners at which the report of said road is made, and the second day of their next stated session, and the commissioners shall appoint three disinterested house-holders of the county, whose duty it shall be after having been duly sworn or affirmed to discharge their duty faithfully and impartially to proceed and view said road the whole distance the same may have been established through the premises of the complainant, and assess and determine how much less valuable the land or premises of the complainant has been or will be rendered by the opening of said road, and they shall report the same in writing to the commissioners at their next meeting thereafter, and if the commissioners shall be satisfied that the amount so assessed and determined be just and equitable and that said road will, in their opinion, be of sufficient importance to the public to cause the damages to be paid by the county, they shall order the same to be paid to the petitioner from the county treasury, but if in their opinion the said road is not of sufficient importance to the public to cause the same to be paid by the

county, they may refuse to establish the same a public highway, unless the damages and expenses are paid by the petitioners.

SEC. 7. That when any county road shall be considered useless, any twelve householders residing in that part of the county where such road is established may make application by petition to the commissioners of the county to vacate the same, setting forth in said petition the reasons why said road ought to be vacated, which petition shall be presented and publicly read at a regular session of the commissioners, and no other proceedings shall be had thereon until the next stated session of said commissioners, when it shall be again read as aforesaid, and if no objection be made the commissioners may on the last day of that session declare said road vacated or any part thereof which they may deem unnecessary to keep open for public convenience; but if objection be made in writing, signed at least by twelve householders residing in the neighborhood of the road proposed to be vacated, the commissioners shall appoint three disinterested persons to view said road, who shall take the same oath or affirmation as is required by the fourth section of this act, and proceed to view the road aforesaid, and make a report of their opinion thereon, and their reasons for the same to the commissioners; and if said viewers shall report in favor of vacating said road or any part thereof, the commissioners may, if they shall deem it reasonable and just, declare said road vacated agreeably to the report of the viewers, but in case said viewers shall report against vacating said road then and in that case no further proceedings shall be had thereon: *Provided*, That previous to any petition being presented under the provisions of this section the same notice shall be given as is required by the third section of this act.

SEC. 8. That when the place of beginning or true course of any territorial or county road shall be uncertain by reason of the removal of any monument or marked tree by which such road was originally designated, or from any other cause, the county commissioners of the proper county may appoint three disinterested persons, citizens of the county, to review and straighten said road, if they shall deem it necessary; and the reviewers shall cause said road to be correctly marked throughout as in case of new roads, and a correct survey to be

Boundaries
uncertain—
review.

made of the same and shall make return of said survey and plat of said road to the commissioners, who shall cause the same to be recorded as in other cases, and from thenceforth said road surveyed as aforesaid, shall be considered a public highway.

Alteration.

SEC. 9. That if any person or persons through whose land any territorial or county road is or may be established, shall be desirous of turning said road through any other part of his or her land, such person or persons may, by notice and petition agreeably to the second and third sections of this act, apply to the commissioners of the county while in session to permit him or them to turn said road through any other part of his, her or their land, on as good ground and without increasing the distance to the injury of the public, and upon the receipt of such petition the commissioners shall appoint a surveyor and three disinterested house-holders of the county as viewers of said road, who, or any two of them, shall proceed to view and survey the ground over which said road is proposed to be turned, and ascertain the distance which said road will be increased by such proposed alteration, and make out a report in writing, stating the several distances so found, together with their opinion as to the utility or inutility of making said alteration, and if said viewers shall report to the commissioners that the prayer of the petitioner or petitioners is reasonable, and that the alteration will not place the road on worse ground or increase the distance to the injury of the public, they shall, upon receiving satisfactory evidence that the proposed new road has been opened a legal width and in all respects made equal to the old road for the convenience of travellers, the commissioners aforesaid may declare said new road a public highway, and make record thereof, and at the same time vacate so much of the old road as is embraced by the new, and the person or persons desiring the alteration aforesaid, shall pay all the costs of the view, survey and return of said alteration.

Viewer neglecting,
penalty.

SEC. 10. That if any person who shall be appointed by the county commissioners as a viewer, reviewer or surveyor of any road, shall refuse or neglect to perform the duties required by this act, without making satisfactory excuse for such refusal or neglect, he shall be fined in any sum not exceeding five dollars, to be recovered by action of debt by any person suing for the same before any justice of the

peace having jurisdiction of the same, and shall be paid over without delay to the county treasurer by the justice of the peace or constable collecting the same, taking his receipt therefor, and the county commissioners shall cause all fines which shall be paid into the county treasury under the provisions of this act, to be expended on roads and bridges within their county.

SEC. 11. That the person required to render services under this act, shall receive compensation for each day they shall be necessarily employed, as follows, to wit: viewers and reviewers, one dollar and fifty cents each; chain carriers and markers, one dollar and twenty-five cents each, and surveyors two dollars and fifty cents, to be charged as costs and expenses, and paid out of the county treasury on the order of the county commissioners. ^{Compensation.}

SEC. 12. That when it shall become necessary to establish a road on a county line, the inhabitants along such line may petition the commissioners of their respective counties for a view of such road in the manner pointed out in the preceding section of this act, and it shall be the duty of such boards of commissioners for each of the counties interested, to appoint two discreet citizens as viewers, who, or a majority of them, shall meet at the time and place named in the order of the commissioners of the oldest county interested, who shall appoint a surveyor, and the viewers and surveyor appointed as aforesaid, shall make their report in writing for or against such road to the commissioners of the counties concerned, and the said commissioners, upon receiving such report shall in all respects be governed by the provisions of this act.

SEC. 13. That if on receiving such report the commissioners of all the counties interested shall be of opinion that such road if opened would be of public utility, they shall order the same to be opened in the manner pointed out by this act.

SEC. 14. That when any road is located under the provisions of the twelfth and thirteenth sections of this act, it shall be the duty of the county commissioners or trustees of townships adjoining such road to select one from their number whose duty it shall be to meet at some convenient place near the line of the same (the time and place to be appointed by the commissioners or trustees of the oldest county

or township interested) previous to the time appointed by law for apportioning labor to their respective road districts, and shall assign a sufficient number of persons, if practicable, to open such road and keep the same in repair, dividing the road in such manner that the persons so assigned may work under the orders of the supervisors in the county or township to which they belong, and the supervisors and persons so assigned shall be governed by the provisions of the act entitled "An act defining the duties of supervisors of roads and highways."

SEC. 15. That on all applications made under the provisions of this act, the county commissioners shall before granting any order thereon require of the person or persons making such application a bond with one or more sufficient securities, made payable to the county treasurer, and approved by the county commissioners, for the use of the county, conditioned that the persons making such application for a view, review, alteration or vacation of any road, or damages on the same (as the case may be) shall pay into the treasury of the county the amount of all costs and expenses accruing on such view, review, alteration or vacation, on application for damages in case the same shall not be granted or the proceedings had thereon finally confirmed and established.

SEC. 16. That all bonds given under the provisions of this act shall be deposited with the county commissioners' clerk, to be by him prosecuted under the order of the county commissioners, where the same shall have become forfeited and money paid into the county treasury for the use of the county.

Approved January 17, 1840.

[Chap. 92.]

AN ACT to establish a Ferry on the Mississippi river.

Ferry at Du
Buque.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That George W. Jones, his heirs and assigns, are hereby authorized to establish and keep a ferry across the Mississippi river at and from some point in the town or city of Du Buque, in this territory; and that said Jones, his heirs and assigns, have such privilege for the term of twenty years: *Provided*, That said Jones, his-heirs or assigns, keep a good and sufficient boat,