

Roads.

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An act concerning roads.(1)

Revision—Approved March 27, 1874.

I. General road law.

1. APPOINTMENT UNDER THIS ACT OF SURVEYORS AND CHOSEN FREEHOLDERS, THEIR PROCEEDINGS.

Application to lay out public road.

R. S. 515, § 2.

1. That when ten or more persons, being freeholders, shall think a public road necessary, or any public road which hath been or shall be laid out unnecessary, or any alteration in such road necessary, in any part of the county in which they reside, it shall be lawful for the said persons to

(1) The following local acts have been passed since 1847 regulating roads in the several townships in the state: *P. L.* 1853, p. 209—Mansfield township, Warren county; *Id.* p. 429—Ocean township, Monmouth. *P. L.* 1856, p. 141—Ocean and Manalapan townships, Monmouth; *Id.* p. 142—Blairstown township, Warren, and New Providence and Union townships, Essex, (now Union); *Id.* p. 254—Frankford township, Sussex. *P. L.* 1858, p. 222—Warren township, Somerset. *P. L.* 1859, p. 197—Woolwich township, Gloucester, and Oxford township, Warren. *P. L.* 1860, p. 627—turnpike roads in Camden and Gloucester counties, (supplement to same, *P. L.* 1868, p. 696). *P. L.* 1861, p. 179—Second Assembly District, Camden county; *Id.* p. 474—New Barbadoes township, Bergen. *P. L.* 1862, p. 11—Piscataway township, Middlesex, and Middletown township, Monmouth; *Id.* p. 196—Tewksbury township, Hunterdon; *Id.* p. 271—Hackensack and Washington townships, Bergen. *P. L.* 1863, p. 187—Middletown township, Monmouth. *P. L.* 1865, p. 254—New Hanover township, Burlington; *Id.* p. 483—County of Cape May; *Id.* p. 769—Piscataway township, Middlesex. *P. L.* 1867, p. 611—Plainfield township, Union. *P. L.* 1868, p. 414—Middletown township, Monmouth; *Id.* p. 1035—Warren township, Somerset; *Id.* p. 1174—Franklin township, Gloucester. *P. L.* 1869, p. 53—Linden township, Union county; *Id.* p. 115—Hackensack township, Bergen; *Id.* p. 830—West Orange township, Essex; *Id.* p. 1031—Town of Somerville, Somerset; *Id.* p. 1104—Hackensack township, Bergen; *Id.* p. 1129 and 1362—Livingston township, Essex. *P. L.* 1870, p. 220 and 505—Hackensack

make application in writing, (a) to the inferior court of common pleas of the said county, in open court, having given previous notice (b) for at least ten days of such intended application and also of the day on which such application is intended to be made, by advertisements under their hands, and set up at three of the most public places in the township in which the said road is proposed to be laid out, vacated or altered, and if there be more townships than one through which the said road may run, by advertisements, to be set up at three of the most public places in each township; and the said court, when applied to as aforesaid, on due proof being made that the advertisements have been set up according to law, on which the judgment of the court shall be final and conclusive, (c) are hereby authorized and required to appoint six of the surveyors of the highways of those townships where the said road shall be so applied for to be laid out, vacated or altered; (d) provided, that no surveyor shall be appointed

(a) On application for appointment of surveyors, the affidavit should show that the petitioners are residents as well as freeholders of the respective counties, and should specify the places where the notices were set up, *Road in Sussex*, 1 Gr. 157. A duly certified list of the surveyors of the county in which the proposed road lies, should be submitted to the court, *Ibid.* The fact that the applicants are freeholders and residents, may be proved by persons in court when the application is made, *Matter of Highway*, Pen. *665, *666. An affidavit may be endorsed on the notice and sworn to in open court, to prove that notices were put up according to law, and that the persons who signed them were both residents and freeholders, *State v. Waldron*, 2 Harr. 369. Notice of the time and place of meeting of the surveyors may be served by the applicants, or by any other person on their behalf, *State v. Atkinson*, 3 Dutch. 420. Application for a road should designate the points of the beginning and ending, *Matter of Highway*, 1 Harr. 391, 2 Hal. 37. *State v. Green*, 3 Harr. 179. *State v. Hart*, 2 Harr. 185. It need not designate intermediate points, *State v. Green*, 3 Harr. 179, 181. But mathematical certainty as to the points is not necessary, *State v. Van Buskirk*, 1 Zab. 87. *State v. Waldron*, 2 Harr. 369. Where a beginning point is precisely designated, it is not necessary that it should be the centre of the road laid out. It is sufficient if included anywhere in the width of the road laid out, *Ibid.* It need not name the owner of the land at the beginning place. Precision and certainty therein of the intent of the petitioners is sufficient, *State v. Waldron*, 2 Harr. 369. "To commence at * * * and near * * * and to terminate * * * to or near" is sufficient, *State v. Northrop*, 3 Harr. 271. *State, Parmley v. White*, 6 Vr. 203, 204. "To begin at a stake in the middle of the road, called the River bank road, in the line of lands of S and R" when in fact no stake was standing anywhere in the middle of that road, is not such a designation as the statute requires. It is too indefinite, *State v. Green*, 3 Harr. 179. Improper to describe it by courses and distances, because this would take from surveyors all discretion, *Matter of Road*, 1 South. *31. *Matter of Highway*, 2 Hal. 37, 38. *State v. Atkinson*, 3 Dutch. 420, 421. General course is sufficient, *Ibid.* *State, Covert v. Hulick*, 4 Vr. 307. It is a sufficient description of the beginning to fix it "in the public road from G. to H., one rod distant from the line of B.," *State v. Emmons*, 4 Zab. 45. An application for a road—"to commence at a stake in the east side of the main road, leading from Salem to Penn's Grove, thence running in a southeasterly direction through lands of George Dancer about twenty rods, to the northwesterly corner of lands belonging to the applicant, and there to end," is sufficient, *Biddle v. Dancer*, *Spen*, 634. Where the object of the application is to alter an old road by vacating part of it and laying out another instead of the part vacated, there should be but one application and return, *Matter of Highway*, 2 Hal. 37. *State v. Bergen*, 1 Zab. 342. See *State v. Green*, 3 Harr. 179. Query. Whether the laying out of two or more roads can be applied for in one application, or be embraced in one order appointing surveyors. *State v. Green*, 3 Harr. 179. It need not state the width, *State v. Shreve*, 1 South. *297. The petitioner ought not to designate two particular routes, on one or the other of which it is desired that the road should be laid out, *Matter of Highway*, 2 Hal. 37.

township, Bergen; *Ib.* p. 163—Shrewsbury township, Monmouth; *Ib.* p. 669—Warren township, Somerset; *Ib.* p. 865—Plainfield township, Union. P. L. 1871, p. 209—County of Middlesex; *Ib.* p. 596—Harrington township, Bergen; *Ib.* p. 605—Shrewsbury township, Monmouth; *Ib.* p. 613 and 1513—Lodi township, Bergen; *Ib.* p. 756—Dover township, Ocean; *Ib.* p. 784—Wayne and Manchester townships, Passaic; *Ib.* p. 786—Union township, Union; *Ib.* p. 908—Hackensack township, Bergen; *Ib.* p. 1177—Landis township, Cumberland; *Ib.* p. 1260—Randolph township, Morris; *Ib.* p. 1459—Harrington township, Bergen; *Ib.* p. 1505 and 1527—Hackensack township, Bergen. P. L. 1872, p. 466—Lodi township, Bergen; *Ib.* p. 477—Maurice River township, Cumberland; *Ib.* p. 1127—Lebanon and Bethlehem townships, Hunterdon; *Ib.* p. 1168—West Milford township, Passaic; *Ib.* p. 1169—East Orange township, Essex; *Ib.* p. 1386—Bergen line road, Hudson. P. L. 1873, p. 227—Lebanon township, Hunterdon; *Ib.* p. 242—Hackensack township, Bergen; *Ib.* p. 256—Woodbridge township, Middlesex, and Clark township, Union; *Ib.* p. 323—Maurice River township, Cumberland; *Ib.* p. 472—Milburn township, Essex; *Ib.* p. 563—Stow Creek township, Cumberland; *Ib.* p. 608—Montclair township, Essex; *Ib.* p. 644—Union township, Union; *Ib.* p. 648—Raritan township, Middlesex; *Ib.* p. 745—Wayne and Manchester townships, Passaic; *Ib.* p. 811—Lebanon and Bethlehem townships, Hunterdon. P. L. 1874, p. 231—Middletown township, Monmouth; *Ib.* p. 259—Raritan township, Middlesex; *Ib.* p. 496—Caldwell township, Essex; *Ib.* p. 536—Princeton township, Mercer; *Ib.* p. 541—Harrington township, Bergen; *Ib.* p. 556—Warren county; *Ib.* p. 579—Ridgefield township, Bergen; *Ib.* p. 593—Montclair township, Essex. P. L. 1875, p. 348—County of Warren; *Ib.* p. 441—Plainfield township, Union; *Ib.* p. 295—North Bergen township, Hudson; *Ib.* p. 253—Upper Penn's Neck township, Salem; *Ib.* p. 310 and 521—Palisades township, Bergen; *Ib.* p. 386—Jackson township, Ocean; *Ib.* p. 591—Caldwell township, Essex.

(b) The notice of an application for a road should designate the beginning and terminating points, *State v. Green*, 1 Harr. 391, 3 Harr. 179. Minuteness is unnecessary and improper, *Matter of Road*, 1 South. *31. It need not state the width, *State v. Shreve*, 1 South. *297, *298. Nor, the precise hour of the day when the application will be made, *Matter of Highway*, Pen. *665. When the application is to vacate part of a public road which runs through two townships, notices of the application need be set up only in the township where such part lies, *State, Newell v. Bassett*, 4 Vr. 26, 28.

(c) Whether notices of the application for the appointment of surveyors have been set up according to the act, is a point upon which the judgment of the common pleas is final and conclusive, *State v. Schenck*, 4 Hal. 107. *State v. Smith*, 1 Zab. 91. *State v. Shreve*, 3 Gr. 57. So, also, in the case of a private road, *Hoagland v. Culvert*, *Spen*, 337. The judgment of the common pleas that the advertisements were signed in the proper handwriting of the applicant, is conclusive, *Ibid.* But not as to the sufficiency of the advertisements themselves; and the supreme court will look into their contents, to see that they give notice to all concerned, of what is intended to be done, *Ibid.* The common pleas have no jurisdiction to appoint surveyors with due proof that the advertisements have been set up according to law, *State v. Shreve*, 3 Gr. 57. And the common pleas cannot set aside the return and appointment, upon the ground, that the court had made the appointment, without proof, or without sufficient proof, that the notices for the application had been subscribed by persons who were freeholders and residents in the county, *Matter of Highway*, 3 Harr. 291.

(d) In the absence of special provisions in the charter superseding or excluding the means of procuring new highways, within the boundaries of an incorporated city, the court of common pleas has jurisdiction to appoint surveyors to lay out a road within the city limits, *State, Pancoast v. Troth*, 5 Vr. 373. *State, Rogers v. Troth*, 7 Vr. 422, 423. Its jurisdiction can only be excluded by an implication arising from the fact that the town authorities are clothed with full and complete jurisdiction over the same subject-matter, *Ibid.* In such cases the general act does not apply, *Cross v. Morristown*, 3 C. E. Gr. 305. *Tainter v. Morristown*, 4 Vr. 57. *State, Bodine v. Trenton*, 7 Vr. 198. Where a road has been laid out and recorded, though never opened, the court of common pleas may appoint surveyors to vacate the same, *State v. Salem Pleas*, 4 Hal. 246. It is not a sufficient reason for refusing to appoint surveyors in such a case, that a rule for an alternative *mandamus* for the opening of the road, was at the time pending in the supreme court, *Ibid.* Courts of common pleas have power to appoint surveyors to vacate part of a public road, *State, Newell v. Bassett*, 4 Vr. 26. The common pleas cannot appoint surveyors to vacate a road which had been dedicated to public use, but had never been recognized as a public highway by lawful authority, *Jersey City ads. State, Howeth*, 1 Vr. 521, reversing *S. C., Id.* 93. See *Holmes v. Jersey City*, 1 *Beas* 299. The authority of the common pleas depending on due proof of the setting up of the advertisements, the order must show that such proof was offered, *State v. Shreve*, 3 Gr. 57, 58. An order appointing surveyors, reciting that "the court, being satisfied that due and legal notice of this

Meeting, etc.

through whose land the road may run, or who for any other reason which the court in their discretion shall deem sufficient, think ought not to be appointed; and the said surveyors shall meet at such time and place as the said court shall direct, a copy of which appointment shall be served by the said applicants, or any of them, on each of the said surveyors, at least six days prior to the time of their meeting; and two of the said applicants shall, at the least, twelve days prior to the said time, sign and set up advertisements at three of the most public places in the said township or townships, setting forth the time and place of the meeting of the surveyors, agreeably to the directions of the court, and designating the points or places from and to which the said road is proposed to be laid out, vacated or altered. (a)

Road between or in two counties. *Ib.* § 3.

Application. Advertisement.

Appointment.

2. That when the aforesaid number of freeholders shall think a public road necessary, or any public road unnecessary, or any alteration in such road necessary, on any part of the line between two counties, (b) or part in one county and part in another, they shall make application in writing, to the supreme court having first advertised such intended application, as also the day on which such application is intended to be made, for at least three weeks, at four of the most public places in each of the said counties nearest the place where such road is to be laid out, vacated or altered, and the supreme court, on such application, shall appoint three surveyors of the highways in each of the said counties, having a regard to the appointment of the surveyors of the highways of those townships where the said road shall be so applied for to be laid out, vacated or altered subject to the restrictions imposed by the first section of this act, who shall meet at such time and place as the said court shall direct; and the said applicants and surveyors shall thereupon proceed in the manner prescribed in the first section of this act.

Road in three counties.

P. L. 1847, p. 119. Amended.

3. That when a public road, or any alteration in a public road, or any vacation thereof, shall be considered necessary, and the same shall run through, or be intended to be laid out or vacated in three different and adjacent counties, application in writing shall be made to the supreme court, by at least ten persons in each of the said counties, being freeholders and residents therein, having first advertised such intended application, as also the day on which such application is intended to be made, for at least three weeks, at four of the most public places in each of the said counties near the place where such road is to be laid out, vacated or

application has been given," sufficiently shows that proof has been given, *State v. Lewis*, 2 Zab. 564. By the supplement to the road act, the words, "ever having regard to the appointment of those surveyors of the townships in which the road is applied for to be laid out," &c., are rendered inoperative, and it need not appear, in the order appointing the surveyors, that regard was had to the appointment of such surveyors, *State v. Atkinson*, 3 Dutch. 420. But it seems that such words are still operative in respect to private roads, *Ibid.* 423, *Clawson, J.* Reciting in the order that regard was had to the appointment of the surveyors of the township, is sufficient, without assigning the reason why surveyors of the township in which the road was to be laid out, were passed by, *State v. Bergen*, 1 Zab. 342. The surveyors ought to be designated both by name and by townships, *State v. Potts*, 1 South. *347, 2 South. *862. It is irregular for the court to leave blank the time and place of meeting, *State, Vanderbeck v. Blauvelt*, 5 Vr. 261, 262. And the clerk cannot fill up such blank, *Ibid.*

(a) Proof that notice to lay out was legally given, must be made before the surveyors, or a majority of them, *State v. Hall*, 2 Harr. 374. It is insufficient, if made before only two of them, who met at the time and place appointed and adjourned to another day, *Ibid.* It is irregular for a witness testifying to the putting up of such notices, to be sworn by the counsel for the applicants, *State v. Bergen*, 1 Zab. 548. Notice of meeting of surveyors to vacate part of a road running through two townships, need be set up only in the township where the part to be vacated lies, *State, Newell v. Bassett*, 4 Vr. 26, 29. The statute requires personal notice to each of the surveyors appointed, and the omission to give such notice will vitiate the proceedings of such as receive notice and meet in pursuance thereof, *State v. Van Geison*, 3 Gr. 339. *Shough, ex parte*, 1 Harr. 264. Surveyors have no jurisdiction to proceed, until they first inquire whether advertisements of their meeting have been set up according to law, and adjudge that due proof thereof has been made to them, *Matter of Highway*, 1 Harr. 91, 93. It is not necessary that the notice of the meeting of surveyors should name the township in which they are to meet, if the place of their meeting is designated with certainty, *State, Thompson v. Emmons*, 4 Zab. 45.

The present act does not require surveyors to be appointed from the townships through which the road is to be laid or vacated, or from the nearest townships, *State v. Van Buskirk*, 1 Zab. 86. *State v. Atkinson*, 3 Dutch. 420. *State v. Bergen*, 4 Zab. 548. The only restriction as to the locality of surveyors is, that regard be had to the surveyors of those townships where the road is applied for; and if the order of appointment states that "regard was had to such surveyors," the requirement of the statute is fully satisfied, *State v. Van Buskirk*, 1 Zab. 87. The common pleas and supreme court are bound, as a legal necessity, to appoint the surveyors of the township through which the road is to run, unless it is to run through their lands, or unless the court, for some other reason in the exercise of a sound discretion, shall think they ought not to be appointed, *Parsell v. State, Mann*, 1 Vr. 530. See *State v. Willingborough Road, Coze* 128. *State v. Elmer, Coze* 55. The simple fact, that the surveyors are taxpayers in the township, is not sufficient to exclude them, or to warrant the courts in refusing to appoint them. The supplement of 1850, making the townships liable to pay for lands taken for roads, furnishes no ground in itself to which the discretion of the courts can be applied. It may be an element, among other reasons, which, taken together, the court may deem sufficient to exclude the surveyors from appointment, *Ibid.* It is no objection that the surveyor has given an opinion as to the propriety of laying the road, *Matter of Highway, Pen.* *948. Nor that he had signed an application for a road over the same route, *State v. Vanderveer*, 1 Dutch. 253, 669. The fact of a surveyor of highways having once acted in that capacity in laying out a highway, does not disqualify him for acting in a similar capacity under a subsequent appointment to lay out a road over the same route, *State v. Bergen*, 4 Zab. 548. After the applicants have incurred all the trouble and expense of having the road laid out and the return made, an objection cannot be taken to the appointment of a disqualified surveyor, *State v. Bergen*, 4 Zab. 548, 549.

(b) The petition of the freeholders for laying out a road in two counties, must be signed by ten freeholders in each county, *Matter of Road*, 2 Hal. 36. Contra, *Matter of Highway, Pen.* *665, *666.

altered; and the supreme court, on such application, shall appoint three of the surveyors of the highways in each of the said counties, having a regard to the appointment of the surveyors of the highways of those townships where the said road shall be applied for to be laid out, vacated or altered, subject to the restrictions imposed by the first section of this act, who shall meet at such time and place as the said court shall direct; and the said applicants and surveyors shall thereupon proceed in the manner prescribed in said section.

4. That if any person shall think a private road necessary to or from his or her land, mill, market, public landing, or public road, or shall think it necessary to have a private road vacated or altered, he or she shall make application in writing, to the inferior court of common pleas of the county, or to the supreme court, as the case may require, having given notice of his or her intention at least ten days, and the court shall thereupon appoint six of the surveyors of the highways, as before directed, and the applicant and the surveyors shall be guided in all things as in the manner before prescribed, except that the signature of the applicant to the advertisements, and to the notice to the surveyors, shall be deemed sufficient.^(a)

5. That the said surveyors of the highways, appointed by the supreme court, or any of the inferior courts of common pleas in this state, when met as aforesaid, or a majority of them so met, on due proof being made to them that the advertisements of their meeting have been set up according to law, on which the said surveyors shall decide, and their decision be final and conclusive, shall view the premises, and may, if they shall think it necessary, lay out, vacate, or alter the said public or private road, and lay the same as may appear to them to be most for the public and private convenience, having a regard to the best ground for a road, and the shortest distance, in such a manner as to do the least injury to private property, and shall cause the road so laid out or altered to be marked at proper distances in the line of the same, and make return thereof, with a map or draught of the same, with the courses and distances, and reference to the most remarkable places, and the improvements through which it may pass, with the time when the overseers of the highways shall open the same, if a public road, for public use, or, if a private road, when the applicants may open the same; which return the said surveyors, or a majority of them as aforesaid, shall date, sign, and deliver to the applicant, or, in case of a public road, to some of the applicants, who shall deliver or transmit it to the clerk of the court of common pleas of the said county, or in case of a road running on the line between two counties, or part in one county and part in another, or into three counties, to the clerk of the supreme court, who is hereby required to record the said return, together with a map or draught thereof, in a book to be kept for that purpose, and every road so laid out or altered and recorded as aforesaid, shall be a lawful highway or private road from the time appointed for the opening of the same; and if any road be vacated, return shall be made, signed, delivered, transmitted, and recorded as aforesaid; *provided*, that when the road lies in three counties, there shall be among the signatures of said majority of surveyors, the signature of at least one surveyor from each of said counties.^(b)

Private road.

R. S. 515, § 4.

Application and notice.

How surveyors to proceed.
Ib. § 5.
Amended.

P. L. 1847, p. 119.

Amended.

Proviso.

(a) This section does not limit the public right of laying public roads. Its purpose is solely to provide a means for private individuals to obtain access to highways, under circumstances in which a public road might not be deemed necessary. *State, Atkinson v. Bishop*, 10 Vr. 226.

(b) The jurisdiction to determine whether the public road applied for is necessary for public convenience, is lodged exclusively in the surveyors of the highways. *State, Atkinson v. Bishop*, 10 Vr. 227. The surveyors are charged with the duty of determining its course and length, according to their discretion, limited only by the description of the road applied for, and by the requirements of the statute. *State, Swanton v. Pierson*, 8 Vr. 363. The road act confers upon the surveyors the power either to widen or narrow a public road. *Holmes v. Jersey City*, 1 Beas. 299. See *Jersey City v. State, Howeth*, 1 Vr. 521. But they cannot lay out a road of greater width than that prescribed by the statute, nor can they narrow a wider one. *Ibid.* They may lay out a road across a navigable canal constructed by the authority of the state. *Morris Canal Co. v. State*, 4 Zab. 64. Where a supplement to a turnpike company's charter authorized

them to abandon part of their route, and then provided that such abandoned part should remain a public highway: *Held*, that the surveyors had no power to vacate a portion of such abandoned part. *State v. Demott*, 2 Gr. 254. See *State v. Snedeker*, 1 Vr. 80. *Query*. Whether they can constitutionally vacate a highway, after an adjoining owner has made improvements upon the faith of it remaining such. *State v. Snedeker*, 1 Vr. 80, 83. See *State, Imp. Co. v. Seymour*, 6 Vr. 47. *Att'y. Gen. v. M. and E. R. R. Co.*, 4 C. E. Gr. 386, 394. The power to adjourn is not restricted to the case where only a part meet, but the whole six when met, may adjourn. *State v. Van Buskirk*, 1 Zab. 86. A majority of the surveyors appointed, may vacate, or lay out a road, if the other surveyor or surveyors had due notice of the time, and place of meeting, and did not attend, or attending did not concur. *State v. Van Geison*, 3 Gr. 339. In fixing the time of opening the road, if the surveyors prescribe the period within which it is to be done, they substantially comply with the law. *Road in Middlesex*, 1 South. *290. If one or more of the surveyors be absent, before they proceed, those who are present should ascertain whether notice has

Return to be filed
in fifteen days
from date.

R. S. 515, § 6.

6. That it shall be the duty of the applicant or applicants, to whom shall be delivered the return of the surveyors of the highways, in pursuance of this act, to deliver or transmit the said return to the clerk of the court of common pleas, or of the supreme court, as the case may require, within

been given to those who are absent, and if not, they should adjourn to another day, with the consent of the majority, and give written notice of such day, to the absent surveyor or surveyors. *State v. Van Geison*, 3 Gr. 339.

The 79th section of the act prohibits the pulling down or removal of any dwelling house by virtue of any provision in that act, and this makes it unlawful to lay out a road through such dwelling house. *State, Rogers v. Troth*, 7 Vr. 422, reversing *S. C.*, 5 Vr. 377. Such section restricts the powers of the surveyors in laying out roads, as well as those of the overseers in removing encroachments, *S. C.*, 5 Vr. 377. The words "heretofore erected" in that section, refer to the time of the laying out of the road, and not to the time of the passage of the act. *Ibid.* A billiard saloon attached to a hotel, is always used in connection with and as a part of the hotel, is a part of the dwelling house, within the protection of such section, *S. C.*, 7 Vr. 422. *Aliter*, as to a bark house, and the vats of a tannery, *State v. Stiles*, 1 Gr. 172, 176. Such section relates as well to the laying out and alteration of streets in a village, as to the removal of obstructions in the country, *State v. Hale*, 1 Dutch. 324. If the appointment was made before the house was commenced, the fact that the road was laid out while the masons were at work on the foundations, is not within the prohibition of the statute, *State v. Waldron*, 2 Harr. 369, 370.

The return must show upon its face a compliance with all the material directions of the statute, *State v. Van Geison*, 3 Gr. 339, 341. When the application for the appointment of surveyors to lay out a private road, pursues the words of the act, and is embodied in the order of appointment, and both show that the road applied for is to run to and from the land of the applicant, the return of the surveyors, "that they think and adjudge the said private road to be necessary, and do lay out the same," is sufficient, without adding that the road was laid to and from the applicant's land, *Powell v. Hitchner*, 3 Vr. 211. A return vacating "all that portion of the public road * * * which lies between S. creek where the said road crosses the same, and where the road leading to M. falls into or joins the said road," sufficiently fixes the beginning and ending, *State, Newell v. Bassett*, 4 Vr. 26, 28. A return signed by four of the surveyors, without showing that the other two were present, or had notice of the time and place of meeting, is fatally defective, *Griscom v. Gilmore*, 1 Harr. 105. *Shough, ex parte*, 1 Harr. 254. It should set out the road in its whole length with such precision, that the landholders, and they who have to open or use it, may have no difficulty in ascertaining where they have a right to travel, or where they would be trespassing, *Ibid.* Stating the beginning point of the road to be "at or near" a certain place is too vague; so also if its termination is expressed in the same or like terms, *Ibid.* So, if it be described as "beginning near the New Jersey Central Railway depot, at Roselle, on the northerly side of said depot, and in a line of a road known as Chestnut street," *State, Charlier v. Woodruff*, 7 Vr. 204. It should show that the surveyors received proof that publication had been made of their meeting, and that they decided upon it, *State v. Scott*, 4 Hal. 17. Where surveyors met on the 23d, and signed their report on the 26th, it need not appear whether they adjourned in the meantime, if they did not adjourn, *Road in Middlesex*, 1 South. *290. But if it appear that there has been an adjournment, it ought also to appear that that adjudication was in all respects legal and proper, *Ibid.* *State v. Scott*, 4 Hal. 17, 21. It must show that an absent surveyor had notice of their meeting, or such notice must appear by proof laid before the court, *Bassett v. Cement*, 2 Harr. 166. The surveyors should certify in their return that they had regard to the shortest distance, or the presumption will be that they had not, *State, Roth v. Yauger*, 5 Dutch. 384. It should show that the road is laid "as may appear to them to be most for the public and private convenience," and also "in such a manner as to do the least injury to private property." If the return shows that public convenience was regarded, but says nothing about private convenience, the omission raises the presumption that the latter was disregarded, and the return will be set aside, *State, Brock v. Lippincott*, 1 Dutch. 434. If application is made to vacate an old road, and lay out a new one, the return should particularly describe the old road vacated, and also the new one laid out, *Ibid.* The return of surveyors must designate the township or townships in which the road laid out is located, *State v. Cake*, 4 Zab. 516. For some purposes, the recitals in a return may be considered as part of the return, *Ibid.* Though the return does not expressly say in which of two townships the road begins and in which it ends, yet where these points are fixed with such precision of description that nobody can possibly be mistaken as to where they are, it is sufficient, *Ibid.* It is not necessary that the return should show where the road laid out crosses the township line, *Ibid.* Where an act authorizes a turnpike to be built along a public highway, upon such highway being vacated according to law, if the surveyors of the highway vacate the same, and in their return set forth that such vacation is necessary for the purpose of carrying into effect the act authorizing the turnpike to be built, it is a vacation of the

highway according to the spirit of the act, *Wright v. Carter*, 3 Dutch. 77, case reversed, *Id.* 685, note. The general meaning of that part of the road act which requires the surveyors to make "return, &c., and reference to the most remarkable places," is, that they are to refer to such places and objects along and near the line of the road, on either side, as may seem to them most likely to be useful as monuments by which the true location of the road may be determined, *Hoffman v. Rodman*, 10 Vr. 252. The judgment of the surveyors upon these points, if fairly exercised, will not be reviewed in this court, *Ibid.* A return that the road shall be opened "on or before the first day of September next," a period of nearly a year between the date of the return and the first of September, is a sufficient fixing of the time of opening, *Road in Middlesex*, 1 South. *290. Where the return of a road is signed by some of the surveyors only, it should appear that the others either met with them, or had notice of their meeting, *State v. Burnet*, 2 Gr. 385. *Griscom v. Gilmore*, 1 Harr. 105. *State v. Van Geison*, 3 Gr. 339, 342. If all are present, but one or two do not concur with the majority, the fact of their being present ought to appear on their return, *State v. Van Geison*, 3 Gr. 339, 342. Also, the fact that those who are absent had been duly notified and did not attend, *Ibid.* In laying out a private road, the surveyors must certify that they had regard to the public and private convenience, *State, Parmley v. White*, 6 Vr. 203.

The map need not show where the road crosses the township or county lines, *Road in Middlesex*, 1 South. *290. *State v. Cake*, 4 Zab. 516. Where a road is vacated, a map should accompany the return, showing the courses and distances, with reference to the most remarkable places, and the improvements through which the road passes, the same as is required in laying out a road, *State v. Lippincott*, 1 Dutch. 434. The map may, by the direction of the surveyors, be both made and annexed by a practical surveyor, after they have signed their return and separated, *State v. English*, 2 Zab. 291, 713. A barn or dwelling house is not such an improvement as is required to be laid down in the map, *State v. Smith*, 1 Zab. 91. The word "improvements" means enclosures, or enclosed fields—lands fenced in, as distinguished from wastes or commons, *State v. Hopping*, 3 Harr. 423. It is not necessary that the map should show the lines, and the courses and distances of the several sides of every enclosed field through which the road is to run. It is sufficient, if the map shows, by continuous or dotted lines marked on it, where the road crosses the fences that divide the different enclosures, and the names of the owners or reputed owners, of the several lots, *Ibid.* *State, Taylor v. Hulick*, 8 Vr. 70, 71.

Where the return of a public road, laid out by surveyors of the highway, with a map accompanying the same, after having been filed in the proper clerk's office, has been accidentally lost, on proper proof being made of such loss, the court may order a certified copy of the return, and a map of substantial identity with the original, to be made and recorded in the road book, *Frame v. Boyd*, 6 Vr. 457. When duly recorded, the return establishes the road, and concludes the rights of individuals over whose lands the road has been laid out, *State v. Van Geison*, 3 Gr. 339. After demanding freeholders, the return cannot be recorded, unless confirmed by four freeholders, *Matter of Highway*, Pen. *642. *Addis v. Priest*, Pen. *812. Where the proceedings of the freeholders have been irregular, the order of the common pleas for filing their certificate will be set aside, and the return of the surveyors recorded, *State v. Cruser*, 2 Gr. 401. The original applicants cease to have control over the road after the return is recorded, and it is doubtful whether the supreme court would afterward set it aside on the consent or confession of errors of some of the original applicants, *State v. Schanck*, 4 Hal. 107. *Aliter*, as to the party in interest where the errors are apparent, *State v. Green*, 2 Harr. 179, 184. Where the surveyors had jurisdiction of the subject-matter, a return coming up collaterally in a court of equity will not be adjudged void, for any irregularity or deficiency, *Tainter v. Morristown*, 4 C. E. Gr. 46.

A material variance in the description of the road, as applied for, and as laid out by the surveyors, will vitiate the return. What is a sufficient variance considered, and the cases examined, *Powell v. Hitchner*, 3 Vr. 211. *State v. Burnet*, 2 Gr. 385. *State v. French*, 1 Zab. 786. There is no difference in this respect between public and private roads, *Ibid.* 214. It must be shown affirmatively that there is a variance between the beginning point of the road as applied for and the beginning point of the road laid out, and that such variance is material, *State v. Van Buskirk*, 1 Zab. 87. Where the application was for a road to run "a northwesterly and a northerly direction," and the road as laid out contained thirty-six courses, all of them either northwesterly or northerly, excepting two. *Held*, that the variance was not material, *State, Covert v. Hulick*, 4 Vr. 307. It is sufficient if the road laid out, taken as a whole, answers, substantially, the description in the application, *Ibid.* If the application is to lay a road running a northwesterly direction, and one of the many courses of the road, as laid, is southwest, this is not a sufficient variance to set aside the

fifteen days after the date thereof; and that in every case of neglect or refusal to deliver or transmit the same within the time aforesaid, the return shall be void.

7: That the clerk of any court of common pleas, or of the supreme court, shall not record the return of the surveyors, until the expiration of fifteen days after he shall have received the same, so that any person being aggrieved thereby, may, within that time, enter a *caveat* with the said

Time allowed to enter caveat.
Ib. 27.

return, if the general course of the road laid be northwesterly, when the beginning and ending points are compared with each other, *State v. Atkinson*, 3 *Dutch*. 420. *State, Swanton v. Pierson*, 8 *Vr*. 363. A mere clerical error in the name of one of the land owners across whose land the road is intended to be laid, is not such a variance as will set aside the proceedings, if correct in other respects, and the road as laid be unmistakable, *Ibid*. The return made by the surveyors will not be considered vague and uncertain because the several courses of the road set forth in the return, are said to be as the magnetic needle of the practical surveyor engaged in laying out the road, pointed on a particular day; nor because the route had been run on a subsequent day by two other surveyors, who found a small difference of course on the first line, and at the termination of the road a departure of about four chains; a fourth surveyor agreeing with the first, *State v. Schanck*, 4 *Hal*. 107. That the surveyors met on one day at the house of one person, and that the return is dated and signed on a different day, and at the house of a different person, and no adjournment of time or place shown in the return, is not sufficient to vitiate the return, *Ibid*. A return, in which "the north side of the said road to begin at a stone in," and then after giving the several courses and distances continues, "which said lines of course are in the middle of the public road now laid out," is incongruous and will be set aside, *State v. Green*, 3 *Gr*. 88, case reversed, *May* 21, 1842. Where the stakes specified in the application and return were not identical, but were eight feet apart, reckoning from the stake in the return, which was in the centre of the road. *Held*, not a material variance, *State v. Van Buskirk*, 1 *Zab*. 86, 89. The description is equally answered whether the stake stands in the centre or upon either side of the road, *Ibid*. Where one of the points called for in the application is a stake "in the middle of said road," and in the road laid by surveyors, that stake is within the width of the road but not in the middle, the variance is not material, *State v. Smith*, 1 *Zab*. 91. Where the road, as applied for, is described as running in the line dividing the lands of J. P. and J. F., which is an ancient line, marked by a fence; and the road is laid out by the surveyors not in the said dividing line, but across the lands of J. P., the return will be set aside, although the road be described in the return as laid out in the dividing line between the said lands, and although it be proved that previous to the application, there was a verbal agreement between J. P. and J. F., to alter the dividing line of their lands to correspond with the line of the road as laid out, *State v. French*, 4 *Zab*. 736. Where a road is laid out in two townships, if surveyors omit to adjudge what part of the damages awarded is to be paid by each township, the laying out of the road is illegal, and must be set aside, *State, Kelly v. Garretson*, 3 *Zab*. 388. Return will be set aside if it does not specify the several courses and distances, *State v. Clark*, *Coze* 226. The application to the court of common pleas for the appointment of surveyors to vacate a private road, the advertisements required by the statute in such cases, and the return of the surveyors, should all state the township in which the road to be vacated, lies; and if the name of the township is omitted in either, the proceedings will be set aside, *State v. Allen*, 6 *Hal*. 103. Return quashed because at time of application there were no stakes or monuments at which the road was to begin or end, *Highway, matter of*, 1 *Harr*. 391. It will not be set aside because one course of the road is by accident not actually delineated on the map, when the course and distance are given definitely, both on the map and return, so that the deficiency can be amended by order of the court, *State v. Miller*, 3 *Zab*. 383. Nor on the ground that the appointment of one of the surveyors was not made under hand and seal of township committee, *State, Garrabrani v. Meyers*, 5 *Dutch*. 392. Where the return and map of a public road do not give the length of the line through the lands of the several owners, and the map does not show the division fences or lines where the road crosses them, the return is illegal, *State, Taylor v. Hulick*, 8 *Vr*. 70. The court of common pleas has jurisdiction to determine whether the proceedings have been conducted in compliance with the statute, and may set aside the report of the surveyors, or the certificate of the freeholders, for non-conformity with the requirements of the statute, or illegality in matter of substance, but it cannot review the judgment of the surveyors in determining that a public road was necessary, and set aside their return, on the ground of error in judgment, *State, Atkinson v. Bishop*, 10 *Vr*. 227.

Surveyors of the highways must not only take but must subscribe the oath of office required by the statute, or the return of a road by them laid out, will be quashed, *Fisher v. Allen*, 3 *Hal*. 301. *State v. Barnes*, 1 *Gr*. 268. *Hoagland v. Culbert, Spen*. 387. *State v. Davis*, 1 *Gr*. 10. *Road in Middlesex*, 2 *South*. *396. *State v. Lawrence*, 2 *South*. *850. Although

a surveyor has taken and subscribed the oath before a justice, and filed the same in due time, but the justice has failed to certify when it was taken, it is fatal to the return, and cannot be cured by a supplemental certificate of the justice, *State v. Northrop*, 3 *Harr*. 271. *State v. Green*, 3 *Gr*. 88, case reversed, *May* 21, 1842. So also if it do not appear either upon the face of the affidavit or otherwise, that the person before whom it was sworn was a justice of the peace, *State v. Hutchinson*, 5 *Hal*. 242. *State v. Green*, 3 *Gr*. 88. *State v. Rogers*, cited by *Hornblower, C. J.*, 3 *Gr*. 90. That the town clerk did not keep a copy of his oath of office, or that it does not appear on the oath of office where it was taken, or that the officer was a justice, provided these appear *aliunde*, is not sufficient to set aside the return, *State v. Bergen*, 1 *Zab*. 342. *State v. Ayres*, 3 *Gr*. 479, 481. The use of the word "declare" in the oath of a surveyor is synonymous with "promise" required by the statute, and is not cause for setting aside the return, *Bassett v. Denn*, 2 *Harr*. 432. Nor the error of the township clerk in filing copies instead of the originals, *Ibid*. Nor where the body of the official affirmation is "promise and swear (or affirm)," and the jurat "affirmed before me," &c., *State v. Shreve*, 1 *South*. *297. Though a quorum of the duly qualified surveyors, sign the return, yet it is void if they have acted with an unqualified person, *State v. Willingborough Road, Coze* 128. An oath that he will perform the duties of "surveyor of highway for the township of O." is a fatal departure, *State v. Davis*, 1 *Gr*. 10. So also, an oath that he will "execute the office of surveyor of the highways in the township of H., in the county of H.," &c., *State v. Hart*, 2 *Harr*. 185, 186. So also the oath that he will "execute the office of a surveyor of the highway, without favor or partiality, of the township of E., in the county of Salem," *State v. Ayres*, 3 *Gr*. 479.

It is no objection to the return that the surveyors were entertained by the applicants. But it is improper to pay them more than one dollar per day, *State v. Bergen*, 1 *Zab*. 343. *State, Hubbard v. Reckless*, 9 *Vr*. 393, 396. If part of the surveyors either forcibly or otherwise, exclude one of their number from acting, the return will be set aside, *State v. Shreve*, 1 *South*. *297, *300. The return will be set aside if six surveyors after deciding against the application for a road, separate; and afterwards on the same day, four of them meet and lay out the road, *Matter of Highway*, 1 *Harr*. 391. If in the orders of the court of common pleas, or in the proceedings of the applicants or the surveyors, (other than those of which the decision of the court or the surveyors is by the statute declared to be final and conclusive) substantial defects are found, the return and recording will be vacated and set aside, *State v. Scott*, 4 *Hal*. 17, 18. *State v. Conover*, 2 *Hal*. 203. If it appear by the return, that the surveyors met at a different place from that designated by the order of the court, their proceedings will be set aside, *Ibid*. It is not good ground to set aside a return, that the witness who proved the putting up of the notices, was sworn by an officer who was present and acting as counsel for the applicants, *State v. Bergen*, 4 *Zab*. 548. The return set aside, because the applicant paid the surveyors more than their legal fees, *State, Parmley v. White*, 6 *Vr*. 203.

Where no possible injury can be conceived to have befallen the prosecutor from the form and mode of appointing the surveyors, their proceedings will not be set aside, *State v. Potts*, 1 *South*. *347, *350, 2 *South*. 862. See *State v. Bergen*, 4 *Zab*. 548, 550. The fact that the land taken was worth \$6000, and the damage awarded but nominal, does not show that the prosecutor has been injured, *State, Vanderbeek v. Blauvelt*, 5 *Vr*. 259, 263. Nor the fact that the road is laid in part over a highway already dedicated to public use, *Ibid*. Every citizen is interested, more or less, in every highway, and has a right to take the opinion of the supreme court whether the *locus in quo* has been legally vacated by the surveyors, *State, Snedeker v. Snedeker*, 1 *Vr*. 80. *State, Miller v. Stout*, 4 *Vr*. 42, 43. On the allegation of a variance, the court will ascertain the intention of the surveyors from the return itself, and not from the belief or understanding of one of the applicants, and still less of one of the opponents of the road, *State v. Stites*, 1 *Gr*. 172. So also, if the road laid out corresponds with the one in the application, proof will not be received that a different one was intended or mentioned by the applicants, *State v. Smith*, 1 *Zab*. 91, 93. Evidence, *aliunde* the return itself, cannot help a defective return; such evidence cannot be placed on the record, *State v. Van Geison*, 3 *Gr*. 340. Affidavits cannot be read to prove that individuals knew the intended points of beginning or end, when the same are uncertain and indefinite in the petition and notice, *State v. Green*, 3 *Harr*. 179. The best evidence of the existence of a public road or highway is the record of the return, &c., or a properly authenticated copy of it. And until the absence of such evidence has been satisfactorily accounted for, no other, of inferior degree, will be permitted to supply its place, *State, Hoffman v. Rodman*, 10 *Vr*. 252.

clerk against recording the said return, which *caveat*, so entered, shall operate as a *supersedeas* to further proceedings until the next court.

Proceedings on
caveat, if road in
one county.
Ib. § 8.
Amended.

Application for
freeholders and
appointment.

Notice.

Oath.

Certificate.

Record.

New application.

8. That when any person or persons shall think him, her, or themselves injured or aggrieved by any road in one county, which shall hereafter be laid out, vacated, or altered by the said surveyors, having entered a *caveat* as aforesaid, he, she, or they, or their legal representatives, or any other person, may make application in writing to the court of common pleas succeeding, and the said court shall not set aside the proceedings of the surveyors for illegality or irregularity, but shall thereupon, during the term to which the said application is made, appoint six of the chosen freeholders of the county in which the said road shall have been so laid out, vacated, or altered, designating the time and place of the meeting of the said freeholders, always having regard to the appointment of the chosen freeholders of the township or townships where the road shall have been laid out, vacated, or altered; *provided*, that no freeholder be appointed through whose land the road may run, or who, for any other reason which the court in their discretion may deem sufficient, think ought not to be appointed; a copy of which appointment shall be served by the applicant or applicants on the said freeholders, in the same way and manner, and the mode of giving public notice by advertisements, in all respects shall be the same as is directed by the first section of this act, in respect both to the applicants and to the surveyors of the highways; and the said chosen freeholders, having taken an oath or affirmation to act faithfully and impartially, shall proceed to view the said road so laid out, vacated, or altered, and if they or a majority of them shall believe such laying out, vacation, or alteration, or any part thereof, to be necessary and useful, they shall certify the same to the said court, the term next succeeding that in which they were appointed and the court shall thereupon cause the same to be recorded in the book kept for that purpose in the office of the clerk of the county as aforesaid; which certificate and proceedings of the freeholders shall be binding and conclusive in all cases, and shall not be subject to an appeal or *certiorari*, or to be set aside for lack of form, and no application shall be made touching such road so laid out, vacated, or altered, under the term of one year after the recording of the same; but if the said freeholders shall believe such laying out, vacation, or alteration to be unnecessary or injurious, they shall certify the same to the court aforesaid, and the proceedings of the surveyors shall be made null and void, and the same shall not again be applied for under the term of one year; but if no *caveat* shall have been entered, or the person or persons entering the same shall not proceed in the manner prescribed in this section, or the said freeholders or a majority of them shall neglect to certify that the same is unnecessary, or if the said freeholders should be equally divided, the proceedings of the surveyors shall be deemed valid and effectual, and the clerk as aforesaid, shall, by order from the court, record the same; and every road so laid out or altered and recorded as aforesaid, shall be a lawful highway from the time appointed for the opening of the same. (a)

(a) A *caveat* filed against recording the return suspends proceedings for the appointment of freeholders, until the term next succeeding the filing of such *caveat*, *State v. Hubbard v. Reckless*, 9 Vr. 393. If the return be filed with the county clerk during term time of the common pleas, a person supposing himself aggrieved, is entitled to fifteen days after such filing, to consider whether to enter a *caveat* against recording the return, *State v. Waldron*, 2 Harr. 369. Exceptions to surveyors' return, and rule for appointing freeholders, allowable in supreme court at the same time, *Matter of Highway*, Pen. *700. The caveator must make application for the appointment of surveyors at the term succeeding that in which the *caveat* was filed, *State v. Hubbard v. Reckless*, 9 Vr. 393. *State v. Waldron*, 2 Harr. 369, 371. If freeholders have been regularly appointed, and owing to a mistake of the clerk in making out the order and certificates of appointment, their return has been set aside, the court should not order the return of the surveyors to be recorded, but should make a new appointment of freeholders, *State v. Northrop*, 3 Harr. 271. The court will appoint freeholders, although several terms have elapsed after *caveat* filed, the cause having been removed by writ of error to the court of errors, *Matter of Highway*, 1 Harr. 345. Where the *caveat* was filed within the time limited by law, and the request for the appointment made at the next succeeding term of court, the proceedings will be sent back to the common pleas to be proceeded in according to law, that is by appointing freeholders, *State v. Waldron*, 2 Harr.

369, 372. If the case be removed by *certiorari*, the supreme court will direct an appointment to be made by the court below, after the errors are corrected, *State v. Hubbard v. Reckless*, 9 Vr. 393. *State v. Northrop*, 3 Harr. 271, 272, overruling *State v. Conover*, 2 Hal. 203. When part of the surveyors have prevented one of their number from acting, freeholders cannot be appointed, *State v. Shreve*, 1 South. *297, *300.

That a freeholder living in the town where the road runs had expressed his opinion on the question, does not authorize the common pleas to pass him by, and appoint one from another town, *Matter of Highway*, Pen. *1026. If the court should, by mistake or inadvertence appoint a man through whose land the road runs, as freeholder, and he proceeds with the others to view, deliberate, and advise touching the same, although he does not actually sign the certificate, yet the court may set aside the appointment *State v. Conover*, 2 Hal. 203. It is no objection, of itself, to the appointment of a person as a freeholder to review damages by laying out a road, that he had opposed the laying out of the road, *Readington v. Dilley*, 4 Zab. 210. It is not error, upon several distinct applications for the appointment of freeholders to review the damages by laying out a road, to appoint the same freeholders in each case, *Ibid.* Where the appointment of freeholders and their proceedings are set aside for reasons that are not the laches or fault of the party applying for them, such party may apply for the appointment of new freeholders in twenty

9. That when any person or persons shall think him, her, or themselves injured or aggrieved by any road which shall hereafter be laid out, vacated, or altered by the said surveyors, or any line between two counties, or part in one county and part in another, having entered a *caveat* as aforesaid, with the clerk of the supreme court, he, she, or they, or their legal representatives, or any other person, may make application in writing to the said supreme court succeeding, and the said court shall thereupon, during the term to which the said application is made, appoint three of the chosen freeholders in each of the said counties, designating the time and place of the meeting of the said freeholders, always having regard to the appointment of the freeholders of the township or townships where the road shall have been laid out, vacated, or altered, subject to the same provisions and restrictions as in the eighth section; a copy of which appointment shall be served by the applicant or applicants, on the said freeholders, in the same way and manner, and the mode of giving public notice by advertisements, in all respects, shall be the same as is directed by the first section of this act, in respect both to the applicants and to the surveyors of the highways; and the said chosen freeholders, having previously taken an oath or affirmation to act faithfully and impartially, shall proceed to view the said road so laid out, vacated, or altered, and if they or a majority of them shall believe such laying out, vacation, or alteration, or any part thereof, to be necessary and useful, they shall certify the same to the supreme court the term next succeeding that in which they were appointed, and the supreme court shall thereupon cause the same to be recorded in a book kept for that purpose in the office of the clerk of the said court, which certificate and proceedings of the freeholders shall be binding and conclusive in all cases, and shall not be subject to be set aside for lack of form, and no application shall be made touching such road so laid out, vacated or altered, under the term of one year after the recording of the same; but if the said freeholders shall believe such laying out, vacation, or alteration to be unnecessary or injurious, they shall certify the same to the supreme court aforesaid, and the proceedings of the surveyors shall be made null and void, and the same shall not again be applied for under the term of one year; but if no *caveat* shall have been entered, or the person or persons entering the same shall not proceed in the manner prescribed in this section, or the said freeholders or a majority of them shall neglect to certify that the same is unnecessary, or if the said freeholders shall be equally divided, the proceedings of the surveyors shall be deemed valid and effectual, and the clerk as aforesaid, shall, by order from the court, record the same;

Proceedings on caveat if road in two counties.
Ib. § 10.

Application and appointment of freeholders.

Notice.

Oath.

Certificate.

Record.

New application, when.

days after the judgment setting aside the first appointment, *Ibid.*

Freeholders may proceed without preliminary proof of the advertisement of their meeting, and their certificate will be valid, provided, that when called in question, it can be shown that public notice had been given according to law, *Matter of Highway*, 1 *Harr.* 91, 94. If stated on the face of their certificate, it is *prima facie* sufficient; if not so stated, proof *abundante* must be made, *Ibid.* Affidavits before a justice of the peace, not referred to in the certificate, or in any way connected therewith, are not sufficient to prove such fact, *Ibid.* The power to review the determination of the surveyors is conferred exclusively on the freeholders who shall be appointed to review their proceedings, *State, Atkinson v. Bishop*, 10 *Vr.* 227. *State v. Henley*, *Coze* 261. Although they have determined the matter submitted to them, freeholders may reconsider their vote, and alter their determination, if done before they separate, *State, Borden v. Justice*, 4 *Zab.* 413. They are not required to cause the road to be actually surveyed, *Ibid.* "That the certificate and proceedings of the freeholders appointed after caveat filed, shall be binding and conclusive in all cases, and shall not be subject to an appeal or *certiorari*, or be set aside for lack of form," is to be understood to mean, that their proceedings shall not be subject to *certiorari* at all, and shall not be set aside, even in the same court for form only. But for matter of substance they may be set aside, as in all other cases of a similar nature, *State v. Conover*, 2 *Hal.* 203. *State v. Scott*, 4 *Hal.* 17, 18. The defects must be such as would make the proceedings of the freeholders a nullity, *State, Borden v. Justice*, 4 *Zab.* 413. That the caveators furnished the freeholders a dinner, is not a sufficient reason, *Ibid.* Query. Whether the court is legally authorized to inquire into the motives which may have induced the determination of the freeholders, and make them the basis of an order to set aside, *State v. Stites*, 1 *Gr.* 172. The court will not on slight grounds sustain an objection which, if true, would be discreditable to the freeholders, *Ibid.* If the freeholders meet at a different time, or a different

place from the one designated, or if they do not show notice of such meeting, or adjourn without the consent or notice required by statute,—these are errors in substance, and their certificate should be set aside, *State v. Cruser*, 2 *Gr.* 401, 402. Where it appears by the minutes of the pleas that a rule to show cause why the proceedings of freeholders should not be set aside was granted upon affidavit, and no such affidavit could afterwards be found, and the court below, on application, refused to dismiss the rule for the want of an affidavit, this court will not interpose, to set aside the proceedings, on the ground that such refusal was error, *State, Newell v. Bassett*, 4 *Vr.* 26. Though the proceedings and certificates of the freeholders are not subject to be reviewed upon *certiorari*, yet the proceedings of the court of common pleas, in the appointment of such freeholders, and their judgment upon such certificate, are subject to such review, *State v. Conover*, 2 *Hal.* 203.

That the former order extended the road a considerable distance beyond the one now applied for, and that one application was for a four rod road, and the other for a three rod road, brings the case within the statute prohibiting two applications for the same road within one year, *Matter of Highway*, *Pen.* *665, *666. The year must be calculated from the ending of the litigation upon the first road, to the application for the second, *Ibid.* *State v. Potts*, 1 *South.* *347. *Matter of Highway*, *Pen.* *1038. A judge is not incompetent to appoint commissioners to review the damages of laying out a road, because he has once been a member of the town committee, nor because he was once employed as surveyor by the opponents of the road, nor because he has expressed an opinion that the road was unnecessary. These are matters unconnected with the question of damages, *Readington v. Dilley*, 4 *Zab.* 210. If a town committee have applied within twenty days for the appointment of freeholders to review the assessment of surveyors and the appointment without their default is not made within that time, the remedy is not lost, but the appointment may be subsequently made, *State v. Miller*, 3 *Zab.* 383.

and every road so laid out, or altered and recorded as aforesaid, shall be a lawful road or highway, from the time appointed for opening the same.

Proceedings on caveat if road in three counties.

P. L. 1847, p. 119.

10. That when any person or persons shall think him, her or themselves injured or aggrieved, by any road which shall hereafter be laid out, vacated, or altered by the said surveyors, where the said road shall be laid out or situate in three different and adjacent counties, having entered a *caveat* with the clerk of the supreme court, as prescribed in the section preceding, he, she, or they, or their legal representatives, or any other person, may make application in writing to the supreme court next succeeding; and the said court shall thereupon, during the term to which the said application is made, appoint two of the chosen freeholders in each of the said counties, designating the time and place of the meeting of said freeholders, always having regard to the appointment of the freeholders of the township or townships where the road shall have been laid out, vacated, or altered, subject to the same provisions and restrictions as in the eighth section of this act; and the said applicants and freeholders shall thereupon proceed as is therein directed and prescribed.

Penalty for neglect of duty.

R. S. 515, § 11.

11. That if any surveyor of the highways, or chosen freeholder, who shall have due notice, or any clerk having due notice, shall refuse or neglect to perform any duty prescribed by this act, he shall, unless he assign good reasons for such refusal or neglect, forfeit sixteen dollars, to be recovered by action of debt, with costs, by any person who shall sue for the same, in any court where the same is cognizable, to be paid to the county collector for the use of the county.

What to be quorum of surveyors or freeholders. Ib § 12. Amended. Proviso.

12. That if any number not less than a majority of the said surveyors or freeholders, shall attend at the time and place appointed by the court, they shall be a quorum to execute the business for which they convened, and be competent to lay out, vacate, or alter the said road, as the case may require; *provided*, that the signature of two of the surveyors or freeholders of each of the said counties, where the road lies in two counties, and the signature of one surveyor or freeholder in each of said counties, where the road lies in three counties, shall be necessary to render the said return valid or effectual; and if any number of the surveyors or freeholders shall convene as aforesaid, they may, if a majority of the applicants attending consent, adjourn to a future day, giving the parties then present verbal, and the absent surveyor or surveyors, or the absent freeholder or freeholders, written notice of the time to which they have adjourned; and if any number of the said surveyors or freeholders, sufficient to constitute a quorum, shall convene pursuant to adjournment, they shall proceed to perform the service and duty required of them, in the manner hereinbefore prescribed.

May adjourn.

2. ASSESSMENT OF DAMAGES IN LAYING OUT OR VACATING A PUBLIC ROAD.

Surveyors to assess damages.

P. L. 1860, p. 601.

13. That whenever any public road or highway shall be laid out or altered by the surveyors, or a majority of them, mentioned in this act, the said surveyors shall immediately thereafter make an assessment of the damage, if any, the owner of any land or real estate, other than the applicant or applicants for such road shall sustain by laying out or altering the same, over and above the advantage that will, in their judgment, accrue to said owner. (a)

(a) Under the constitution of 1844, and the act of the legislature of 1850, private property cannot be taken for public roads or streets without compensation being first made to the owner, *State, Hudson Co. Imp. Co. v. Seymour*, 6 Vr. 47. *State, Gaines v. Hudson Co. Com'rs*, 8 Vr. 12. Surveyors of highways are bound, in laying out a road, to assess the damages of all landholders whose lands are taken, that are not applicants, *State, Dunham v. Eumyon*, 4 Zab. 258. *State, Price v. Bennett*, 1 *Dutch*, 329. In every case where a road is laid out over lands of a person who is not an applicant, surveyors must assess to him some damages, although they are of opinion that he sustains none, *State, Troutman v. Cooper*, 3 Zab. 381. *Ogden, J. State, Kelley v. Garretson*, 3 Zab. 388. *State v. Everett*, 3 Zab. 378. *State v. Miller*, 3 Zab. 382. It is not necessary to assess the damages for land taken for a public road of a land owner who is a real applicant for the road, although he did not sign the petition, *State, Thompson v. Emmons*, 4 Zab. 45. An assessment awarding \$200 to A. B. and C. D., without saying how much is assessed to each of them, will be set aside, unless it appear by the return that they owned the land as joint

tenants or tenants in common, *State, Kellogg v. Fischer*, 1 *Dutch*, 129. Also, where damages are assessed in one case to "Peter Donald & Co.," and in another case to the "heirs of Jacob Kemp," *State, Charlier v. Woodruff*, 7 Vr. 204, 205. A person ought not to be appointed to review damages in laying out a road who has formed or expressed an opinion upon the subject with a knowledge of the facts, and the assessment made under such appointment will be set aside, *Readington v. Dilley*, 4 Zab. 209. In laying out a highway over lands of any one not an applicant therefor, the surveyors must certify their adjudication, as to the damages sustained by such land owner, together with their return, *State, Troutman v. Cooper*, 3 Zab. 381. It is error, in assessing the damages sustained by land owners by the laying out of a road, to assess a sum to A. B. and others; the damage to each owner must be assessed to him by name, *Ibid*. It must appear by the return of the laying out of a road, through whose lands it passes, that the damages may appear to be rightly assessed, *Ibid*. In a road case, an assessment of damages made in behalf of heirs or devisees by that designation alone, is neither in consonance with

14. That said surveyors, or a majority of them, shall, with their return of the laying out or altering of any public road or highway, return their said assessment, certified by them in writing under their hands, particularly specifying the amount assessed in favor of the respective owners; which said assessment shall be evidence of the several amounts to which the owner or owners of said land shall be entitled. Return to be made.
P. L. 1850, p. 162, § 2.
15. That the inhabitants of any township in which any public road or highway shall be laid out or altered, in their corporate capacity, shall be liable to pay to the parties entitled to receive the same, the sum assessed against such township as damages; and it shall be the duty of the township committee to cause all such sums as shall be necessary to pay the same to be assessed and collected in the same manner that all other moneys for township purposes shall be assessed and collected. (a) Township liable for damages assessed.
Ib. § 3.
16. That in case any public road or highway, laid out or altered as aforesaid, shall lie in two or more townships, it shall be the duty of the surveyors laying out or altering the same to state and certify the proportion of the assessment by them made, which shall be paid by the inhabitants of the several townships in which said public road or highway is laid out or altered; and it shall be the duty of the township committees of said townships to provide for the payment thereof, in manner aforesaid. Assessment if road in two or more townships.
Ib. § 4.
17. That if any township committee, or any owner of land or real estate so taken as aforesaid, shall be dissatisfied with the assessment of said surveyors, they may, within twenty days after the return of said surveyors shall be filed in the clerk's office of the court by which they were appointed, file their notice of appeal therefrom in said office, after which the said appellants may apply to the next term of said court; and in case the next term shall begin in less than twenty days after the surveyors' return was made, they may apply to the next succeeding term, which court shall appoint three disinterested chosen freeholders of the county or counties in which the road shall lie, always having regard to the chosen freeholders of the townships nearest to said road to review the assessment made by the said surveyors, and lessen, increase, or confirm the same as to them, after taking into consideration the advantage and disadvantage that will accrue to said owner, shall seem fit and just; and Proceedings to review assessment.
Ib. § 5.

Appointment of freeholders.

the statute, nor with former adjudged cases, *State, Combs v. Blauvelt*, 4 Vr. 36. An assessment of damages, made in favor of the estate of E. B., is fatally defective, it not specifying particularly the owner, as required by the statute, *State, Swanton v. Pierson*, 8 Vr. 363. See *State, Covert v. Hulick*, 4 Vr. 307. A person whose land was not taken for a public road cannot urge as a reason for setting aside a return, that no damages were awarded to another person whose lands were taken, and who does not complain, *State, Thompson v. Emmons*, 4 Zab. 45. See *State v. Calk*, 4 Zab. 516. Since the supplement to the road act of March 1, 1850, if a road is laid out by surveyors without adjudicating as to the damages which each land owner over whose land the road runs, not an applicant for the road, is entitled to, the whole proceeding is irregular, and will be set aside; and it is no excuse that the surveyors were ignorant of the law. *State v. Everett*, 3 Zab. 378. *State, Troutman v. Cooper*, 3 Zab. 381. *State, Price v. Bennett*, 1 Dutch. 329. But if such owner mislead the surveyors, and cause them to omit making any assessment to him he cannot take advantage of his own wrong, and the assessment will not be set aside on account of the omission, *State, Price v. Bennett*, 1 Dutch. 329. It is a good objection to a return of a road, that the surveyor assessed damages in favor of an applicant who was one of the ten required by law, and who was induced to become so by a promise of damages; and this objection may be made by a prosecutor through whose lands the road was laid, *State, Miller v. Stout*, 4 Vr. 42. If the surveyors have assessed to the land owner an amount equal, in their judgment, to the actual damages sustained by him, their assessment will not be reviewed on *certiorari*—the remedy in such a case being by application for the appointment of freeholders to review the assessment, *State, Covert v. Hulick*, 4 Vr. 308. But if it clearly appears that the assessment was not the result of a fair estimate of the actual damages, but was intended as merely nominal damages, because the surveyors regarded the land owner as an applicant for the road, when they had no right to do so, such assessment is bad, and the return will, for that reason, be set aside, *Ibid.* An assessment of surveyors will not be disturbed in this court, merely, on the ground of its inadequacy as a compensation to the land owner; but, whenever it plainly appears that such inadequacy resulted from the surveyors having adopted and acted upon a wrong principle in making up their judgment, the whole proceedings will be set aside, *State, Swanton v. Pierson*, 8 Vr. 363. If the assessment to the land owner is omitted, or is illegal and void, the return

of the road itself is illegal, and must be set aside; it is all one proceeding, which cannot be good in part and bad in part, *State, Kelley v. Garretson*, 3 Zab. 388. If the basis upon which damages are estimated is, by taking the value of the land and the cost of fencing, and it appears that the amount of damages allowed is not equal to the value of the land taken and the cost of the fence, the assessment will be set aside, *Williamson v. East Amwell*, 4 Dutch. 271. The expense of making fence and the inconvenience of being cut off from water are proper matters to be allowed for in the assessment of damages by the laying out of a road, *Readington v. Dilley*, 4 Zab. 210. Where damages were assessed by the surveyors of the highways for taking lands of an owner, which were afterwards increased by the chosen freeholders, the fact that freeholders subsequently vacated a part of said road, and declared the same unnecessary, is no legal defence to an action brought against the township to recover the damages assessed by the freeholders under the act. The freeholders cannot apportion the damages, nor can a court or jury, *Reid v. Township of Wall*, 5 Vr. 275. The mode of assessing damages, as the fact were shown to the court. *Held*, to be proper, *Frame v. Boyd*, 6 Vr. 457. An assessment for damages, for land taken to widen a road, includes all damages occasioned by reducing the land so taken to the grade of such road, and, consequently, when the grade of such road was subsequently changed, the damages occasioned by such change were held not to include any but such as arose by the alteration of the road in its entire width from the old established grade to the new grade, *Van Ripper v. Essex Public Board*, 9 Vr. 23. The assessment against land owners must be in proportion to benefits, *State, Abrey v. Cannon*, 4 Vr. 218. The surveyors cannot assess any part of the damages of land owners in one township to the land owners in another, *Ibid.* Where a road is laid out in two or more townships, the surveyors must certify the proportion of assessment by them made, which shall be paid by the several townships, *Ibid.* *State, Kelley v. Garretson*, 3 Zab. 388.

(a) The town committee will be ordered to pay the damages to the land owners, so that a road may be opened, *Mimhinnah v. Haines*, 5 Dutch. 388. The township committee are authorized to cause the damages assessed for lands taken for roads to be assessed and raised without any vote of town meeting; and if they refuse or neglect to raise and pay such damages, a *mandamus* will issue to compel them, *Miller v. Bridgewater*, 4 Zab. 56.

- the report of the said three chosen freeholders, or a majority of them, made in writing under their hands, shall be filed in the office of the clerk of the county in which the lands taken shall lie, and shall be final and conclusive to the parties interested.
- Their report final.** 18. That no assessment shall be made in favor of any person who shall be an applicant for the laying out and altering any such public road or highway.
- No assessment in favor of applicant. Ib. § 6.** 19. That it shall not be lawful for the overseers of the highways in any township, to open for public use any public road or highway laid out or altered as aforesaid, until the amount of the assessment shall be paid to the party entitled to receive the same; but in case any party, so entitled, shall refuse to receive such payment, or be out of the state, or under any legal disability, then payment of the amount, to which said party is entitled, to the clerk of the court of common pleas in the county in which said lands shall lie, shall be deemed legal payment; such money to remain in the hands of said clerk until called for by the party entitled to receive the same, his, her or their legal representative.
- Road not to be opened till damages paid. Ib. § 7.** 20. That the party intending to make the application mentioned in the seventeenth section of this act, shall give ten days' notice in writing to the other party, stating the object of the said application, and the time and place of making the same; and the freeholders appointed shall meet upon a like notice and shall be duly sworn faithfully and impartially to execute the duties imposed upon them by this act, before they enter upon the discharge thereof.
- Notice. Ib. § 8.** 21. That nothing herein contained shall be held to prevent the review by chosen freeholders, or the laying out or altering of any public road or highway, as heretofore.
- Laying of road may be reviewed. Ib. § 9.** 22. That the owner of any land or real estate, taken as aforesaid, shall be entitled to recover the amount of the assessment made in his or her favor, with costs, in any court of competent jurisdiction, against the inhabitants of the township who, by this act, are made liable for such assessment.
- Suit for damages assessed. Ib. § 10.** 23. That the said court shall be allowed, for making the appointment of freeholders, the sum of one dollar; and one dollar per day shall be allowed to said freeholders, for their services, to be paid by such party as said court shall direct.
- Fees. Ib. § 11.**

3. ASSESSMENT OF DAMAGES IN LAYING A PRIVATE ROAD.

- Damages in case of private road. P. L. 1854, p. 189, § 1.** 24. That whenever any private road shall be laid out or altered, the surveyors, or a majority of them, mentioned in this act, shall immediately after laying out or altering the same, make an assessment of the damage the owner of any lands other than the applicant or applicants for such road will sustain by laying out or altering the same, and that such assessment shall be deemed the just compensation to be made for private property taken for public use, as prescribed by the constitution of this state, and fully authorize the appropriations thereof to the purpose aforesaid.
- Assessment to be returned. Ib. § 2.** 25. That the surveyors, or a majority of them, shall, with the return of the laying out or altering of any private road, return such assessment, certified by them in writing, under their hands, particularly specifying the amounts assessed in favor of the respective owners aforesaid, which assessment shall be evidence of the several amounts which such owners shall be entitled to have and recover from the applicant or applicants for such roads, and the same shall not be opened or used until such amount be paid.
- Appointment of freeholders to review assessment. Ib. § 3.** 26. That if any such owners, applicant or applicants, shall be dissatisfied with the assessment of the surveyors, such owner, or applicant or applicants, within twenty days after return made as aforesaid, having given ten days' notice in writing to the other party, of the object, time, and place of such intended application, may apply to a justice of the supreme court, or a judge of the court of common pleas of the county wherein such land is situated, which justice or judge shall forthwith appoint three competent and disinterested freeholders of such county, who, or a majority of them, shall have power to review such assessments, and may diminish or increase the same as they, under the circumstances, shall deem equitable and just,

and make report thereof in writing, under their hands forthwith, to be filed in the office of the clerk of said county, and the same shall be and remain final and conclusive; *provided*, that such freeholders meet upon like notice as aforesaid, and be duly sworn or affirmed to execute the duties aforesaid, before they enter upon the discharge thereof.

27. That it shall be lawful for the applicant or applicants to open for use such private roads, so soon as the amount or amounts of assessments shall be severally paid to the party thereto entitled; and should any party so entitled refuse to receive the same, or be under any legal disability, or not be resident in this state, then in either case the payment, if made to the clerk of the circuit court of the county in which such land is situate, shall be deemed a legal and sufficient payment thereof, and money so paid shall remain with such clerk until demanded by the party entitled thereto, his, her, or their legal representatives, and shall be ordered to be paid by said circuit court, upon petition by the claimant.

Road opened when damages paid.
Ib. § 4.

28. That the owner of such land shall be entitled to recover the amount of the assessment made in his or her favor, without costs, in any court of competent jurisdiction, of any person made by this act liable therefor, and that nothing in this act contained shall preclude the review by chosen freeholders, of the laying out or altering of any private road as heretofore.

Suit for amount of assessment.
Ib. § 5.

29. That the justice or judge, for making such appointment, shall be allowed one dollar, and each of the freeholders one dollar for their services, to be paid by the applicant or applicants for such road.

Fees.
Ib. § 6.

4. WORKING AND REPAIRING OF PRIVATE ROADS, SWINGING GATES, BRIDGES, &C.

30. That every private road which shall be laid out or altered by virtue of this act shall be cleared, worked, repaired and maintained by the applicant or applicants, and such other person or persons as commonly make use of the same, or in case of neglect it shall be lawful for any other person or persons who have occasion to use the said road, to clear, work and maintain the same; *and further*, that it shall be lawful for the owner of any land, over which a private or by-road may pass, to hang swinging gates in the said road; and if any person shall stake, shore, or leave open, or cut, break, or pull down, or destroy any gate, he shall, for every offence, forfeit two dollars, to be recovered by action of debt, with costs, by any person who shall prosecute for the same, and shall also pay the owner of the soil or his tenant, all damages which he may have sustained thereby, to be appraised by three neighboring freeholders, or a majority of them, which damages so assessed shall be recovered by action of debt, with costs.^(a)

How private road worked and maintained.

R. S. 515, § 13.

Swinging gate.

31. That where any private road is now or shall be laid out or altered by virtue of this act, so as to run upon the line or lines of one or more owner or owners of the soil, it shall be lawful for such owner or owners, or either of them, to hang swinging gates in the said road; and if any person or persons shall stake, shore, or leave open, or cut, break, or pull down, or destroy any gate (other than such owner or owners of the soil, at whose expense the said gate was hung or put up), he, she, or they shall, for every such offence, forfeit five dollars, to be recovered by action of debt, with costs, by any person who shall prosecute for the same; and shall also pay the owner or owners of the soil, his or their tenants, all damages which he, she, or they may have sustained thereby, to be appraised by three neighboring freeholders, or a majority of them, which damages, so assessed, shall be recovered by action of debt, with costs.

When several owners, each may have a swinging gate.
Ib. § 14.

32. That it shall and may be lawful for the owner or owners of any land or meadow, over which a private or by-road may pass, to erect, make, and maintain bridges on all ditches and drains lying or running across said road.

May make bridges.
Ib. § 15.

33. That all bridges which are now made, or hereafter may be made, across or over ditches or drains in private and by-roads, lying on mud or miry bottom, with one or two doors or hoists, with at least three feet

Bridges considered as swinging gates.
Ib. § 16.

(a) There is a clear distinction between a private or by-road and a private way; in the former the public have an interest, in the latter they have not; and the section which provides for erecting swinging gates across a private or by-road, does not extend to a private way, *Stevens v. Allen*,

5 *Dutch*. 68, 509. To an action brought to recover a penalty for leaving open a swinging gate across a private or by-road, the defendant cannot set up the defence that he had a private way where the road in question is laid, *Ibid*.

span, and made of such light materials as may be hoisted or lowered with facility, shall be taken and considered as swinging gates, and all persons leaving such gates down or laid, or who shall cut, break, or destroy any such gate, bridge, or door, shall, for every such offence, forfeit two dollars, to be recovered by action of debt, with costs, by any person who shall prosecute for the same, and shall also pay the owner of the soil or his tenant, all damages which he may have sustained thereby, to be appraised by three neighboring freeholders or a majority of them; which damages so assessed, shall be recovered by action of debt, with costs.

Expenses of private road or bridge, when two or more benefited.
Ib. § 17.

34. That for the equitable distribution of any expense which may accrue in making and keeping in repair any private road or bridge, whereby two or more persons owning real estate may be benefited by the use of said road, in going to or from their said premises, it shall and may be lawful for any person so using said road, to make and keep in repair said road or bridge at any time when the same may be necessary; and the expense of said repairs shall, on the refusal of any individual to pay his proportion thereof to the person from whom the money may be due, on the application to two freeholders, entirely disinterested in the same, be assessed by said freeholders, after the valuation of said work, upon the owner or owners benefited thereby, according to the advantages he or they may respectively receive.

How collected.
Ib. § 18.

35. That upon the receipt of the said assessment made out by the freeholders in manner aforesaid, the person who may have expended money in the making or repairing any such private road or bridge, shall, in person or by notice in writing, left at the usual place of abode of each or any person or persons upon whom such assessment may be made, demand of the same the sum so assessed as aforesaid; and if any person or persons, upon whom any such assessment be made, shall neglect or refuse to pay the amount of said assessment for the space of twenty days after payment of the same shall have been demanded, it shall and may be lawful for the person who may have disbursed the said money, to sue for and recover from every delinquent person or persons upon whom such assessment shall have been made, the amount of such assessment, together with the costs of suit, by action of debt, in any court of competent jurisdiction.

5. BY-ROADS.

Freeholders may open by-road.
Ib. § 19.

36. That if any by-road heretofore used as such by the inhabitants of this state, although not laid out agreeably to law, shall be shut up, or rendered impassable, whereby the said inhabitants may be put to immediate inconvenience or difficulty, then any person so aggrieved may apply, in writing, to three of the chosen freeholders of the county nearest to the said by-road to lay out the said road, and the said freeholders are hereby authorized to lay out the same, which shall remain as a private road until it be vacated or altered, as in the manner directed in the fourth section of this act.(a)

6. WORKING AND MAINTAINING PUBLIC ROADS.

Divisions assigned to overseers.
Ib. § 20.

37. That the township committee who shall hereafter be chosen, agreeably to law, in the respective townships of this state, or a majority of such committee, are hereby authorized and directed to assign and appoint, in writing, to the overseers of the highways respectively, their several limits and divisions of the highways within such township, for opening, clearing out, working, amendment, and repair; and the said overseers are hereby commanded to observe and conform themselves to such assignment; *provided*, that in case the township committee of any township shall neglect or refuse to assign and set off the divisions and limits of the highways to the overseers of the highways, then it shall be the duty of the said

(a) A by-road has no statutory origin. It is, as its name imports, an obscure or neighborhood road in its earlier existence, not used to any great extent by the public, yet so far a public road that the public have, of right, free access to it at all times. *Wood v. Hurd*, 5 Vr. 87. To constitute such a road, the land occupied by it must have been given up or dedicated by its owner for the purposes of a by-road to all who may wish to enjoy it. *Ibid.* A private road, laid out under the statute of this state, is not a private

way, or right of way, which is a species of real property known to the common law, but is open to the use of all the public, *Perrine v. Farr*, 2 Zab. 356. The authority of three chosen freeholders, as to opening by-roads, depends upon the fact, that there had existed before a by-road, used as such by the inhabitants; they have no power to determine that there is a by-road, but only to order it to be opened; and their authority can only be exercised where the obstruction is recent, *Ibid.*

overseer or overseers of the highways to observe and conform themselves to such assignments as have at any time heretofore been made in the said township.^(a)

38. That it shall be the duty of the said overseers to hire laborers, and also horses, oxen, wagons, ploughs, carts and other implements, to open, clear out, make, work, amend, repair, and keep in good order, the highways within their respective limits and divisions, to make causeways, and to erect such bridges as can be built by common laborers, and to procure whatever materials they shall deem necessary to effect the purposes specified in this section.⁽¹⁾

Duty of overseers.
Ib. § 21.

39. That the moneys necessary for defraying the costs, charges, and expenses of opening, clearing out, making, working, amending, repairing, and keeping in good order the highways, and procuring materials for the same, and also the compensation allowed for the services of the overseers thereof, shall be granted, assessed, collected, and raised in the manner prescribed by the act entitled "An act incorporating the inhabitants of townships, designating their powers, and regulating their meetings;" and it is hereby enjoined upon the said townships, that they be careful to have money in hand, ready to advance sufficient for the objects and purposes specified in this act.

Money for roads,
how raised.
Ib. § 22.

40. That it shall be the duty of every overseer of the highways to account for the expenditure of the moneys which he shall receive, for the uses herein mentioned, to the township for which he was elected or appointed, at their annual or other meeting, or to the township committee aforesaid, and to pay the overplus, if any, to his successor in office, to be applied to the uses and purposes for which it was raised; and if such overseer shall neglect or refuse so to do, he shall, for every offence, forfeit and pay thirty dollars, to be recovered with costs, by action of debt, in any court of record having cognizance of that sum, by the clerk of the said township, to be applied, on recovery, to amend and repair the highways thereof; and shall also be liable to prosecution, at the suit of the inhabitants of the said township, for the moneys so by him received and unaccounted for.

Overseers to
account.
Ib. § 23.

Penalty for
neglect.

41. That in case any township shall be fined or amerced, upon the presentment of the grand jury, for not opening and clearing out, or for the badness, want of repair, or deficiency in any of the highways, the overseer within whose limits or division the same shall be or happen, shall refund the money paid in consequence of such fine or amercement, with costs, upon an action brought by the inhabitants of such township; or such overseer may, in the first instance, be presented as aforesaid, and fined on

Overseer liable if
township fined.
Ib. § 24.

Amended.

(a) An overseer of the highways is a township officer, and can be chosen only by the annual township meeting, generally, and not by the persons residing in the particular districts, *Green v. Kleinhaus*, 2 Gr. 473. An overseer of the highways cannot, at his pleasure, lay aside his office, *State, Reeves v. Ferguson*, 2 Vr. 107. To make his office vacant, his resignation must be accepted by competent authority, *Ibid.* The township committee should not apportion the money raised for road purposes, and newly assign to the overseers their division, until twenty days after the town meeting, so that it may be known what tax payers have given notice that they will work out their road tax, *Callahan v. Morris*, 1 Vr. 160. The duty of opening, working and clearing out the public highways is enjoined by law on the overseers of highways; and no act or neglect of the township committee can absolve them from the duty, or authorize anybody to obstruct or close a public road, *State, Morgan v. Monmouth Road Co.*, 2 Dutch. 99. It is the duty of the committee to assign to the overseers in writing their several limits and divisions of the highways; but if the committee neglect to do so, the overseers are to observe and conform themselves to such assignments as have at any time heretofore been made, *Ibid.* If the overseer neglects his duty, and the township is fined or amerced for the default, the overseer may be compelled to refund the money, or may be proceeded against for the default in the first instance, *Ibid.* If a township neglects to raise money for the roads, the overseers are required to call out the inhabitants to work them, *Ibid.* The overseer has no right to dig and take away the soil of an adjacent land owner beyond the limits of the road, without his consent, *Ward v. Folly*, 2 South. *485. Roads must be opened or worked for cash or upon the credit of the overseer; or if the overseer is not furnished with money, he may warn out the inhabitants to work without pay, *Callahan v. Morris*, 1 Vr. 160. He is bound to open and work the road without regard to the orders of the town meeting or the township committee,

State v. Elkinton, 1 Vr. 335. Town meetings have no power to make special and limited appointments, but every overseer of the highways is an overseer for the whole township, and is bound to repair such part or parts of the highways as the township committee shall assign to him in writing, *State v. Hageman*, 1 Gr. 314. The charge of keeping all the roads in repair is devolved by law upon the township; the duty of an overseer to repair a particular part arises upon the designation of the township committee, *Ibid.* Overseer justified in repairing road, though not assigned to him in writing by township committee, *Ward v. Folly*, 2 South. *482. If the overseer fails to do his duty he may be indicted or sued for penalties, and he is also within reach of the mandatory writ of this court, *State, Whitenack v. Township Committee, &c.*, 10 Vr. 60. No authority being conferred upon them to assess and collect funds to pay for opening, clearing out, making and repairing highways, without submitting to town meeting what moneys shall be raised for that purpose, a *mandamus* will not be awarded in the latter case, *State, Whitenack v. Bernards*, 10 Vr. 60. The committee will not be required to appropriate to the opening of a new road, the moneys voted expressly for repairing the old highways, *Ibid.* The township committee have no power to authorize an overseer of roads to expend money for their repair, so as to render the township liable to an action, *Callahan v. Morris*, 1 Vr. 160. If the roads be not repaired, the township is not liable at the suit of one who has sustained special injury thereby, *Ibid.* Township authorities upon whom devolves, by law, the duty of keeping the public highways in good order and repair, and who are liable to indictment for failure or neglect to perform such duty, have such special interest beyond the public at large in the highways, as entitles them to file a bill in their own name, to restrain shutting up or rendering impassable such highways, *E. and A. R. Co. v. Greenwich*, 9 C. E. Gr. 217, 10 C. E. Gr. 565.

(1) See P. L. 1875, p. 434, applying to the county of Mercer.

conviction, for not opening and clearing out, or for the badness, want of repair, or deficiency of and in the highways aforesaid; *and further*, that the inhabitants of any township, merely as such, shall not be excluded from being witnesses on such presentment on account of their being interested.^(a)

Persons may elect to work out road tax. *Ib.* § 25.

42. That if any person who is assessed for the raising of money to open, clear out, amend and repair the highways, elect to work out his tax, or any part of it, on the said highways, he shall give notice thereof in writing, to the overseer in whose limits and division he resides, within twenty days after the order for raising the said money shall be passed or made; in which case such persons, if of the age of twenty-one, and under the age of fifty-five and of ability to work, shall, on having two days' previous notice, attend himself or send a sufficient substitute at such time and place as shall have been appointed by the said overseer, and shall work on the said highways under the direction and superintendence of such overseer, for which he shall be credited such a sum towards the payment of the said tax as the said overseer shall think his labor deserves; and if neither such person nor any substitute shall attend at the said time and place, he shall forfeit and pay one dollar, to be recovered with costs, by action of debt, by the clerk of the township, in any court of record having cognizance of that sum, to be applied, on recovery, to open, amend and repair the highways of such township, and the said overseer shall be admitted as a witness in support of the said action; *and further*, that the said person shall, upon such delinquency, forthwith pay the whole or the residue, as the case may require, of the said tax to the collector, or on failure, be proceeded against for the same according to law.^(b)

Roads laid over dams to be kept in repair. *Ib.* § 26.

43. That all roads laid out or to be laid out near to or across dams for mills or iron works, shall be kept in good repair, and the bridges over the races and floodgates shall be substantially built, repaired, amended, kept in good order, and railed in on each side, the rails to be at least three feet high, and the whole rendered easy, convenient and safe for the passing of travelers, horses, carriages and cattle; and the wheels of such mills and iron works shall be entirely covered in and hid, either by a sufficient breastwork raised between the said road or bridge and the said water-wheels, or in such other way as effectually to secure persons, horses, cattle and carriages in passing the same; and where a dam hath been or shall be erected, and a public road or highway hath been or shall be laid out near to or over the said dam, and across the races and floodgates, such road shall be made and maintained, and the bridge or bridges over the same, and the railing in thereof, shall be built, rebuilt, repaired and kept up, and the wheels of the mills or iron works covered in and hid as aforesaid, pursuant to the directions of this act, under the immediate inspection, order and superintendence of the overseer of the highways within whose limits and division the same shall happen; and where any highway hath been or shall be laid out before the making such dam, races or floodgates, such highway, if it go near to or over the said dam, races or floodgates, shall be made and maintained, and the bridge or bridges over the same, if they be cut across the said highway for the use of such iron works or mills, and the railing thereof, shall be built and rebuilt, repaired and kept up, and the wheels covered in and hid as aforesaid, at the proper charge and expense of the owner or possessor of such iron works or mills; *provided*, that it shall and may be lawful for such possessor, if he be a tenant paying rent, to deduct and retain such charge and expense out of the said rent; and if the owner or possessor of such iron works or mills shall neglect or refuse to perform the duty hereby required of him, he shall, for every month he shall neglect or refuse to comply with the provisions of this act, forfeit and pay twenty dollars, to be recovered by action of debt, with costs, by the overseer of the township where the offence shall be committed, who is hereby required

Under whose direction.

Duty of millers, etc.

Penalty for neglect.

^(a) As to overseer's liability, see *Mendham v. Losey*, *Pen.* *347, *353. *Freeholders of Sussex v. Strader*, 1 *Harr.* 108, 118. *Harris v. Moore*, *Coxe* 44. *Morgan v. Monmouth Co.*, 2 *Dutch.* 99.

^(b) In a township where roads are worked by hire, any resident tax payer, upon giving proper notice to the road overseer within whose district he resides, has the right to pay the whole of the road tax by work, and this right is

not taken away by the fact that the amount of his road tax is greater than the whole money required for or appropriated to the district in which he resides, *Ryerson v. Slate*, 4 *Zab.* 622. But if he owns land in two townships, in only one of which the inhabitants work out their road tax, he must pay the tax on the lands assessed in the other township, *Van Dien v. Hopper*, 2 *South.* *764.

and enjoined to prosecute for the same in any court of record having cognizance of that sum, the one moiety to the prosecutor and the other moiety to the township where the offence was committed.(a)

44. That the owner or possessor shall be exonerated from keeping in repair the bridges mentioned in the preceding section, as long as he shall neglect to uphold the said iron works or mills.

When owner need not repair bridge.
Ib. § 27.

45. That it shall and may be lawful for the overseer of the highways, or other person by his order, to enter on lands adjacent to such highways, and to cut, make, scour out, cleanse, and keep open such gutters, drains and ditches therein as shall be sufficient to convey or draw off the water from the said highway, with the least disadvantage to the owner of the said land, and the owner and every other person except such overseer, is hereby prohibited from filling up, stopping, or obstructing such gutter, drain, or ditch, under the penalty of eight dollars for every offence, to be recovered by action of debt, with costs, by the said overseer, in any court of record having cognizance of that sum, and applied to the working and repairing the said highways.

Overseer may enter lands to make and open drains.
Ib. § 28.

46. That no tree shall be girdled and killed on the highways, under the penalty of two dollars, to be recovered and applied as in the preceding section; and if any be, it shall be the duty of the overseer of the highway forthwith to cut down such tree so girdled or killed.

Trees not to be girdled.
Ib. § 29.

47. That if any person shall girdle or kill any tree standing within two rods of such highway, the owner or possessor of the land where the same stands shall, within two years after such girdling or killing, cut down the said tree, or on failure thereof, shall forfeit and pay two dollars, to be recovered and applied as is directed by the forty-fifth section of this act.

Penalty.
Ib. § 30.

48. That no overseer or other person working on the highways, or present as a spectator or otherwise, shall ask of any traveler, or shall extort, or by contrivance procure or receive from such traveler any money, meat, drink, or other reward or thing, under the penalty of two dollars, to be recovered and applied as directed by the forty-fifth section of this act.

Penalty for extorting from travelers.
Ib. § 31.

49. That it shall be the duty of the overseer, in and through whose limits and division any highways are or shall be laid out, to cause the same to be opened to their full width, and all encroachments to be removed; and if it be doubtful to the said overseer what person hath so narrowed or encroached upon the said highway, then such overseer, of the party conceiving himself to be injured, shall and may apply to any two justices of the peace of the county, and the surveyors of the township in and through which such highway runs, who, or the major part of them, are hereby authorized and directed to determine the same in writing, under their hands, and thereupon the said overseer shall forthwith proceed to open the said highway agreeably to such determination; and if it be doubtful to the said justices and surveyors, or a majority of them, which of the proprietors or possessors of the adjacent lands have so narrowed or encroached on the said highway, then it shall be the duty of the said justices and surveyors, or a majority of them, to direct in writing, under their hands, the said overseer to open such highway equally on each, which order the said overseer shall forthwith carry into effect.(b)

Encroachments to be removed.
Ib. § 32.

(a) See *Livermore v. Freeholders of Camden*, 5 *Dutch*. 245, 2 *Vr* 507. *Cobwell v. May's Landing Co.*, 4 *C. E. Gr.* 245, 248.

(b) A house began between the time of appointing surveyors, and the laying out of the road, is an encroachment, *State v. Waldron*, 2 *Harr.* 369, 371. If a prior owner has encroached, the continuance by the present owner is his encroachment, *State, Clark v. Pierson*, 8 *Vr* 126. The act vacating highways not opened, used, or worked for twenty years after being laid out, does not apply to ancient highways, and therefore does not legalize an encroachment, *Tainter v. Mayor of Morristown*, 4 *C. E. Gr.* 46. Where a highway has been laid out to intersect a turnpike road and terminate at the line thereof, a gate placed laterally upon the turnpike, at the end of the highway, is not an obstruction to the highway, within the meaning of the act of the legislature, *Ayres v. Turnpike Co.*, 4 *Hal.* 33. The fact that a post which is at the end of a fence, extending from the gate, so as to prevent carriages passing from the highway to the turnpike road, stands on the highway, can furnish no defence in an action brought by the turnpike company to recover tolls, *Ibid.* If an abutting owner sets back his fence, and after long public user, moves it forward to the original line, he is guilty of an encroachment, *Gulick v. Groendyke*, 9 *Vr* 114.

The application of the overseer need not show that the road has been regularly laid out, or otherwise lawfully appropriated, *Vanillburgh v. Shann*, 4 *Zab.* 740, 744. In proceedings the word "highway" will be taken to mean a lawful public road, *Ibid.* The phrase "the highway within my limits and division," sufficiently describes the road, *Ibid.* It is not necessary that a commission be appointed to ascertain the lines of an ancient highway before proceeding to remove encroachments alleged to be thereon, when the true limits and courses thereof can be ascertained with accuracy and certainty, and, in fact, are so ascertained by survey, *Tainter v. Morristown*, 4 *C. E. Gr.* 47. In proceedings to remove encroachments, each land owner affected, is entitled to a reasonable notice of the time and place of meeting of the justices and surveyors, *State, Clark v. Pierson*, 8 *Vr* 216. Where the determination states that such notice was given, the burden of proof is on the land owner to show that it was not served, *Ibid.* A notice to an adjacent landholder to appear, given on the day of the meeting, is not sufficient, *Lindsay v. Freeman*, 3 *Dutch.* 250. Where the justices and surveyors certify that they have determined that the land owner has encroached, and define the centre line of the road, as originally laid out, by fixed monuments, courses and distances, give the width and place stakes

Penalty for obstructing.
Ib. § 33.

50. That if any person shall narrow, encroach upon, stop, or obstruct any highway, he shall, for every such offence, forfeit and pay ten dollars, to be recovered by action of debt, with costs, by the overseer of such highway, in any court of record having cognizance of that sum, and applied to the repair of the highways.

Inhabitants may determine how roads worked.
Ib. § 37.

51. That it shall and may be lawful for the inhabitants of the respective townships in this state, qualified by law to vote for township officers, at their annual town meeting, to determine, by vote of said meeting, whether they will work and maintain their highways by hire, in the manner hereinbefore mentioned, or by labor, in the manner hereinafter set forth, a copy of which vote, signed by the clerk of the said township, shall be transmitted to the township committee within five days after the said town meeting; and in all cases where the inhabitants of any township shall have elected to work and maintain their highways by hire, it shall not be lawful to change the mode of working and maintaining such highways in such township for three years.

Township committee to assign districts.
Ib. § 38.

52. That in case the inhabitants of any township shall elect, in the manner appointed in the preceding section, to maintain their public highways by labor, then it shall be the duty of the township committee, on notice thereof from the town clerk as aforesaid, to divide the highways in such township into convenient districts, and to assign and apportion, in writing, to the several districts, the inhabitants of such township in equitable proportions, having regard to the circumstances of such inhabitants and the quality of the highways to be opened, maintained, and kept in order, and that the overseers of the highways shall, at their discretion, apportion the labor of the inhabitants of the said township in the same proportion with the tax for the support of government, and shall warn and call out the inhabitants to work on the highways accordingly; and it shall not be lawful to change the mode of working and maintaining such highways in such township by labor for three years.

Penalty for not working on the road.
Ib. § 39.

53. That if any inhabitant, who shall have received two days' previous notice, shall neglect or refuse to appear and work one day, of at least eight hours, then he shall forfeit and pay to the overseer of the district or division to which he is annexed, the sum of two dollars for every day he shall so refuse or neglect to labor, at least eight hours, the sum of three dollars for each day's absence of a cart and one horse, and four dollars for each day's absence of a wagon or cart with two or more horses or oxen, so warned out, to be recovered by an action of debt, before any justice of the peace of the county where such omission shall happen, with costs of suit; and the money, when recovered, shall be applied to the working and repairing of the highways to which such inhabitants were annexed.

P. L. 1870, p. 667.

Overseer to keep account of labor.
Ib. § 40.

54. That it shall be the duty of every overseer of the highways, in those townships which elect to work and maintain their highways by labor, to keep a book, in which he shall enter the name of every person liable to labor on the highways within his district, and the amount of labor done by each person that year, a transcript of which book the said overseer shall lay before the township committee, at their annual or some other meeting, near the close of the year, under oath or affirmation that the same is just and true, to the best of his knowledge and belief, and shall also transmit a true copy of said book to his successor, within twenty days after his appointment.

Delinquents to make up deficiency.
Ib. § 41.

55. That it shall be the duty of every overseer, in the townships aforesaid, to examine the book received by him from his predecessor, and to require those persons who shall appear to be delinquent, and not to have done their proportion of labor the preceding year, to perform the same.

If money not supplied, roads to be repaired by inhabitants.
Ib. § 42.

56. That in case any township in any county of this state, which shall elect or determine to maintain their highways by hire, shall neglect or refuse to raise and furnish to the overseer of the highways, money sufficient for the opening, clearing out, working, making, amending, repairing

along the centre and outside lines, such determination sufficiently describes the encroachment, *State, Clark v. Pierson*, 8 Vr. 126. An order of justices and surveyors was quashed because it did not appear that they directly decided that any person had encroached on the highway, but only determined where the road ought to run, *Lindsley v. Freeman*, 3 Dutch. 250. The determination of justices and

surveyors, as to encroachments on the highway, must describe the encroachments to be removed with certainty, and by reference to proper monuments, *Vantilburgh v. Shann*, 4 Zab. 740. A simple reference to movable stakes is not sufficient. *Ibid.* 746. In determining whether there is an encroachment, the surveyors and justices decide in a summary way by inspection, *Gulick v. Groendyke*, 9 Vr. 114, 115.

and keeping in good order the highways and bridges within their respective limits, then it shall be, and it is hereby made the duty of the overseers of the highways, in said townships, to open, clear out, work, amend, repair and keep in good order, the highways within their respective limits and divisions, in the same way and manner as is prescribed to the overseers of the highways of those townships which elect to maintain their highways by labor.

57. That the overseer or overseers of the highways, in any of the townships of this state, shall, for neglect or refusal to perform any of the duties enjoined on him or them, by this act, be liable to an action for said neglect or refusal; and it shall be the duty of any magistrate in said township, or in any adjacent township, upon complaint preferred in writing, by any three inhabitants of this state, being freeholders, to issue his precept against said overseer, and upon conviction, to fine the said overseer in any sum not exceeding twenty dollars, nor under five dollars, together with costs, to and for the use of the township; *provided*, that before such precept shall issue, ten days' previous notice in writing shall be given to such delinquent overseer of such intended prosecution.

Penalty on overseer for neglect.
Ib. § 43.

58. That the board of chosen freeholders of each and every county in this state, shall have full power and authority to place, or cause to be placed, at the intersection of all such public roads and highways in their respective counties, as they in their discretion may deem proper, a post or stone; and likewise a stone at the end of each mile, on all roads as aforesaid, with inscriptions engraved or painted thereon, in legible characters, the name or names of the most noted or public place or places to which such road may lead, and also the names of such other places as may be thought proper, with the estimated number of miles to such places respectively, in figures; and that the board of freeholders of the respective counties, or some person or persons by them appointed, shall superintend the erecting and keeping in repair such post or stone guides and mile-stones, at the expense of the counties respectively; and if any person shall throw down, demolish, or deface any such post or stone guides or mile-stones, appendages, letters, or figures thereon engraved or painted, or be aiding or assisting in such offence, he shall pay a fine of ten dollars, to be sued for in an action of debt, by the overseer of the highway in whose district the offence has been committed, and when recovered to be applied to the use of the county.

Posts and mile-stones to be set up.
Ib. § 44.

Prosecution for defacing.

59. That if any overseer shall neglect or refuse, upon information being given him, to prosecute as directed in the preceding section, he shall forfeit and pay, for every such refusal or neglect, ten dollars, to be recovered by the clerk of the board of chosen freeholders, for the use of the county; but if judgment shall be awarded against said overseer, then and in that case the costs arising thereon shall be paid by the collector of the county.

Penalty for neglecting to prosecute.
Ib. § 45.

60. That the following and no other fees shall be allowed and taken for services done and rendered by virtue of this act:

Fees.
Ib. § 46.

Overseers. To every overseer of the highways, one dollar for every day he shall be employed in executing the duties required by this act;

Overseer.

Courts. For every appointment of surveyors of the highways, fifty cents; for every appointment of the chosen freeholders, fifty cents; for every order of recording the proceedings of the surveyors or freeholders, fifty cents;

Court.

Surveyors of highways. To each surveyor, at the rate of three dollars per day;

Surveyor.

Chosen freeholders. To each freeholder, at the rate of three dollars per day.

P. L. 1867, p. 148.
Freeholder.

Clerks. For reading and filing every application, twelve and a half cents; for entering and filing *caveat*, twelve and a half cents; for entering every order for recording, twelve and a half cents; for every copy thereof, twelve and a half cents; for recording and filing returns of surveyors and freeholders, twenty-five cents; for a copy of such returns, twelve and a half cents.

Clerk.

61. That it shall be lawful for any chosen freeholder, or any surveyors of the highways, who has been or shall hereafter be appointed by the supreme court or any court of common pleas in this state, in pursuance of

Freeholders and surveyors to act after term of office.
Ib. § 47.

this act, to discharge and perform all the duties of such appointment, on or before the last day of the next regular term of the court by which he was so appointed, notwithstanding the term of office of such chosen freeholder or surveyor of the highways shall have previously expired.

Roads dividing townships, how kept in order. Ib. § 48.

62. That where any two townships in this state are, or hereafter shall be divided by a public road or highway, it shall and may be lawful for the township committee of either of said townships, having given thirty days' previous notice in writing to the clerk of the other of said townships, to make application to the inferior court of common pleas of the county in which such townships are situate, or if the said townships are situate in different counties, then to the supreme court of this state, for the appointment of commissioners to ascertain and determine what part or portion of the said public road or highway shall be opened, cleared out, made, worked, amended, repaired and kept in good order by each of the said townships, and thereupon it shall be the duty of the said court to appoint three judicious commissioners, not being inhabitants of or freeholders in either of the said townships, to divide, assign and set off to each of the said townships, its just share and portion of the said public road or highway, for the purpose aforesaid.

Commissioners' oath and duty. Ib. § 49.

63. That the said commissioners shall, before they enter upon the execution of their appointment, take and subscribe an oath or affirmation faithfully and impartially to perform the duties of their appointment, and shall give ten days' notice in writing to the clerk of each of the said townships, of the time and place when and where they will meet to discharge the duties of such appointment; and at the time and place so designated, or at such other time and place as the said commissioners shall then and there appoint, the said commissioners, or any two of them, shall proceed to view and examine the said road or highway, and to divide and assign to each of the said townships its just share and proportion thereof; and shall cause the line of such division and assignment to be marked, so far as the same can conveniently be done, and shall also make a map or survey and description thereof, and file the same, with their oath of office, with the clerk of the court of common pleas of the county in which the said townships are situate, or if they are situate in different counties, then with the clerk of the supreme court, to be by him recorded and filed.

Duty of townships. Ib. § 50.

64. That all the charges and expenses of making and executing such appointment shall be taxed by the court making such appointment, and shall be paid equally by the said townships; and that each of the said townships shall thereafter open, clear out, make, work, amend, repair and keep in good order the share or portion of the said road or highway so divided and assigned to it, in the same manner and under the same penalties as are or may be prescribed by law in reference to public roads or highways situate wholly within the bounds of such townships; but such assignment shall not further or otherwise affect the said townships.

Trees protected. Ib. § 52.

65. That no overseer of the highway or other persons, except the owner or owners thereof, shall cut down, wilfully injure or destroy any fruit, shade or any ornamental tree which may have been or shall be planted or set out by the owner or possessor of any lands adjoining any highway in this state, and which shall not extend more than seven feet out from the line of the road, towards the centre of the same, unless the township committee of the township in which such road is situate, or a majority of said committee, shall first order the cutting down or destroying of the same. (a)

Penalty for injuring. Ib. § 53.

66. That if any overseer of the highway or other person shall offend against the provisions of the preceding section, he, she or they so offending shall forfeit and pay the sum of fifty dollars for each and every such offence, to be recovered in an action of debt, with costs of the suit, in any court having cognizance thereof, by any person who may prosecute for the same within six months after such offence shall have been committed; *provided*, that this act shall not prevent any overseer from clearing out any highways to their full width where they pass through any woods or forest.

(a) See *Winter v. Peterson*, 4 Zab. 524. *Davidson v. Schenck*, 2 Vr. 174.

7. CONSTRUCTION OF SIDEWALKS.

67. That it shall be lawful for the inhabitants of any township in this state, at their annual meeting, to provide for the construction of sidewalks on the public highways, not exceeding in width one-fifth on each side of the road of the width thereof, and also to place posts or railing by the side thereof, which sidewalks shall be constructed out of any money raised for repairs of highways; and the amount so to be expended, and the road or place where the sidewalks shall be made, shall be determined by such meeting or by the township committee; *provided*, that this provision shall not apply to any public highway which hath been or which shall hereafter be laid out of a less width than three rods, except in such place or places where it shall pass through a city, town or village. *(a)*
68. That it shall be lawful for any person owning or occupying lands adjoining a public road or highway, in any township, city or ward, to construct sidewalks on said highway, in the manner hereinbefore provided, contiguous and along the line of said land.
69. That when a sidewalk shall have been constructed as aforesaid, every person who shall ride or drive a horse or team thereon, except for the purpose of crossing the same, when necessary so to do, shall forfeit and pay the sum of five dollars, to the use of the township, to be sued for and recovered by any person who will sue for the same.

Inhabitants by vote may provide for sidewalks.

P. L. 1851, p. 288, § 1.

Proviso.

P. L. 1854, p. 257.

Owner of land may make sidewalk.

P. L. 1851, p. 288, § 2.

Penalty for driving over. Ib. § 3.

8. ALTERING THE GRADES OF STREETS AND HIGHWAYS.

70. That an action upon the case doth and shall lie in behalf of any person owning any house or other building standing and erected upon any street or highway, the grade whereof shall be, or shall have been, altered by virtue of the ordinance, resolution or other proceeding of the legislative authority of any city, borough or town corporate in this state, to recover from the said city, borough or town corporate, all damages which such owner shall suffer by reason of altering any such grade; *provided*, that this act shall not be construed to authorize any action for damages by any such alteration already actually worked and put into effect; *and provided further*, that no such action shall be brought after the expiration of twelve months from the working of any such grade. *(b)*
71. That all provisions in any charter or law of this state, whereby the expenses of working any grade established in lieu of a former grade existing, and according to which buildings have been erected, are directed to be borne by the owners of land in any street or highway so graded, shall be and the same are hereby repealed.
72. That the foregoing provisions respecting grades shall not refer to any city, town or borough whose charter or any supplement thereto now existing, or which shall hereafter be passed, provides or shall provide for assessing and paying compensation to persons injured by the making of grades established or to be established.
73. That the grade of no street, in any city or town which has been built on, shall be altered, unless by the consent of the majority of owners in interest of the lots fronting on the part proposed to be altered, nor without paying to the owners of such buildings the damages sustained by the alterations of such grade. *(c)*
74. That the damages mentioned in this act, to be paid to such owners, shall be assessed upon and paid by the lands and real estate benefited thereby, in proportion to the benefits received; and such damages shall be ascertained, estimated and assessed, and the amount thereof shall afterwards be justly and equitably assessed and apportioned upon the lands and real estate benefited thereby, by commissioners to be appointed, and who shall act in all things in the same manner as now provided in the respective charters of the several cities, boroughs and towns corporate in this state, for the laying out, opening, altering or widening any street, highway, road or alley, and all proceedings in such matters shall be in conformity

Damages from alterations of grade of road recoverable.

P. L. 1858, p. 415, § 1.

Limitation of suit.

Inconsistent provisions in city charters repealed. Ib. § 2.

Not to apply in certain cases. Ib. § 3.

Consent requisite to warrant alteration of grade. Ib. § 4.

Damages, by whom paid and how assessed. Ib. § 5.

(a) This section does not apply to incorporated towns or cities, *Cross v. Morristown*, 3 C. E. Gr. 305, 308. *State, Tainter v. Morristown*, 4 Vr. 57.

(b) Applies to the alteration of a grade not before formally established, *Lambertville v. Clevinger*, 1 Vr. 53. See *Reock*

v. Newark, 4 Vr. 129. *Plum v. Morris Canal Co.*, 2 Stock. 256.

(c) No formal instrument in writing is necessary to show consent. A petition to the common council, asking for the improvement, is sufficient, *State, Vanatta v. Morristown*, 5 Vr. 445.

with and analogous to the proceedings directed and the privileges allowed in such charters; and such provisions are hereby extended and made applicable in all things to the estimating, payment, apportionment and collection of such damages in the same manner as if such subject had originally been embraced therein.

Not to affect contracts.
Ib. § 6.

75. That nothing in this act contained shall be so construed as in any manner to affect any contract or contracts which may have been entered into by the authorities of any city, borough or town corporate in this state, with any person or persons for the working, grading, leveling or otherwise improving any street, highway, road or alley.

9. MISCELLANEOUS PROVISIONS.

Width of public roads.

R. S. 515, § 1.

P. L. 1856, p. 244.
" 1871, p. 110.

Width of private roads.

R. S. 515, § 1.

Roads in certain cases vacated.

P. L. 1859, p. 624.

Effect of act with respect to cities.

R. S. 515, § 34.

Certain roads, public highways.
Ib. § 35.

Certain roads, public roads.
Ib. § 36.

Map or survey of road accepted by township committee may be put on record as a public highway.

P. L. 1872, p. 47.

Application for appointments of freeholders in Cape May.

R. S. 515, § 9.

76. That every public road or highway which shall hereafter be laid out shall not be more than four rods wide, unless a greater width shall be specified in the notices and applications for the same; nor shall any such road be less than two rods wide, unless the same be laid out in a village, borough or city, and where, by reason of buildings or other permanent erections, such road cannot be, conveniently, laid out of such width.^(a)

77. That every private road which shall hereafter be laid out shall not be more than thirty feet in width, but may be less, at the discretion of the surveyors.

78. That all public roads having been laid out by surveyors or otherwise, and not opened, worked or used for more than twenty years next before the twenty-fourth day of March, one thousand eight hundred and fifty-nine, shall be considered and they are hereby vacated.^(b)

79. That nothing in this act contained shall be construed to extend to narrowing, widening or altering any street in any of the cities, towns or villages in this state, or to pulling down or removing any dwelling house, market house or other public building heretofore erected, and which may encroach on any highway.

80. That the main or high streets in the towns of Greenwich and Bridgeton, in the county of Cumberland, are hereby declared to be public highways, and as such to be repaired and kept in good order.

81. That the great road leading from Perth Amboy to Salem, and the great road leading from the city of Elizabeth to Trenton, as the same now go, are hereby declared to be subject to the same laws and regulations to which other highways in this state are subject.

82. That whenever the owner or owners of any land shall open a road of lawful width, and dedicate the same to public use as a public highway, and shall deliver a declaration of such dedication, together with a map or survey of the said road, to the township committee of the township in which the said lands may lie, upon the acceptance thereof by the township committee, endorsed thereon, the same may be put upon record as a public highway, and shall thenceforth be a public highway to all intents and purposes.

83. That whenever it shall so happen, that application shall be made to the inferior court of common pleas of the county of Cape May, for the appointment of chosen freeholders of said county to view any road laid out, altered, or vacated by surveyors of the highways, and it shall appear to the said court that the road so laid out, altered, or vacated shall run through the lands of any or either of the chosen freeholders, or that for any other reason which the court shall deem sufficient, such chosen freeholder or freeholders ought not to be appointed on such view, that then and in such case it shall and may be lawful for the said court to appoint one or more justices of the peace of said county, who shall be free from the objections aforesaid, in the place or stead of such chosen freeholder or freeholders who may have been deemed by the said court, improper to be appointed on such view; and the proceedings of such justice or justices, in conjunction with the chosen freeholders so as aforesaid to be appointed, shall be good and valid to all intents and purposes, anything in this act contained to the contrary notwithstanding.

(a) See *Holmes v. Jersey City*, 1 *Beas.* 299. *State, Tainter v. Morristown*, 4 *Vr.* 67.

(b) See *Smith v. State*, 3 *Zab.* 712. *State v. Snedeker*, 1 *Vr.* 80. *State, Bodine v. Trenton*, 7 *Vr.* 198. *Tainter v. Morristown*, 4 *C. E. Gr.* 46.

84. That the term township, made use of in this act, shall be construed to comprehend precinct, ward, city, borough, and town corporate.

Construction of word township. *Ib.* § 51.
No road to be laid on lands of state. *Ib.* § 54.

85. That no law of this state for laying out or opening public or private roads, shall be so construed as to permit any person or persons whatever to lay out or open any public or private road through or upon any lands belonging to this state, unless the consent of the legislature be first obtained for that purpose.

86. That if any person or persons shall hereafter open or attempt to open any public highway or private road through or upon any of the aforesaid lands, he, she, or they shall be deemed guilty of a high misdemeanor, and shall each and every of them, so offending, forfeit and pay the sum of one thousand dollars, to be recovered in an action of debt, to be prosecuted by the treasurer of this state, for the use of the state.

Penalty. *Ib.* § 55.

87. That in case any turnpike road, which has been laid upon a public road, shall for any cause be abandoned as a turnpike, and the company owning the same shall suffer the same to become out of repair, it shall be the duty of the overseer or overseers of the highways of the townships in which the said road runs, to take charge thereof, and to amend and repair the same as if the same were a regularly laid out public road, and the inhabitants of the said townships shall and may raise money for the support of said roads in the same manner that other road taxes are raised; *provided*, that this act shall not be held or construed to give authority to any turnpike company to abandon certain portions of their roads at their own pleasure or profit, and to retain the right or power, after so doing, of taking toll on the unabandoned portions of their roads.

Overseer to take charge of abandoned turnpikes laid over public roads.

P. L. 1855, p. 580.

Proviso.

88. That if any land in any township or ward of this state, or any street or road, shall be injured by a flow of water in consequence of the refusal or neglect of the overseer or overseers of the highways in an adjoining township to cut, make and keep open necessary gutters, drains or ditches in his or their road district to draw off the water from his or their district, the owner of said land, or overseer or street commissioner of the road or street so injured, may present a petition to the court of common pleas in which said road district is located, setting forth the facts under oath or affirmation, and thereupon said court shall appoint three of the chosen freeholders in said county, not residing in said townships or wards, who first having taken an oath or affirmation to act faithfully and impartially in the premises, shall proceed to view said road district and inquire into said injury on their own view, or by the testimony of witnesses, and if in their opinion the facts stated in said petition are true, they shall designate in writing where necessary gutters, drains or ditches shall be made in said road district to convey or draw off the water from the highway with the least disadvantage to the owner of the land, and make their report in writing to the clerk of said county, who shall file and record the same; and if thereafter said overseer or overseers shall wilfully refuse or neglect to cut, make, cleanse and keep open such gutters, drains and ditches so designated, the said township in which said road district is located, shall be liable in damages to any land owner of an adjoining township or ward, or to the adjoining township or ward for any injury sustained by reason of such neglect or refusal.

Court of common pleas to appoint chosen freeholders to view land or road injured by flow of water, and to make report to clerk of county.

P. L. 1872, p. 72.

Penalty for neglect.

89. That any person or persons, townships or wards, may, within sixty days, appeal from the decision of said freeholders to the court of common pleas of said county, who shall give final judgment on the same.

Appeal. *Ib.* § 2.

Whereas, many turnpikes have been constructed in this state over public roads and through lands wherein the owners of the fee or parties interested have not made any claim for damages, and considerable moneys have been expended in the construction thereof, without any interference from the aforesaid persons; therefore,

90. That all turnpikes or turnpike roads heretofore constructed and now in use, shall be and are hereby declared to be legally in the possession and control of the corporation controlling the same, so far as relates to the collection of toll thereon, or to the enforcement of penalties for interfering with or regulating the management or travel of said turnpikes or roads.

Turnpikes in use to be deemed in possession of corporation.

P. L. 1868, p. 426.

Whereas, the provisions in some of the acts incorporating turnpike

companies, with regard to carriages meeting and overtaking each other, are variously expressed and differently understood, and in some acts of incorporation entirely omitted, in consequence whereof great inconvenience has arisen to the good people of this state and others traveling the said turnpike roads; *and whereas*, it is of importance that a like regulation should be adopted whereby traveling on all public roads of this state may not be interrupted; therefore,

Law of the road.
R. S. 534.

91. That drivers of carriages, sleighs, or sleds, whether of burthen or of pleasure, using any of the turnpike or public roads in this state, when met by another carriage, sleigh, or sled, shall keep to the right, and when overtaken by a carriage, sleigh, or sled, they shall likewise keep to the right, so as in both cases to permit such carriage, sleigh, or sled either met or overtaken, to pass free and uninterrupted; and if any person shall offend against this provision, such person shall forfeit and pay the sum of two dollars to any person who shall be obstructed or hindered in his or her passage and will sue for the same, and shall be subject to an action of damages for every such offence, to be recovered with costs of suit.

Regulation of
wheel carriages.
R. S. 533.

92. That all wagons and other wheel carriages of any kind or description whatever, drawn by one or more horse or horses, oxen, or other cattle, made and constructed, and all axle trees, made or repaired, from and after the first day of October next, traveling or passing on or through the roads or highways within this state, belonging to persons resident therein, shall run or track on the ground, from centre to centre of the felloes, not less than four feet and ten inches, under the penalty of five dollars, to be recovered from the owner or owners, proprietor or proprietors, of such wagon or other wheel carriage, for each and every offence, before any one justice of the peace of this state, where the fact shall be committed, upon the oath or affirmation of one or more witness or witnesses; which said fine, when recovered, shall be paid, one moiety thereof to the overseers of the highways for the township, division, or precinct where the fact was committed, to be applied towards repairing the highways in the same, and the other moiety to be paid to the person or persons prosecuting the same to effect; and the said overseers are hereby made accountable for all moneys they may receive in virtue of this act, in the same manner and form as they are for other fines and forfeitures; *provided always*, that the above fine shall not be set or levied more than once upon one journey, and that every information relative to any breach of this act, be made within twenty days after the offence is committed.

Road land free
from taxes.
P. L. 1857, p. 378.
Between what
times road to be
worked by in-
habitants.
Ib. § 2.
P. L. 1863, p. 196.

93. That all land covered by a public road laid out over the same, shall be wholly free from taxation.

Railroad compa-
ny may alter
grades of public
road.
P. L. 1862, p. 326.

94. That it shall not be lawful for any overseer of any road to require or employ any person to work on any road between the first day of October and the first day of April, except so far as may be necessary to make the roads passable when obstructed by snow or rain; *provided*, that nothing in this section shall prevent the macadamizing of roads according to law, during the months of March, October, and November.

95. That any railroad company which shall construct any railroad by virtue of powers granted in their charter by this state, may, in crossing any public highway, for the purpose of making said highway pass over or under said railroad at an easy and suitable grade, alter the location of said highway at their own expense, so far as shall be necessary to make said highway pass over or under said railroad at such grade, and such alteration shall be valid and of the same effect as if made by surveyors of the highways according to law; and all alterations heretofore made in any public highway in this state by any such railroad company, for the purpose and in the manner aforesaid, are hereby confirmed and made valid as if the same had been made by surveyors of the highway according to law. (a)

WHEREAS, the inhabitants of the county of Cape May have, by their petition to the legislature, set forth that the public are put to great inconvenience for want of a landing place whereon to stow or lay boats; therefore,

Landing place in
Cape May.
R. S. 780.

96. That from and after the passing of this act, it shall and may be lawful for any person or persons whatsoever, to stow their boat or boats

(a) See *Central R. R. Co. v. State*, 3 Vr. 220. *Greenwich v. Easton and Amboy R. R. Co.*, 9 C. E. Gr. 217, 10 C. E. Gr. 565.

in the highway or road, which now is, or which may hereafter be laid out at Cape Island, in the lower precinct of the county of Cape May, they at all times leaving two-thirds of the width of the said road open and clear; and that all boats, stowed as aforesaid, shall not be considered or removed as a nuisance, any law or usage to the contrary notwithstanding; *provided nevertheless*, that this act shall not authorize any person or persons to stow any boat or boats more than twelve rods distant from the high water mark.

97. That no proceedings or return of surveyors of the highways had or made under this act, shall be reversed, set aside, or held to be insufficient by reason of any defect in the official oath or affirmation of any surveyor of the highways, or of the neglect or omission of any such surveyor of the highways to take, subscribe, or file such oath or affirmation, unless objection shall be made in respect to such oath or the absence thereof at the time of the appointment of such surveyor.

Proceedings of surveyors not set aside on account of defect in official oath.

P. L. 1870, p. 10.

98. That in case of any omission or defect, either in matter of substance or of form, in the map, return, or assessment of damages of surveyors of the highways in laying out, vacating, or altering any public road by virtue of this act, it shall be lawful for the court, having appointed such surveyors, to take order to have such omissions or defects supplied or amended, and for that purpose shall have full power to call before them in open court, said surveyors, whether the offices of such surveyors have expired or not; and to direct them, if it shall be necessary so to do, to review their said proceedings, and to supply omissions and amend defects in their said map, return, and assessment of damages in such particulars and in such mode as the said court shall, by rule of court, direct; and that said additions and amendments may be made either before or after said return has been recorded, and that said record, if necessary, may be altered, by order of the court, so as to correspond with final action in the premises; *provided*, that all parties interested shall be duly notified of such proceedings before the court, and that such notice may be given either by personal service or by advertisements, or in such manner and for such a length of time as the said court shall direct and appoint.(a)

Map, return, and assessment may be amended.

Revision.

99. That nothing in this act contained shall in any wise repeal, alter, or affect the act entitled "A supplement to an act concerning roads, approved April sixteenth, eighteen hundred and forty-six," approved March twenty-third, eighteen hundred and fifty-nine, or the supplements thereto, but that such an act and its supplements shall have the same force and effect as if it and they had been passed after the passage of this act, and it and they had been supplements hereto.(1)

Not to repeal act of March 23, 1859.

Supplement.

Approved April 8, 1875.

P. L. 1875, p. 64.

100. SEC. 1. That in all cases where surveyors of the highways have been heretofore or shall be hereafter appointed by virtue of the provisions of the act entitled "An act concerning roads," approved on the twenty-seventh day of March, in the year of our Lord one thousand eight hundred and seventy-four, to lay out a public or private road, or to vacate or alter any public or private road, according to the provisions and requirements of said act; and the said surveyors so having been appointed, shall have met heretofore, or shall hereafter meet, by virtue of said appointment, and have refused or shall refuse to make return that they think the public or private road which has been or shall be proposed to be laid out, vacated or altered, is necessary, then and in every such case there shall be no application touching or concerning the same under the term of one year after such appointment.

After refusal of surveyors to return that road proposed to be laid out, vacated, &c., is necessary, no new application shall be made for one year.

(a) This section does not authorize the correction of assessments for benefits or damages, made under supplement of March 1, 1850, and March 23, 1859. The supplement of March 12, 1874, p. 33, does authorize such correction, *Field v. Field*, 9 Vr. 290.

(1) For supplement applying only to the county of Warren, see P. L. 1875, p. 348.

II. Supplements to road act of eighteen hundred and forty-six still in force.

A supplement to an act concerning roads, approved April sixteenth, eighteen hundred and forty-six.

P. L. 1859, p. 526.

Approved March 23, 1859.

Assessment and collection of road tax.

101. SEC. 1. That all taxes assessed for making and repairing roads shall be paid in money and collected in the same manner as other taxes for county and township purposes, and at least three-fourths of the same shall be worked out on the roads in such townships as are entitled to receive it, between the first of May and the first day of July of each and every year.

Election of commissioners of highways.

102. SEC. 2. That each township shall elect, at their annual town meeting, three men who shall be freeholders of the township, and who shall be called commissioners of highways, and meet at some convenient place in the township, the first Monday after town meeting, and proceed to lay off the townships of the different counties in the state, into districts, usually of not less than three miles in length of road, having reference in all cases to equalizing the districts, and assign to each district the amount of road to be worked by each overseer, and apportion the moneys received for roads to each district in proportion to the amount of labor required to be done, and make the overseers' lists accordingly, and forward them to the overseers elect; and the said commissioners shall receive for each day's service actually performed by them the sum of one dollar each, to be paid by the township committee of such township where the work has been done.

Taxes to be paid over to commissioners.

103. SEC. 3. That all taxes collected for roads be paid by the collector and by the constable, if collected by the tax warrant, over to the commissioners, and that they be required to give security for the safe disbursement of the same, and to pay over to the several overseers of the various districts the money collected for such roads in the proportions assigned to each overseer by the said commissioners.

Proportion of cities, boroughs and towns.

104. SEC. 4. That every city, borough and town corporate, shall be required annually to raise and pay over to the commissioners of highways of the several townships adjoining such city, town or borough, and from which public roads lead into such city, town or borough, at least ten per centum of the amount in each year allotted by such commissioners to be expended in the repairs of the roads in the several districts next adjoining such city, town or borough, which sums so paid shall be by the said commissioners paid to the overseers of such districts respectively, to be by them expended thereon in the manner provided by the eighth section of this act, and as part of the sums so allotted to such districts by the said commissioners.

Election of overseers of roads.

105. SEC. 5. That the overseers of roads for each district shall be elected by the taxpayers of each road district in the state, on the fourth Monday of March, at some convenient place agreed upon by the people of the various districts; and at the time of such election for overseer, the taxpayers of the district shall also determine whether the work in the district shall be done by the inhabitants of the district or by contract, putting the work out to the lowest bidder, and instruct their overseers accordingly; and the said overseers of highways shall receive one dollar and fifty cents per day for each and every day actually engaged in contracting for, working on, or superintending said roads or highways.

Overseers to advertise for proposals for working roads.

106. SEC. 6. That it shall be the duty of the overseers of the several highways immediately after their election to advertise for proposals, when the work is determined to be done by contract, for making and working the public roads for the ensuing year, which proposal or proposals shall be sealed up when received by the overseer, and by him opened on the fourth Monday in April of each and every year, when the lowest bidder, having regard at all times to the ability of the person to perform the work, shall be awarded the contract, and in every way comply with the contract for the work which shall be necessary to be done, either by the day or by contract, on the district which it would be the duty of the overseer to make and keep in repair, and if said work is done by the day,

said contractor is required to work ten hours per day with his men and teams; and when worked by the inhabitants, ten hours shall constitute a day's work, and each man working shall be entitled to one dollar per day, or ten cents per hour, and each man and team two dollars per day, or twenty cents per hour.

107. SEC. 7. That any district which feels aggrieved or dissatisfied in apportioning the moneys of the several townships by the commissioners of highways, may, through their overseer, apply to the township committee whose duty it shall be to meet at their usual place of meeting in the township, on the third Monday after town meeting, for the purpose of receiving the apportionment of money made by the commissioners of highways to the overseers of roads, and hear any report from any overseer who may consider his apportionment unjust, and make any change which they in their judgment may see fit, which decision shall be conclusive and remain in force for the year in which they may be called upon to decide.

District aggrieved may appeal.

108. SEC. 8. That when done by contract or otherwise, the overseers of the various districts where it is practicable shall have the roads regularly formed, or turnpiked and graveled; and when done by contract, the contractor to whom the work to be done is awarded, or the overseer when the work is not contracted for, shall proceed to form up the roads in the several districts, always giving preference to the roads which are traveled most, and which have never been formed up or graveled; the said roads shall be formed usually twenty-one feet in width, and in no case to exceed twenty-five feet from outside to outside, and to raise the centre when formed not less than twelve inches, and when formed twenty-five feet wide, not less than fifteen inches in the centre, measuring from the bottom of the ditch on the side of the road, with a regular curve from the centre to the outside, and all roads so formed shall be required to be completed by the first day of July in each and every year; and the said overseer or his contractor shall have liberty to enter the enclosure of any person owning lands on said highways, and to dig a ditch or drain for the purpose of carrying off the surplus water from the said road; *provided*, that said ditch or drain is not made at such a point as to interfere with buildings, or in any way to become a nuisance to the owner or owners of lands on such highways; and it shall not be lawful for the said owners or any other person to fill up or obstruct said ditch or drain, under the penalty of twenty dollars, to be sued for in the name of the overseer of the district in which such offence shall have been committed, in any court having proper jurisdiction of the same, which money, when collected, shall go towards the making and repairing of the said road in said district, and it shall be made the duty of the overseer to sue for and collect the same; also the overseers of the various districts shall be authorized to make and build as many small bridges, such as can be built by common laborers, as they may deem necessary to thoroughly drain the said roads.

Manner of repairing roads.

109. SEC. 9. That the inhabitants of each road district be required to furnish the overseer with gravel when to be had conveniently, and of sufficient quantities to enable such overseer to gravel all roads made and formed in said district, as described in the eighth section of this act; and it shall be the duty of said overseers to attend to graveling the same, and to keep sufficient moneys in hand to pay for said gravel when necessary, and that any district may be permitted to use gravel from an adjoining district when directed by the commissioners.

Inhabitants of district to furnish gravel.

110. SEC. 10. That hereafter it shall not be lawful for any township to assess more than seventy nor less than twenty per centum of the amount raised for county and poor tax for road purposes.

Limitation of assessment.

111. SEC. 11. That any obstructions to highways caused by floods, snow drifts or otherwise, shall be removed by the overseer of the district as soon as practicable to be done; it shall be the duty of the overseers of the various highways requiring such obstructions to be removed to order out the people of the districts adjacent to the place or places where such obstructions shall be, and proceed forthwith to remove the same, for which service the persons engaged in performing the labor shall receive the same compensation for men or men and teams as is paid for working on the

Removal of obstructions.

roads at other times; and in case the labor is required to be done at a season of the year when the overseer has no funds in hand, the amount due for work shall be accredited to each person's name who is entitled to receive pay for the same, and deducted from his or her road tax for the ensuing year.

Roads to be scraped.

112. SEC. 12. That each road district where it is practicable to use it, shall be required to own a road scraper, to be bought and paid for by the district, for the purpose of scraping and smoothing the surface of said roads; and it shall be the duty of the overseers of the various districts immediately after the frost is out of the ground in the spring, to scrape and smooth the said roads at least once before the first day of April, or sooner if the weather does not interfere; and that any overseer neglecting to attend to such scraping and smoothing of said roads shall be liable to a fine of twenty dollars, to be sued for and collected by any person who is an inhabitant of the district, which fine, when collected, to be appropriated for the benefit of the roads of said districts.

Roads along streams or rivers.

113. SEC. 13. That any public road that may lay along streams or rivers in this state, and which may be washed away in whole or in part, shall be required to be made and kept in good repair, where it is practicable to repair and widen the same when washed away; but where it is not practicable to repair and widen the said road, then it shall be the duty of the overseer of the district to have the road relayed and widened, as provided for by law, so as to make it at least two rods in width; and where the road is located upon a high river bank, the overseer to cause to be put up good and sufficient railing, so as to be entirely secure for the travelling public, and pay for the said railing out of the moneys received for the respective district.

Compensation of surveyor.

114. SEC. 14. That no surveyor of the highway shall at any time when called to lay out a public road, receive a greater compensation or larger per diem when they grant a new road than when they do not grant such road, under a penalty of twenty dollars, to be recovered by any person, in a court having proper jurisdiction of the same, and applied for the use and benefit of the said road of said district.

Assessment of damages.

115. SEC. 15. That hereafter when any public road or highway shall be laid out or altered in this state, and damages shall be assessed in favor of any owner or owners of land or real estate, taken thereof in pursuance of a certain supplement to the said act, which was approved on the first day of March, eighteen hundred and fifty, the six surveyors, or a majority of them, shall at the same time, and without additional compensation, assess the said damages as equitably as may be upon the owner or owners of any land or real estate in the neighborhood of said road or highway which, in their opinion, will be benefited thereby, as nearly as may be in proportion to the benefits which the said lands of each of the said owners shall be deemed by them to have derived from the laying out and opening of the said road, and shall certify the same in writing as a part of their return now required by law.

Copy of return to be served on township clerk.

116. SEC. 16. That a copy of the said return certified by the clerk of the said county, shall within ten days after the same has been filed, be served upon the township clerk of the township in which said road or highway is situated, to be kept by him with the other papers and writings of his office; and that the clerk of the said county shall be entitled to receive the sum of one dollar for such certification of the said copy, and the said township clerk the sum of twenty cents for filing the same among the other township papers as aforesaid; and the said township clerk, within ten days after the receipt by him of said certified copy of the surveyor's return and assessment, shall give notice in writing to each of the said owners of land upon whom any sum shall have been assessed for benefits as aforesaid, stating the amount so assessed; the date and the time of filing with him of the said certified copy, to the end that said land owners may examine the same and appeal therefrom as hereafter provided, if they or either of them shall desire so to do.(1)

Collection of assessments.

117. SEC. 17. That the township committee of the township in which said road or highway is situated shall thereupon cause the amount of said

(1) See supplement of March 28, 1871, (P. L. 1871, p. 956), applying to county of Union.

damages to be collected from the person or persons upon whom the same have been assessed, at the same time and in the same manner as the ordinary township taxes are now collected, and shall pay the same when collected to the person or persons to whom said damages have been awarded and are entitled to receive them; after which the said road shall be opened for public use.

118. SEC. 18. That any owner who shall be dissatisfied with the amount of damages so assessed upon him or her for benefits as aforesaid, may at any time within thirty days from the time of the notice given to him or her by said township clerk as aforesaid of such assessment, apply to any judge of the court of common pleas of said county to appoint three competent and disinterested freeholders to review the said assessment, in the manner prescribed in the fifth and eighth sections of the hereinbefore mentioned supplement; and said freeholders, in making such review, shall consider the whole of said assessment, and if any portion thereof shall be changed or varied by them, the remaining parts or portions thereof shall be so adjusted that the whole sum assessed for damages shall be assessed for benefits.

Review of assessment.

119. SEC. 19. That in case the said surveyors, at the time of the laying out of any road as aforesaid, shall be of opinion that said road is a general benefit to the township at large in which the same is situated, they shall have power to assess upon said township such part or portion of the damages awarded by them as they shall deem equitable and just, the remaining part of said damages to be assessed as hereinbefore provided; and in that case said township shall be bound to pay the amount so assessed against it at the same time with the land owners, who may also have been assessed therefor.

Part of assessment may be laid on township.

120. SEC. 20. That if any damage shall happen to any person or persons, his, her or their team, carriage, or other property, by means of the insufficiency or want of repairs of any public road in any of the townships of this state, the person or persons sustaining such damage shall have the right to recover the same, with costs, in an action on the case in any court of competent jurisdiction in this state, to be instituted by the said person or persons, his, her or their executors or administrators against such township by its corporate name, and any judgment in such action shall be collectable in the manner and from the same property as is now by law provided for the collection of judgments against the several townships of this state.

Damages for want of repairs of road.

121. SEC. 21. That if any damage shall happen to any person or persons, his, her or their team, carriage, or other property, (a) by means of the insufficiency or want of repair of any bridge upon any public road, in any township of this state, which such township or the county in which the same shall be situate is or shall be liable to make or repair, the person or persons so sustaining such damage shall have the right to recover the same, with costs, in an action on the case in any court of competent jurisdiction in this state, to be instituted by such person or persons, his, her or their executors or administrators against the board of chosen freeholders of such county, and any judgment in such action shall be collectable in the manner and from the same property as is now provided by law for the collection of judgments against such board of chosen freeholders, or against any of the counties of this state; *provided*, that in case such bridge shall be in more than one of the counties of this state, such action may be instituted against the board of chosen freeholders of either of such counties, at the option of the person or persons so injured, his, her or their executors or administrators in the manner herein provided; and any judgment recovered in such action shall and may be collected from such county against whose board of freeholders such action was instituted, and in payment thereof, the county paying the same shall be entitled to demand, sue for, have and receive of and from the other county or counties in which such bridge was situate, a ratable proportion of the sum so paid, with lawful interest thereon.

Damages for want of repairs to bridges on public roads.

Proviso.

122. SEC. 22. That all acts and parts of acts repugnant hereto shall be, and the same are hereby, repealed; *provided*, nevertheless, that nothing in

Repealer not to apply to certain counties.

(a) See *Livermore v. Freeholders of Camden*, 5 Dutch, 245, 2 Vr. 507.

this act contained shall apply to the counties of Burlington, Morris, Salem, Sussex, Warren, Monmouth, Cumberland, Hunterdon, Gloucester, and Mercer.(1)

An act to extend the operation of an act entitled, "A supplement to an act concerning roads," approved April sixteenth, anno domini one thousand eight hundred and forty-six, which supplement was approved March twenty-fourth, one thousand eight hundred and fifty-nine.

P. L. 1874, p. 101.

Passed March 26, 1874.

Act extended to streets in cities and towns.

123. SEC. 1. That the operation of the act entitled, "A supplement to an act concerning roads," approved April sixteenth, one thousand eight hundred and forty-six, which supplement was approved March twenty-fourth, one thousand eight hundred and fifty-nine, shall be, and is hereby extended so as to include any street or highway with the limits of any municipal corporation.

A further supplement to an act entitled "An act concerning roads," approved April sixteenth, one thousand eight hundred and forty-six.

P. L. 1874, p. 33,

Approved March 12, 1874.

Return of surveyors when defective or erroneous, may be amended.

Proceedings.

124. SEC. 1. That when it shall appear to the court that the return of the surveyors of the highways is defective or erroneous, it shall not, on account thereof, vacate the road, or annul or set aside the proceedings to lay out, vacate or alter the road; but the court, on motion of the applicants for the road, or any of them, shall make an order specifying the particulars wherein said return is defective or erroneous, and requiring the surveyors who signed said return, and who are still living and residents of the county or counties in which the road is located, to meet, at a time and place to be designated in the order, to make an amended return; said applicants, or any of them, may serve, or cause to be served, a copy of said order on each of the surveyors who signed said return, and who are named in said order, either personally or by leaving it at his residence, at least six days prior to the time of their meeting; and the surveyors named in said order shall meet at the time and place therein designated; and they, or a majority of them, shall make, date and sign an amended return, correcting the errors and defects in their former return, to which, when filed, the clerk shall annex the map attached to their former return; but if said map shall be defective or erroneous, the said surveyors shall annex to their amended return a new map of the road, or authorize the practical surveyor to annex it thereto, as now provided by law in such cases; and the annexed return shall be delivered to some of the applicants, and be transmitted to the clerk, and be recorded as prescribed by the aforesaid act in relation to the returns of the surveyors of the highways; and such amended return shall have the same force and effect as an original return.

Amended return may be amended.

Surveyors may make amended return though term expired.

125. SEC. 2. That if it shall appear to the court that the amended return is defective or erroneous, and the court deem it necessary, it may order another amended return to be made in the manner aforesaid.

126. SEC. 3. That the surveyors, in their proceedings to make an amended return, shall have the same powers, and receive the same compensation, as is now provided by law in such proceedings; and if, at the

(1) By supplement approved March 9, 1860, (P. L. 1860, p. 211), the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth and twelfth sections, shall not extend to or be in force in the counties of Atlantic, Middlesex, Ocean and Union, and the acts and parts of acts repealed by section twenty-two are revived.

By supplement approved March 12, 1860, (P. L. 1860, p. 242), the commissioners elected under the second section of the foregoing act, in the townships of Camden county, shall not receive any compensation; section four repealed as to Camden county.

By supplement approved March 15, 1860, (P. L. 1860, p. 264), the second, third, fourth, fifth, sixth and seventh sections shall not apply to the townships of Bernard, Bedminster, Bridgewater and Warren in the county of Somerset.

By supplement approved March 22, 1860, (P. L. 1860, p. 554), provisions of act repealed as to counties of Passaic, Bergen and Essex and second assembly district of Camden county.

By supplement approved March 7, 1861, (P. L. 1861, p. 172), the thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth and nineteenth sections extended to Bloomfield township, Essex county.

By supplement approved March 14, 1861, (P. L. 1861, p. 422), the eighth, ninth, eleventh, twelfth, thirteenth, fourteenth, twentieth and twenty-first sections extended to Branchburg and Hillsborough townships, Somerset county.

By supplement approved March 17, 1862, (P. L. 1862, p. 222), act repealed as to Cape May county.

By supplement approved February 16, 1864, (P. L. 1864, p. 21), provisions of act repealed as to Hudson county.

By supplement approved April 17, 1868, (P. L. 1868, p. 1122), act extended to West Windsor township, Mercer county.

By supplement approved February 22, 1871, (P. L. 1871, p. 289), sections fifteen, sixteen, seventeen, eighteen and nineteen of act of 1859, extended to township of Chatham, county of Morris.

By supplement approved March 30, 1875, (P. L. 1875, p. 409), act extended to county of Warren.

time of making the order aforesaid, the terms of office of the surveyors, or any of them, who signed the former return, and who shall then reside in the county or counties aforesaid, have expired, such person or persons are hereby authorized and empowered to act in making the amended return in the same manner and with the same effect as if they were still in office.

A supplement to an act entitled "An act concerning roads," approved April sixteenth, eighteen hundred and forty-six.

Approved March 24, 1874. P. L. 1874, p. 88.

127. SEC. 1. That whenever the appointment of freeholders to review the finding of surveyors of the highway, in regard to the laying out, alteration or vacation of any road, made under the eighth section of the act to which this is a supplement, shall be certiorated, the court of common pleas, making such appointments shall have the power and authority, after the final determination of such *certiorari* when such appointment shall be affirmed, to make another and new appointment of freeholders to review such finding of the surveyors of the highways, in the room and place of the freeholders whose appointment had been or may be certiorated, which appointment of freeholders shall have the same force and authority as the original appointment; and said freeholders, so appointed shall proceed in the same manner as directed by the said eighth section, and the report of the said freeholders so afterwards appointed, shall have the same effect, and shall be acted upon in the same manner by said court of common pleas as directed by the said eighth section; *provided*, that in all cases of such appointments heretofore certiorated and affirmed, such new appointments herein provided for, shall be made within six months after the approval of this supplement, and in all cases hereafter certiorated and affirmed within six months after the said final determination of such appointment.

After determination of certiorari to remove appointment of freeholders to review finding of surveyors, common pleas may make new appointment.

128. SEC. 2. That whenever the report and proceedings of chosen freeholders, appointed under and by virtue of the provisions of the second section of the act, approved March twenty-second, eighteen hundred and sixty, entitled "A further supplement to an act concerning roads, approved April sixteenth, eighteen hundred and forty-six, and the several supplements thereto," have been or shall be set aside or reversed upon certiorari or otherwise, the court of common pleas by whom the said freeholders were appointed, shall have the power and authority to make another and new appointment of chosen freeholders, for the purposes and upon the notice directed in said act; and the said chosen freeholders so newly appointed shall proceed to perform their duties, and meet upon the same notice, and their report shall be filed and have the same force and effect in all respects as provided for in the said act; *provided*, that in all cases wherein such report and proceedings have been heretofore reversed or set aside the application for such new appointment herein provided for shall be made within six months after the approval of this supplement, and in all future cases within six months after such report and proceedings shall be reversed or set aside.

When report of freeholders set aside upon certiorari, common pleas may make new appointment.

Proviso.

A further supplement to an act entitled "An act concerning roads," revision approved April sixteenth, eighteen hundred and forty-six.

Approved March 27, 1874. P. L. 1874, p. 118.

WHEREAS, changes in public roads are frequently desirable and necessary, to accommodate public and private interests, by vacating short pieces of such roads and relaying them in other places; *and whereas*, for small changes, proceedings under the present act to which this is a supplement, are both expensive and troublesome, and are attended with much delay, so much so that few persons are willing for the public good to incur the expenses attendant on such change; for remedy whereof,

Preamble.

129. SEC. 1. That whenever ten or more persons, being freeholders, shall think any alteration of any public road necessary in any part of the county wherein they reside, by having a portion of such road vacated, not exceeding in length six hundred yards, and said road changed by relaying

Proceedings for alteration of short sections of road.

Application to surveyors of highways.

Notice, what to state.

Appointment of surveyors.

Copies of appointment to be served.

it in another place (the road so relaid not to exceed six hundred yards in length) they may make application to three of the surveyors of the highways of said county, one of whom shall be a surveyor of the highway of the township wherein the portion of the road proposed to be changed shall be situated (unless the road to be vacated, or relaid, shall run through his land, in which case a surveyor of any adjoining township may be selected in his stead), the other two surveyors to be taken from the surveyors of the highways, of two of the adjoining townships by public notice in writing signed by said freeholders and put up in three public places in the township where the said road so proposed to be changed or altered is situated; which notice shall contain a description of the portion of road proposed to be vacated and a general description of the road proposed to be laid out in lieu of the one so vacated, and shall name a day and hour not less than ten days from the putting up of said notice, and when they will apply to one of the judges of the court of common pleas of said county at his chambers (giving also the name and residence of said judge) for the selection and appointment of said three surveyors of the highways as aforesaid, which judge upon due proof being made to him of the putting up of said notices as required by this act, without any further application than a copy of the notice so as aforesaid put up, is hereby authorized to make such selection and appointment from the acting surveyors of the highways, as aforesaid, by an order under his hand, which order shall name the said surveyors and the township wherein they severally reside, and shall fix the time and place of meeting of said surveyors, and for so doing he shall receive the sum of one dollar.

130. SEC. 2. That said applicants shall cause the said order, so as aforesaid, to be copied, and a copy thereof served on each of the surveyors therein mentioned, at least six days before the day therein appointed for their meeting.

III. Public road boards.

An act concerning public road boards.

P. L. 1876, p. 385.

Approved April 21, 1876.

Name by which public board shall be known and designated.

131. SEC. 1. That the persons to be appointed in the several counties of this state, as hereinafter provided, be and they are hereby constituted, within the county in which they are appointed, a public board, to be known and designated as "the (inserting the name of the county in which they are appointed) county public road board," for the purpose of laying out, opening, constructing, improving, ornamenting and maintaining one or more free public roads in the county in which they are appointed, that shall afford better facilities for those who may wish to travel upon the same, for purposes of business or pleasure; that in each of said boards the acts of a majority shall be deemed the acts of the board, and that each member of each of said boards shall, before entering upon the duties of his office, take and file in the office of the clerk of the county in which he is appointed, an oath or affirmation to act faithfully and impartially in the execution of the trust reposed in him by this act, and each member of each of said boards shall give bond to the county collector of the county in which he is appointed, in the sum of fifty thousand dollars, with two good and sufficient sureties, to be approved by a justice of the supreme court, conditioned for the faithful performance of his duties under this act, which bond, in case of forfeiture, shall be prosecuted by said county collector, for the use of said county.

Mode of appointing road boards.

132. SEC. 2. That whenever, in any county of this state having upwards of seventy-five thousand inhabitants, according to the latest official census of the United States or of this state (and not having already in existence a public road board organized in accordance with the provisions of this act or any other act of this state), twenty-five freeholders and taxpayers in such county shall make known in writing to the board of chosen freeholders of such county their desire to have a public road board organized in said county under this act, such board of chosen freeholders of such county may, if they deem proper, cause the said matter to be submitted to the votes of the legal voters of the said county at a special

election to be held for that purpose in said county; the said board of chosen freeholders shall fix the time of holding such election, and shall give at least six weeks' notice of such election in at least two newspapers printed and circulating in such county; the tickets voted at such election in favor of the appointment of such road board shall read "for road board," and those against such appointment shall read "no road board," and such election shall be held and conducted and the votes canvassed in all respects in conformity with the provisions of the act respecting elections; if a majority of the legal votes cast at such election shall not be in favor of the appointment of a county road board, then no further proceedings shall be had upon such aforesaid application; if a majority of such votes shall be in favor of the appointment of a county road board, then it shall be the duty of the said board of chosen freeholders to forthwith appoint five persons to be members of the public road board of such county; *provided, however*, that no such appointment shall be made and no further proceedings had thereunder unless such submission has first been made as aforesaid to the legal voters of such county and ratified by a majority thereof as hereinbefore provided; *and provided*, that no person shall be appointed to membership in said board unless he shall have been a citizen of the United States, resident in the limits of such county for at least five years next preceding his appointment; that one of the persons so appointed shall hold office for one year, one for two years, one for three years, one for four years, and one for five years, and they shall within thirty days after their appointment determine by lot who of them shall hold office for each of said terms, and give notice of such determination in one of the newspapers printed and published in the county in which they are appointed; the board of chosen freeholders of such county shall immediately after any vacancy may occur in such public road board, appoint a person to fill such vacancy, and shall from time to time appoint persons to succeed the incumbents whose term of office will or shall have expired; persons appointed to fill vacancies in such board shall hold office during the unexpired term only; persons appointed to succeed incumbents shall hold office for the term of five years from the time the term of office of his predecessor expired, and each member shall remain in office until his successor is appointed and qualified; the board of chosen freeholders in each county shall fix the compensation of the members of the public road board of such county, and shall pay the same; nothing in this section or in this act shall be construed to authorize the appointment of more than one public road board in any one county.

Proviso.

133. SEC. 3. That the persons so appointed shall, within thirty days organize said board by the election of a president, to be chosen from among such persons so appointed; they shall appoint a secretary and treasurer, who need not be members of said board, and such other officers, agents, surveyors, engineers, workmen and servants, as may be deemed necessary for the purposes of this act, and fix their compensation; the president shall be elected annually, and the other officers and employes of the board shall hold office during the pleasure of the board.

Election of president, secretary and other officers.

134. SEC. 4. That whenever, in any such county, one hundred persons or more, being freeholders and taxpayers in such county, shall present their petition, in writing, to the public road board, so appointed and organized in such county, setting forth their desire to have a free public road laid out, opened, constructed, improved, ornamented and maintained in such county, and setting forth the general location, width and extent of such desired road, and stating their willingness to be assessed, under the provisions of this act, for the improvement asked for in such petition, then such public road board shall consider such petition, and if they deem it advisable, and for the best interests of such county, shall proceed to lay out such desired road, and take such further proceedings in regard to the same as are provided in this act, nothing in this section or in this act shall be construed to prevent the presentation of as many petitions as may be signed by the requisite number of freeholders and taxpayers of such county, under the provisions of this section, and the consideration of the same by such public road board.

Proceedings for laying out, constructing and improving public road.

Public road board invested with rights and powers to lay out, open and control public road.

135. SEC. 5. That such public road board, after having considered any petition so presented to them, and having deemed it advisable and for the best interests of such county to lay out, open, construct, improve, ornament, and maintain a public road of the general location, width and extent set forth in such petition, are hereby authorized and invested with all the rights and powers necessary and expedient to lay out, open, construct, improve, ornament and maintain such public road, and in making the surveys for the same, they may use all the surveys and maps that now are or may hereafter be recorded or filed in any public office of such county, *provided*, the same be not removed from such public office.

Proviso.
May take lands, buildings and improvements.
Proviso.

136. SEC. 6. That the said board shall have power to open such road by taking all the lands, buildings and improvements within the lines of such road, making compensation for any which have not been heretofore dedicated, opened or taken to or for public use; *provided*, that no person in possession of any dwelling house, store or shop shall be disturbed, nor any dwelling house, store or shop, church, engine or school house, or other public structure, be taken down, removed or destroyed, before the expiration of three months after the publication, as provided for in section seven of this act, of notice of the amount of the assessment for laying out and opening, except by consent of the person in possession, as well as the owner thereof; *and provided also*, that nothing in this act contained shall be so construed as to prevent the removal, by any person entitled to remove the same, of any building or structure at any time within the said period of three months, and in case of such removal compensation therefor shall be determined and paid, as hereinafter provided; *and provided also*, that nothing in this act contained shall be so construed as to authorize the removal or destruction of any of the public buildings belonging to such county.

Survey and map showing route of road, &c., shall be made and filed in the office of the board.

137. SEC. 7. That said board, immediately after its determination to lay out any such road, shall, as soon as it conveniently can, proceed to lay out such road, in the following manner: they shall, in the first place, make or cause to be made a survey of such road, with a map thereof showing the *termini* and route of such road, including the courses and distances, and the various improvements through which the same will pass, and also the names of the several owners of lands proposed to be taken therefor, so far as the same can be conveniently ascertained, and showing also the width of such road; and after the preparation of said map, it shall be filed in the office of the board; and after filing said map, the board shall refer the matter of awards and assessments for laying out and opening such to the commissioners of assessment provided for in this act, and shall furnish the commissioners of assessment with a map or maps, showing the lands and buildings to be taken for the opening of such road, and shall also furnish the said commissioners of assessment with any other map or maps showing the property in such county which in the judgment of said commissioners of assessment, will be benefited by such improvement, designating each lot and parcel on said map or maps by a number; said commissioners of assessment shall determine the extent to which the several pieces or parcels of property on said map or maps are benefited, and shall also ascertain, so far as practicable, the names of the owners of such real estate to be taken and property to be benefited, as aforesaid, and the interest of each of the owners of the real estate to be taken, and when such names or estates are not known, they shall so report; they shall also appraise the value of the interest of each known owner of real estate, and the damage to be done to such owner by taking the same, considering in such appraisal the condition in which each owner's parcel will be left after taking so much thereof as will be required for said opening, and where the estates in any plot of land are unknown they shall appraise the value of the damages done to the fee simple; said commissioners of assessment shall also estimate all other expenses likely in their judgment to attend the completion of the said laying out and opening, and shall so determine the cost of laying out and opening such road, this cost they shall then assess upon the lands to be benefited to the extent to which said lands are benefited by said laying out and opening, in proportion to the benefit received; thereupon they shall, under their hands, make a preliminary

Mode of ascertaining owners, &c., making assessments for damages.

Other expenses to be estimated.

report of the facts ascertained, and of the appraisements, awards, estimates, determinations and assessments made by them concerning said laying out and opening of such road, and shall file such preliminary report, together with the map or maps furnished to them by the public road board, with the secretary of said board; thereupon the said secretary shall cause a notice of such filing to be published for two weeks successively, once in each week, in five of the newspapers published in such county, if so many there be, to be designated by said public road board, which notice need contain only a statement that the said map or maps and preliminary report have been filed, and that the same are open to the inspection of all parties interested, and shall state the time and place when and where the said commissioners of assessment will meet to hear and consider any objections to said preliminary report which may be presented in writing, and all objections at such time and place presented in writing, said commissioners of assessment shall consider and adjudicate upon, and may adjourn from time to time as may be necessary, and shall thereupon, under their hands, make a final report of the facts ascertained, and of the appraisements, awards, estimates, determinations and assessments made by them concerning said laying out and opening of such road, and shall file such final report, and any map or maps accompanying the same, with the secretary of said board; thereupon said secretary shall cause a notice of such filing to be published for two weeks successively, once in each week, in five of the newspapers published in such county, if so many there be, to be designated by said public road board, which notice need contain only a statement of such filing, and that the same are open to the inspection of all parties interested, and shall state the time and place when and where an application will be made to a justice of the supreme court to confirm said final report and the map or maps accompanying the same; that at such time and place, and at such other times and places, to and at which the hearing on said application may be adjourned by said justice, all parties interested shall be heard, and the justice shall thereafter confirm said report as presented to him, with the map or maps accompanying the same, or order and direct the commissioners of assessment to make such corrections and alterations in the same as he may deem just and proper; thereupon the commissioners of assessment shall correct their report and map or maps as directed by said justice, and present such corrected report and map or maps to said justice, who shall thereupon confirm the same, and the report and map or maps confirmed by said justice shall be filed with the secretary of said board; thereupon said secretary shall cause a notice of such filing to be published for two weeks successively, once in each week, in five of the newspapers published in such county, if so many there be, to be designated by said public road board, which notice need contain only a statement of such confirmation and filing, and shall state the time and place when and where the public road board will meet and remain in session from ten o'clock in the morning until three o'clock in the afternoon, for the purpose of receiving remonstrances in writing against the laying out and opening of such road, and if, at such time and place so appointed, a majority in amount of said assessment shall remonstrate in writing against the laying out and opening of such road, then all proceedings in regard to the laying out and opening of such road shall cease; but if, at such time and place, a majority in amount of said assessment shall not remonstrate in writing against the laying out and opening of such road, then the work shall be proceeded with, in accordance with the provisions of this act; the secretary of said board shall immediately give notice, by publication for one week in five of the newspapers published in such county, if so many there be, to be designated by said public road board, stating the amount of said assessment and the amount represented by remonstrance, and if such remonstrance shall not represent one-half in amount of said assessment, thereupon, on the expiration of said one week, the awards made shall be due and payable after the lapse of sixty days.

Preliminary report to be made.

Notice of filing report to be published.

Confirmation of report to be made by a justice of the supreme court.

Map and report to be corrected as directed by the justice.

138. SEC. 8. That the said board shall establish and determine the width of the carriage-way and of the sidewalks of such road, and shall construct such road by grading the same in such way and manner and according

Road board to determine the width of the carriage way and of

the sidewalks of such road.	to such grade as the said board shall fix and determine, by excavating and removing earth, rocks, trees, stumps, buildings, improvements and all obstructions, by disposing of such portions thereof as are not needed in the constructing, improving or ornamenting such road to the best advantage, and by filling up any low parts of the route, and otherwise preparing the premises for such road by building all the bridges on such road and by building all sewers, culverts and receiving basins and providing all necessary sewerage and outlets for the same, or by making connection with or using any public sewers or outlets that may exist that they may deem necessary within or without the lines of such road; <i>provided</i> , that such road shall be constructed upon the grades established by any municipal authorities (if any have been established) as near as conveniently may be so as to ensure an easy and even grade throughout the entire road, and in case any grade shall be changed compensation shall be made to the person injured (if any there shall be who are injured by such alteration of grade);
Proviso.	said board shall have power to improve such road or any part thereof by paving or macadamizing the roadbed thereof, by flagging the sidewalks or any part thereof, by curbing and guttering such road or any part thereof, by providing lamps for and lighting such road or any part thereof, and may use, in making any such improvements, any materials now or at such time in use for any of said purposes within the lines of such road that may have been placed there by or under any municipal authority; <i>provided</i> , that the average cost per mile of such constructing and improving shall not exceed seventy-five thousand dollars, based upon a width of one hundred feet, and in the same proportion for a less width; <i>and provide also</i> , that no road shall be laid out and opened under the provisions of this act, exceeding one hundred feet in width.
Improvement of roads, &c.	139. SEC. 9. That said board shall have power to ornament such road, or any part thereof, by planting trees upon the same, and shall have power to maintain such road by keeping the same in repair and fit for public use.
Proviso.	140. SEC. 10. That the said board, their agents, engineers, surveyors, and others in their employ, shall have full power at all times to enter upon lands for any of the purposes contemplated by this act; that any land and real estate deemed necessary by the said board for the laying out, opening, constructing, improving, ornamenting and maintaining such road, or any part thereof, may be taken therefor, and damages shall be allowed and benefits assessed to and against the persons owning the lands and real estate so taken respectively, as herein provided.
May plant trees and keep road in repair.	
May enter upon lands, &c.	
Work to be done and furnished by contract.	141. SEC. 11. That all work and all materials of or exceeding one thousand dollars, done and furnished in and about the constructing, improving, and ornamenting such road, shall be done and furnished by contract, after advertisement in the manner following: the public road board shall advertise for proposals for doing any work and furnishing any materials amounting in the whole to one thousand dollars or more, once in each week, for at least two weeks, but not more than four weeks, (according to the extent and nature of such work), in such of the newspapers of such county as they may deem expedient, and shall thereafter give the contract or contracts to the lowest responsible bidder, who shall furnish such good and sufficient sureties as may be approved by said public road board; but said board shall be under no obligation to accept the lowest bid if they deem it to be against the interest of the public so to do, and may reject all bids if they deem it to be for the interest of the public so to do; and in case of such rejection the said board shall again advertise for proposals, and proceed in all things as if no proposals had before been offered.
Proposals to be advertised for.	
Horse or dummy railroad not allowed on such road except to cross the same.	142. SEC. 12. That, except to cross such road, no horse or dummy railroad shall be allowed on such road; and in case any such railroad be now, or shall hereafter be constructed on any part of the line of such road, it shall be the duty of the public road board to designate a new and convenient route for such railroad, and to give written notice of the route so designated to the persons or corporation owning such railroad, and, within ninety days after the giving of such notice and obtaining the consent of such horse railroad corporation, it shall be the duty of such persons or corporation to remove their tracks from the line of such road; and such persons or corporation are hereby authorized to lay their tracks

over the route designated in such notice; and in case of the failure of said persons or corporation to remove their tracks as aforesaid, within ninety days after the giving of said notice, the said public road board may remove the same forthwith; *provided*, that if any person or corporation is entitled to damages or compensation by reason of any act done or contemplated under this section, the same shall be ascertained and paid as herein provided.

143. SEC. 13. That after such road shall be constructed, improved, and ornamented in accordance with this act, the board shall refer the matter of assessment to raise the money to pay the cost of such constructing, improving and ornamenting, to the commissioners of assessment, and shall furnish the commissioners of assessment with the amount of the cost of such constructing, improving and ornamenting, and with map or maps showing all the property in such county, which, in the judgment of said commissioners of assessment, will be benefited by such improvement; designating each lot or parcel on said map or maps by a number; said commissioners of assessment shall determine the extent to which the several lots or parcels of land on said map or maps are benefited by such constructing, improving and ornamenting, and shall also ascertain, as far as practicable, the name of the owners of such land benefited by such constructing, improving and ornamenting; and when such names are not known they shall so report; they shall then assess the cost of such constructing, improving and ornamenting, upon the lands to be benefited to the extent to which said lands are benefited by such constructing, improving and ornamenting, and in proportion to the benefit received; thereupon they shall, under their hands, make a preliminary report of the facts ascertained, and of the determinations and assessments made by them concerning such constructing, improving, and ornamenting of such road, and shall file such preliminary report, together with the map or maps furnished to them by said board, with the secretary of said board; thereupon the said secretary shall cause a notice of such filing to be published for six weeks successively, once in each week, in five of the newspapers published in such county, if so many there be, to be designated by said public road board, which notice need contain only a statement that the said map or maps and preliminary report have been filed, and that the same are open to the inspection of all parties interested, and shall state the time and place when and where the said commissioners of assessment will meet to hear and consider any objections to said preliminary report which may be presented in writing; and all objections, at such time and place, presented in writing, said commissioners of assessment shall consider and adjudicate upon, and may adjourn from time to time as may be necessary, and shall, thereupon, under their hands, make a final report of the facts ascertained, and of the determinations and assessments made by them concerning such constructing, improving and ornamenting of such road, and shall file such final report and any map or maps accompanying the same with the secretary of said board, thereupon the said secretary shall cause a notice of such filing to be published for two weeks successively, once in each week, in five of the newspapers published in such county, if so many there be, to be designated by said public road board, which notice need contain only a statement of such filing and that the same are open to the inspection of all parties interested, and shall state the time and place when and where an application will be made to a justice of the supreme court to confirm said final report and the map or maps accompanying the same; that at such time and place and at such other times and places to and at which the hearing on such application may be adjourned by said justice, all parties interested shall be heard, and the justice shall thereafter confirm said report as presented to him with the map or maps accompanying the same or order and direct the commissioners of assessment to make such corrections and alterations in the same as he may deem just and proper; thereupon the commissioners of assessment shall correct their report and map or maps as directed by said justice and present such corrected report and map or maps to said justice, who shall thereupon confirm the same, and the report and map or maps confirmed by said justice shall be filed with the secretary of said board,

Road board may remove tracks from line of road.

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Owners of lands to be assessed for amount of cost of constructing, improving and ornamenting road according to benefit.

Preliminary report to be made and filed.

Notice of filing to be published.

Objection shall be made in writing.

Final report.

Notice to be given of filing.

Confirmation of report.

Correction of map and report.

and thereupon such assessment together with the assessment for laying out and opening such road as provided for in section seven of this act, shall be a lien on the lands and real estate upon which said assessments are made until paid as herein provided.

What the board may include in road.

144. SEC. 14. That the said board may include in any such road as a part thereof, any road, street, highway or avenue, or part thereof already laid out, opened, or dedicated in such county, and said public road board shall have the exclusive control of such road, and regulate the use thereof throughout the entire length thereof.

Road may be constructed in sections.

145. SEC. 15. That said public road board shall have power to construct, improve, ornament and maintain such road in sections, and any *certiorari* or other legal proceedings had or taken in regard to or affecting any particular section, shall not affect any other section, and the work may be proceeded with on all other sections the same as if no *certiorari* or other legal proceedings had been had or taken.

Compensation to be paid owners of lands, &c., to be ascertained by commissioners.

146. SEC. 16. That except as otherwise provided in this act, in all cases the compensation to be paid to owners of lands and buildings, or to any party for any purpose, and the assessment to be levied for any improvement as provided in this act, shall be ascertained by three commissioners of assessment, to be selected and appointed by the judge of the circuit court of the county in which such road is located, on application of said public road board, and said judge shall fix the compensation to be paid to said commissioners by the public road board, and in case any or all of said commissioners shall be interested in any assessment to be made, the public road board shall notify said judge, who shall appoint a commissioner or commissioners in the place of the commissioner or commissioners so interested.

Commissioners to fix a time and place where parties interested may be heard.

147. SEC. 17. That the commissioners of assessment shall in all cases, whether awarding damages or compensation for lands, buildings or improvements taken, or in any other case authorized by this act, or assessing property for benefits received, fix a time and place where parties interested may be heard in relation to the same, of which they shall give public notice in two newspapers to be designated by said public road board, by publication for four weeks successively, once in each week, and they may adjourn from time to time, without further notice, until they have made up their award or assessment.

Majority of the commissioners required to perform any act.

148. SEC. 18. That in all cases where, under this act, any act or thing is required to be done or performed by the commissioners of assessment, the acts of a majority of said commissioners of assessment shall be the acts of said commissioners of assessment; any commissioner of assessment neglecting or refusing to perform any of the duties imposed upon him by this act, or for any other good reason appearing therefor, may be removed by the judge of the county circuit court, and any vacancy in the commissioners of assessment occurring by such removal, or otherwise, shall be immediately filled by said judge.

Vacancy, how filled.

Compensation for damages not expressly provided for, how ascertained and paid.

149. SEC. 19. That in all cases where the owners of any land, or corporate franchises, or property, or any party interested therein, shall be entitled to compensation for damages done by the public road board under the exercise of any authority contained in this act, not herein otherwise expressly provided for, the amount thereof shall be ascertained under like proceedings as in cases of awards, under section seven of this act; and the amount, when thus ascertained, shall be paid by the public road board to the party entitled thereto.

If parties cannot be found, payment may be made into court.

150. SEC. 20. That in case any parties entitled to any award or compensation under any of the provisions of this act, cannot be found to whom to pay the same, or are unknown, or labor under disabilities, or refuse to receive the same when tendered, payment of such award or compensation into the circuit court shall be equivalent to payment of the parties entitled thereto, and the same shall be paid to the party entitled thereto, upon the order of said court.

Interest on assessments when to become due and payable.

151. SEC. 21. That the interest on all assessments, until the first installment of the assessment shall become due and payable, shall be payable as follows: on the first Monday of the first October after the date of the confirmation of the assessment made under section thirteen of this act the

first instalment of interest shall become due and payable, and shall consist of interest on the amount of the assessment, at seven per centum per annum from the date of the confirmation of the assessment made under section thirteen of this act until said first Monday in October; the second instalment shall become due and payable on the first Monday of the second October after the date of the confirmation of the assessment made under section thirteen of this act and shall consist of one year's interest on the amount of the assessment, at seven per centum per annum, and so there shall become due and payable on the first Monday of each succeeding October after the date of the confirmation of the assessment made under section thirteen of this act an instalment of interest which shall consist of one year's interest on the amount of the assessment, at seven per centum per annum, until five instalments of interest shall become due and payable, and all assessments, with the interest thereon, shall be payable in twenty instalments, as follows: the first instalment shall consist of one-twentieth of the principal of the assessment, together with one year's interest, at seven per centum per annum on the whole of such principal, and shall become due and payable on the first Monday of the sixth October after the date of the confirmation of the assessment made under section thirteen of this act; the second instalment shall consist of one-twentieth of the whole principal, and one year's interest at seven per centum per annum on nineteen-twentieths of the whole principal, and shall become due and payable on the first Monday of the seventh October after the said confirmation; the third instalment shall consist of one-twentieth of the whole principal, and one year's interest, at seven per centum per annum, on eighteen-twentieths of the whole principal, and shall become due and payable on the first Monday of the eighth October after the said confirmation, and in like manner each subsequent instalment shall consist of one-twentieth of the whole principal, together with one year's interest, at seven per centum per annum, on so much of said whole principal as shall not theretofore have become due and payable, and said instalments shall respectively become due and payable on the first Monday in each succeeding October; in case any interest or instalment shall not be paid to the county collector of the county when due and payable as aforesaid, interest shall be charged and collected thereon at the rate of twelve per centum per annum, from the time when such interest or instalment shall have become due, as aforesaid, until the same shall be paid, or until the property assessed shall be sold for the interest or assessment, but any owner whose land is assessed may discharge his land or any part thereof from the lien of said assessment by at any time paying the whole of the assessment on said lands, and interest to the county collector of the county, who shall forthwith notify the secretary of the public road board of such payment, and said secretary shall thereupon cancel said lien of record; *provided*, that in any case where the owner of land assessed desires to discharge a portion of the said land from the lien of such assessment, it shall be the duty of the county collector of the county, upon written request, to apportion the assessment and fix the amount which shall be paid upon the part to be released, and upon receiving such amount said county collector shall notify said secretary of such payment, and the land to be released thereby, and said secretary shall cancel the lien of such assessment, so far as it affects said land to be released, and the lien of said assessment shall continue upon the remainder of the land as theretofore.

Payment of instalments.

When interest at the rate of twelve per cent. per annum may be charged.

Proviso.

152. SEC. 22. That all assessments which shall hereafter be assessed or made under this act upon any lands, tenements or real estate, situate in such county, shall be and remain a lien thereon from the time of the confirmation of the assessment made under section thirteen of this act, until paid, notwithstanding any devise, descent, alienation, mortgage, or other incumbrance thereof, and that if the full amount of any interest or assessment, or any portion thereof, shall not be paid and satisfied within the time limited and appointed for the payment thereof, it shall and may be lawful for the said county collector of such county to cause such lands, tenements and real estate to be sold at public auction for the shortest term any person will agree to take the same, and pay such interest or assessment,

Assessments to be a lien.

Proceedings in case of sale.

or the balance thereof remaining unpaid, or the instalment due, with the interest thereon, and all costs, charges and expenses; and to execute under his hand and seal of the county, a declaration of such sale, and to deliver the same to the purchaser, and such purchaser, his executors, administrators or assigns shall, by virtue thereof, lawfully hold and enjoy the said lands, tenements or real estate, for his or their proper use, against the owner or owners thereof, and all persons claiming under him or them, until said term shall become completed and ended; but said land shall be liable for any unpaid interest or instalments of any assessment, the same as if such sale and purchase had not been made; *provided*, that the said county collector of the county shall first have caused such sales to be advertised once a week for five weeks, in such of the newspapers (or supplements thereto), printed and published in said county, as the board of chosen freeholders of the county may designate by resolution; which advertisement shall describe the said lands, tenements or real estate, which may be done by reference to any assessment map on file with the secretary of the public road board, and showing any lands as thereon described by lot and block number, or otherwise, and specify the amount of the interest or assessment; and the recitals in such declaration of sale shall be evidence of the assessment, advertising and sale; *and provided also*, that the lands, tenements, and real estate sold, may be redeemed by the owner, mortgagee, occupant or person interested therein, or by any other person, for and in behalf of the owner or owners, mortgagees, or any creditor or creditors under a judgment, attachment or mechanics' lien, or claimant of such lands, tenements, or real estate, at any time within two years after the sale for assessments, or any part thereof, by paying to the county collector of the county for the use of the said purchaser, the said purchase money, together with any other sum paid for any taxes, assessments or water rents, or any part thereof, which the said purchasers may have paid, chargeable on the lands, tenements, or real estate, and which he is hereby authorized to pay, with interest thereon, at the rate of fifteen per centum per annum, in addition thereto, and the certificate of the county collector of the county, stating the payment, and showing what lands, tenements and real estate such payment is intended to redeem, shall be evidence of such redemption; the owner or owners, mortgagee or any creditor or creditors under a judgment, attachment or mechanics' lien, shall have power to redeem at any time until the expiration of six months' notice, in writing, given to said owner or owners by the purchaser, or those claiming under him, either personally, or, if not to be found in the county, then by depositing such notice in any post office of such county, directed to him, her or them, at his, her or their last known place of residence (or at the post office nearest thereto), but nothing herein contained shall be so construed as to impair the lien created by such assessment or sale; within a month after the service of such notice by the purchaser, or by those claiming under him, it shall be the duty of the person serving or causing the same to be served, to file in the county register's office a copy of the notice served, together with an affidavit of some person who shall be certified, by the officer before whom said affidavit shall be taken, to be a creditable person, proving the due service of the said notice which affidavit shall be evidence in all courts of the facts therein contained; *and provided also*, that the said terms for which any lands, tenements or real estate are sold, as aforesaid, shall not commence, nor shall said purchaser, or those claiming under him, have a right of possession to said lands, tenements or real estate, until the two years above limited for the redemption of the same shall have expired, and the said purchaser, or those claiming under him, shall, at the expiration of said term, quit and surrender the said lands, tenements or real estate, in as good state and condition as when he entered therein, natural wear and damage by the elements excepted; *provided also*, that the sale of such lands, tenements and real estate, or any portion of them, may be adjourned or postponed from time to time, or suspended, as the said county collector of the county may direct; *and provided*, that if at any sale of lands, tenements or real estate, the whole or part thereof shall remain unsold for the want of purchasers, then it shall and may be lawful for the said county collector of the county to

adjourn the said sale not less than thirty nor more than sixty days; twenty days' notice, at least, shall be given as aforesaid of the adjourned sale; and if, at said adjourned sale, there shall be no purchasers for said lands, tenements or real estate, or any part thereof, then it shall be lawful for the county collector of the county, in the name of the board of chosen freeholders of the county, to purchase the said lands, tenements or real estate for the benefit of the county, subject to the same redemption as hereinbefore provided for; and said board of chosen freeholders of the county may assign said purchase to any party, upon such terms as said board of chosen freeholders of the county may deem just and proper; *provided, also*, that all moneys paid for the redemption of said lands, tenements or real estate as aforesaid, together with such taxes and assessments as shall be paid by a mortgagee or other creditor under a judgment, attachment or mechanics' lien, shall be a lien on said lands, tenements or real estate for the amount so paid, with interest at the rate of fifteen per centum per annum, and such lien shall have precedence of all other liens on said lands, tenements or real estate; and on foreclosure of any mortgage by such mortgagee redeeming, said sums and interest shall be directed to be made out of said lands; and on sale of said lands, under any such judgment, attachment or mechanics' lien, said sums and interest shall be paid out of the proceeds of sale; *provided, further*, that a complete record of all assessments shall be kept in the office of the public road board, which record shall contain the time when such assessments were confirmed, the time when they were paid, and if the property has been sold therefor, the time of sale, and to whom sold, and, if redeemed, when and by whom; it shall be the duty of the secretary of the public road board, to give certificates of search, in relation to liens, to any person or persons applying for the same, and to cancel such sales, when the property shall be redeemed on certificate of the county collector of the county of such redemption; it shall be the duty of the county collector of the county to make out two certificates for all property redeemed, one for the person redeeming, and one which he shall deliver forthwith to the secretary of the public road board.

Proviso.

Proviso.

153. SEC. 23. That it shall be the duty of the county collector of the county to give notice of the expiration of the time limited for the redemption of all lands sold for assessments, or any part thereof, by virtue of this act, by advertisement as aforesaid, once a week for eight weeks next preceding the expiration of the time so limited for redemption, specifying the property unredeemed and the amount due thereon.

County collector to give notice of expiration of time limited for redemption of lands, &c.

154. SEC. 24. That notwithstanding any mistake occurring in the name or names of the owner or owners of any lands or chattels real in such county, in assessing any lands or real estate under this act, such assessment shall be valid and effectual in law against such lands or chattels real, and the same may be proceeded against and sold in the manner herein described, with the same effect as though such assessment had been made in the name of the real owner or owners thereof; *provided*, that in the advertisement of the sale of such land or chattels real, the name or names of the real owner or owners, if discovered, shall be made to appear.

Mistake in name or names of owners, &c., not to render the assessment invalid.

Proviso.

155. SEC. 25. That after the expiration of the time limited for the redemption of any land sold for non-payment of any assessment, or any part thereof, and proof to said county collector of the county, that all taxes and assessments thereupon up to the date of such application, have been paid, and proof of services of notice on all the parties entitled to redeem, as required by this act, and the expiration of the time given then therefor, the said county collector of the county, under his hand and the seal of the county, shall execute to the party who purchased said property at such assessment sale, and who paid the taxes and assessments thereafter accruing thereon, or to the party who is the assignee of such person, a lease of said premises for the unexpired term of years for which he purchased the same; and said lease shall be evidence that all the provisions of this act have been duly and fully complied with, and that the lessee is entitled to hold the said land for the term of years mentioned therein, free and clear of all incumbrances.

When the county collector may execute lease of premises purchased, &c.

Cost to be assessed on the lands benefited.

156. SEC. 26. That the money to pay the cost of laying out, opening, constructing, improving and ornamenting such road to the extent to which the lands to be assessed are benefited by said improvements, shall be raised by assessing the same upon the lands and real estate in such county benefited thereby, in proportion to the benefits received.

Money to be paid by the public at large to be raised by tax.

157. SEC. 27. That all moneys required or necessary for any purpose authorized by this act, except such as are herein required to be raised by assessment, in accordance with the provisions of this act, shall be paid by the public at large of such county, and shall be raised by tax, at the same time and in the same manner as the county taxes shall be raised.

May borrow money and issue bonds.

158. SEC. 28. That it shall be lawful for the public road board to borrow from time to time such sums of money as said board may deem necessary to pay for all awards made by the commissioners of assessment for lands, buildings and improvements taken in the opening of such road, and for any damages and compensation awarded to any person under the provisions of this act, or to pay for the constructing, improving, ornamenting and maintaining such road or any part thereof, or that may be necessary for the purpose of executing any part of this act, and any sum they may deem necessary, in anticipation of the collection of any assessment or assessments, to be made or levied under this act, the payment of said sums thus borrowed to be provided for by the issue of bonds, in sums of one thousand dollars each, payable in thirty years after date, with interest from date at the rate of seven per centum per annum, payable semi-annually, which bond shall be given in the name of "The (inserting the name of the proper county) Public Road Board," for and in behalf of the inhabitants of such county, and said bonds shall be signed by the president and secretary of the public road board, with the seal of the said board affixed, and numbered from one upwards in the order of their issue; and said bonds, together with the coupons attached, may be made payable at such place as the said public road board shall determine and designate therein, and the same may be made payable to order or bearer; and such bonds shall bear date the first day of January or July next preceding their issue; said bonds may be sold in such way and manner as the public road board may, from time to time direct, either at public or private sale, at not less than ninety-five per centum of their par value.

List and statement of all bonds issued to be made by the secretary of the board.

159. SEC. 29. That during the first ten days of every month the secretary of the public road board shall make and transmit to the clerk of the board of chosen freeholders of such county, a full and complete list and statement of all bonds issued by the public road board during the previous month, and all bonds issued by said public road board and all interest on the same shall be paid by the county collector of such county as the same, according to their terms and conditions, become due and payable; and in order to provide for the payment of said interest, the said board of chosen freeholders of such county is hereby empowered and authorized to issue and sell bonds, in the sum of one thousand dollars each, payable in thirty years after date, with interest from date at the rate of seven per centum per annum, payable semi-annually, which bonds shall be given in the name of the board of chosen freeholders of such county, for and in behalf of the inhabitants of said county; and said bonds shall be signed by the then director of the board of chosen freeholders of such county, with the seal of the said board of chosen freeholders of such county affixed, and countersigned, numbered and registered by the county collector of such county, and, together with the coupons attached, shall be made payable to bearer, at the office of said county collector, and said bonds shall bear date on the first day of January or July next preceding their issue, and shall be sold in such way and manner as the board of chosen freeholders of such county may, from time to time direct, either at public or private sale, at a price not less than ninety-five per centum of their par value, and to an amount sufficient to raise such money as shall be required for the payment of said interest, and said board of chosen freeholders of such county shall cause to be, and there shall be raised in each year by tax, at the same time and in the same manner as the county taxes shall be raised, a sum sufficient to pay the interest on all thirty year bonds issued under this act accruing in such year, and in order to provide for the payment

Sale of bonds, &c.

of the principal of all thirty year bonds issued under this act, said board of chosen freeholders of such county shall cause to be, and there shall be raised each year by tax, in manner aforesaid, such an amount as shall, after deducting the assessments arising under this act falling due within such year, be equal to one twenty-ninth part of the whole principal of said thirty year bonds theretofore issued and unpaid, until a sufficient sum shall be raised to pay the whole principal of said thirty year bonds.

160. SEC. 30. That said public road board shall have power to issue certificates of indebtedness in payment for work done or materials furnished, or any expense incurred in the execution of this act, and to issue them at such times and for such amounts, payable at such periods, and executed and transferable in such manner as they may deem best; said certificates of indebtedness shall be paid out of the proceeds of the sale of bonds authorized to be issued by section twenty-eight of this act, and shall bear interest at the rate of seven per centum per annum, and may be paid at any time within one year from the date thereof, at the option of said board, as they shall designate therein.

Certificates of indebtedness.

How paid.

161. SEC. 31. That no member of said public road board, or officer, agent, clerk or employé of said board, (except a contractor for work to be done on such road) shall at any time be interested in any proposal, bid or contract that shall be made by or offered to or made with said board, or in any work done for or materials to be supplied to said board.

Member of board, or officer not to be interested in any contract.

162. SEC. 32. That the treasurer appointed by said public road board, and such other employés as they shall designate, shall give bonds in such sum as said board shall require; and said board shall fix the compensation of the county collector, and any other person required by this act to perform any service, for any services rendered in pursuance of this act, except as otherwise provided in this act, and pay the same.

Treasurer and other employes to give bonds.

163. SEC. 33. That said public road board shall have power to make and use a common seal, and alter the same at pleasure, and shall keep an office in such county with a clerk in attendance thereat during business hours, to be determined by said board, to give information to all parties interested, to require and take bonds of any officer, agent or employé by their title as aforesaid.

May have a seal.

164. SEC. 34. That said public road board may establish such rules and regulations for the authentication of all their acts, contracts, and for all other purposes necessary or expedient to the efficient execution of this act as to them shall seem convenient; they shall keep a record of all their meetings and proceedings, and regular accounts of all moneys received and expended, and make an annual report of such account to the board of chosen freeholders of such county; *provided also*, that all the meetings and proceedings of said road board shall be public.

May make rules and regulations.

Proviso.

165. SEC. 35. That all the proceedings and acts of said public road board, as the same shall appear upon the minutes of said board, and all maps, contracts, awards, assessments, or other matters or papers on file in their office, shall be matters of public record, and all parties shall be deemed to have due notice of the existence thereof, and the same shall be opened to the inspection of the public during the business hours of every day, except Sunday and holidays, and copies thereof, certified under the seal of said board, by the secretary of said board, shall be evidence in all courts and places, the same as the original would be if produced.

Proceedings, minutes, &c., to be public and matters of public record.

166. SEC. 36. That the secretary of the public road board shall forthwith, after any final report and assessment map or maps have been confirmed and filed with him, transmit true copies of the same to the county collector of such county, and the county collector of such county shall make to the public road board, at each regular meeting, a written report of all his proceedings under this act.

Copies of report and assessment map to be transmitted to county collector.

167. SEC. 37. That the public road board may, in the corporate name of such board, maintain any suit at law or in equity, to carry out any object or intent of this act; and in like manner they may be sued for any debt or other liability they may incur; and any contract they may make pursuant to their powers, and any judgment that may be obtained against them, shall be of like effect as if lawfully made by or obtained against the board of chosen freeholders of such county; all certificates of indebtedness

May sue and be sued.

Certificate of indebtedness to be considered public stock created under the laws of this state.

and bonds to be issued by said public road board under this act, shall be deemed and taken to be public stock created under the laws of this state, and can be deposited with the treasurer of this state, under and subject to the provisions of an act entitled "An act to authorize and regulate the business of banking," approved April ninth, one thousand eight hundred and seventy-five, and the supplement thereto.

Commissioners of the public road board sinking fund how constituted.

168. SEC. 38. That the director of the board of chosen freeholders of such county, and the county collector of such county for the time being, respectively holding said offices, together with one freeholder, to be designated from time to time by the board of chosen freeholders of such county, from amongst their number, shall constitute a board of commissioners, which shall be known by the name of the "The Commissioners of the Public Road Board Sinking Fund," whose joint duty it shall be to invest, from time to time, all the money directed by this act to be raised by assessment, and all money directed to be raised by taxation for the payment of the principal of the thirty year bonds issued under this act, and all interest and profits accruing thereon, and they may reinvest and change any investment as they deem best, and the same shall remain a sinking fund, to be appropriated to no other purpose than the payment of the principal of the thirty year bonds issued under this act; said sinking fund commissioners shall annually report to the board of chosen freeholders of such county a detailed and particular statement of all the investments, reinvestments, and changes thereof made within said year; said commissioners of the sinking fund shall only invest in United States bonds, bonds of the state of New Jersey, bonds and improvement certificates of such county, or any city, town or township therein, or bonds or certificates of indebtedness issued under this act by the public road board of such county.

Duties and powers.

Rules of construction.

169. SEC. 39. That whenever, in this act, words importing the plural number are used in describing or referring to any matters, parties or persons, any single matter, party, or person shall be deemed to be included, although distributive words may not be used; and when any subject matter, party, or person is described or referred to by words importing the single number, or the masculine gender, several matters and persons, and females as well as males, and bodies corporate as well as individuals, shall be deemed to be included; and these rules of construction shall apply in all cases, unless it be otherwise specially provided herein, or unless there be something in the subject or context repugnant to such construction.

Rules to apply.

Repealer.

170. SEC. 40. That all acts and parts of acts, general or special, public or private, inconsistent with the provisions of this act, or any part thereof, shall be and the same are hereby repealed, and this act shall be deemed and taken as a public act, and as such shall be taken notice of by all courts of justice in this state, without the necessity of pleading the same, and shall take effect immediately.(1)

Public act.

IV. Miscellaneous acts.

An act relative to assessments for the improvement of roads and streets.

P. L. 1871, p. 123.

Approved April 4, 1871.

When new assessment ordered what to be added to expenses.

171. SEC. 1. That whenever an assessment for the improvement of any road or street has been, or shall be set aside by the supreme court of New Jersey, and commissioners have been or are appointed to make a new assessment, the costs and expenses of such new assessment, together with the interest due on the certificates of indebtedness issued on account of such improvement, shall be added to the expenses of said improvement, and assessed and collected in the same manner as the assessment of such improvement.

An act to open public roads to and from railroad depots.

P. L. 1873, p. 144.

Approved April 4, 1873.

Proceedings to lay out road to and from railroad depots.

172. SEC. 1. That upon the application of ten freeholders of the county in which any depot of a railroad company shall be located other than upon an already existing thoroughfare legally laid out and opened, to the

(1) For act to constitute the Essex Public Road Board see P. L. 1869, p. 957, and supplements P. L. 1870, p. 181 and 714; P. L. 1872, p. 1096 and 1269; P. L. 1873, p. 424 and 622.

board of chosen freeholders, board of commissioners of any township, or town or village or other authority having control of the roads, avenues or streets therein, it shall be the duty of such authorities upon such application being petitioned for, to map, survey, lay out, open and improve the road or roads necessary to get to and from the said depot from the several sides thereof to the place or places on the first cross road where necessary to accommodate the public; the necessary cost of land over and above benefits derived and all other expenses of opening and improving said road or roads shall be made and collected in the same manner and by the same authorities that are now in control of the roads and streets in such district or township, and it shall be a lien upon the assessed property adjacent thereto until paid, with interest and costs.

Expense of opening, how collected.

173. SEC. 2. That all laws and parts of laws inconsistent herewith are hereby repealed.

Repealer.

Supplement.

Approved March 26, 1874. P. L. 1874, p. 95.

174. SEC. 1. That in townships where there are no road commissioners, and any road or roads of said townships are laid out by the freeholders of the county, the said freeholders shall give notice in writing to the overseers of the roads in said township nearest where said road or roads are or have been, or hereafter shall be so laid out, to open the same at once to accommodate the public; and the township committee of said township where said road is built, shall order assessed the costs of land taken for said roads over and above the benefits derived, and all other expenses of opening and improving said road or roads upon the assessed property in the township, and it shall be collected in the same manner, and at the same time as other taxes are collected, and paid to the parties so damaged by said township committee.

By whom road to be opened when there are no road commissioners.

Costs to be assessed on property of the township.

175. SEC. 2. That if the overseer or overseers of roads so notified as aforesaid, shall neglect or refuse for the space of twenty days after receiving the notice to be given as aforesaid by said freeholders to said overseer or overseers of roads, to open the aforesaid roads, the same overseer or overseers shall be liable to indictment for such neglect or refusal as for a misdemeanor.

Penalty for failure of overseer of roads to open roads.

An act to better facilitate the direction of travelers on the roads, turnpikes or highways in New Jersey.

Approved March 17, 1874. P. L. 1874, p. 35.

WHEREAS, the roads, turnpikes and highways of this state frequently intersect and cross each other at places distant from any habitation, making it inconvenient and troublesome to travelers to designate routes, thereby frequently causing delay and loss of time in traveling from place to place through the state; therefore,

Preamble.

176. SEC. 1. That each and every township in this state shall, in the manner hereinafter provided, erect and maintain guideposts on the several roads, turnpikes and highways within each township, at each and every place where such roads, turnpikes or highways intersect or cross each other.

Townships to erect guide posts at road crossings.

177. SEC. 2. That it shall be the duty of the township committee, in each and every township aforesaid, to require the overseers of the highways, in the several highway districts in such township, to ascertain and to report to the said committee annually at the first regular meeting thereof (after having been notified so to do), at what place or places guideposts are required, as aforesaid in section one of this act, to be erected for the direction of travelers in each of the said districts; and for each neglect or refusal to so ascertain or make such report, said overseers shall severally forfeit and pay, into the treasury of the township whereof they are respectively such overseers, the sum of ten dollars as a penalty therefor.

Overseers of highways to report where guide posts are necessary.

178. SEC. 3. That it shall be the duty of each and every township committee in the several townships in this state, upon the receipt of such report of the overseers of the highways, as provided in section two of this act, and within three months thereafter, to erect or cause to be erected at

On receiving report township committee to cause posts to be erected.

How to be constructed.

each and every place designated in such report, a substantial post or posts, of not less than eight feet in height above and firmly set in the ground, and near the upper end of which shall be securely fastened a board of suitable size and dimension, and upon such board shall be plainly and legibly painted the name of the next town or place thereto, and also such other town or place of note, as the township committee may think proper, to which said road, turnpike or highway leads, together with the distance or number of miles to the same; and also the figure of a hand with the forefinger thereof pointing towards the town or place to which said road, turnpike or highway leads.

Penalty for neglect.

179. SEC. 4. That each and every township which neglects or refuses to erect and maintain such guideposts or some adequate substitute therefor, in the manner herein provided, shall forfeit and pay into the county treasury, annually, the sum of ten dollars for each and every guidepost which it so neglects or refuses to erect or maintain.

Penalty for injuring posts.

180. SEC. 5. That each and every person who shall maliciously or wilfully disfigure, mutilate, break down or destroy any guidepost erected, or that shall hereafter be erected as aforesaid, in any of the townships in this state, shall pay a penalty of ten dollars for each and every such offence, to be recovered by an action of debt before any justice of the peace of the said county.

An act in relation to the powers of commissioners appointed to purchase toll roads in this state.

P. L. 1876, p. 220.

Approved April 19, 1876.

Preamble.

WHEREAS, in one or more counties of this state commissioners have been heretofore appointed by acts of the legislature to purchase certain turnpike, plank or macadamized roads; and whereas, said commissioners allege that they have been seriously embarrassed and delayed by reason of defects in the acts appointing them, in the performance of the duties which they have been sworn to execute, whereby considerable unnecessary expense has been incurred; and whereas, it is desirable that said commissioners should be enabled to discharge their duties with all convenient dispatch; therefore,

Commissioners to fill any vacancy in the board.

181. SEC. 1. That where commissioners have been heretofore appointed in any county of this state, by acts of the legislature, not heretofore repealed with authority to purchase any turnpike, plank or macadamized road, such commissioners shall constitute a board, and shall have power to fill any vacancy occurring by reason of the death, resignation, disability or refusal to serve of any commissioner.

General powers.

182. SEC. 2. That such board of commissioners shall have power, by the votes of a majority of all the commissioners for the time being, to establish rules for its proceedings, to appoint a president from its own members, and to employ and fix the compensation of a secretary, counsel, and such other agents as may be necessary to enable it to speedily carry out the purposes for which it was appointed; any notice required to be published or given by such commissioners shall be as valid and effectual in law, when signed by said president and secretary, as if signed by each and all of said commissioners.

Per diem allowance and expenses, how paid.

183. SEC. 3. That the per diem allowance of said commissioners heretofore fixed by law, and the compensation of their officers and agents, and their other expenses, heretofore or hereafter incurred, shall be paid, from time to time, by the county collector of the county in which such commissioners reside, upon the order of the president and secretary aforesaid.

When lawful to buy one or more toll roads.

184. SEC. 4. That where said commissioners have been heretofore authorized to buy more than one toll road in the county in which they reside, they shall not be obliged to buy more than one such road; but it shall be lawful for them, by the votes of a majority of all their members, for the time being, to buy any one or more of the toll roads they were authorized to purchase.

Purchase to be paid by direct tax.

185. SEC. 5. That in case any toll road or toll roads should be purchased in any county under and by virtue of any acts of the legislature, it shall be lawful for the board of chosen freeholders of such county to pay for

the same by a temporary loan, to be paid by direct tax, in the year following such purchase, instead of by the issue of bonds, if such board shall prefer so to do.

An act in relation to turnpike roads.

Approved April 21, 1876. P. L. 1876, p. 382.

186. SEC. 1. That whenever the directors of any turnpike company, upon which turnpike road have been laid, by authority of law, the rails of a railroad company operated by steam, shall apply to the court of common pleas of any county, or to the justices of the supreme court of this state, as the case may require, for the appointment of surveyors of the highways to vacate said turnpike road, or any portion of the same, then and in such case the same proceedings shall be taken and had as are taken and had in reference to the vacation of any public road; and if such turnpike road, or any part thereof, shall be vacated upon said proceedings, the right of way of the public over such lands, within the limits of such turnpike road, as a turnpike, shall be extinguished; *provided, nevertheless*, that all other easements over said lands shall continue, and the said turnpike company shall not be divested of the title thereto; *and provided further*, that it shall be the duty of the surveyors of the highways appointed in such case to assess and appraise the damages which any owner or owners of lands abutting upon said turnpike road may sustain by reason of such vacation, which damages shall be paid by said company upon demand, and before the easement of the right of way over such as a turnpike shall be extinguished, and either party may take proceedings in the nature of an appeal, as in the case of assessment of damages for the opening of a public road.

Proceedings for vacating turnpike road in certain cases.

Proviso.

An act to prevent injury to roads.

Approved April 9, 1875. P. L. 1875, p. 577.

187. SEC. 1. That no person shall use on any road leading from the steep rocks of the Palisades to the Hudson river, in the county of Bergen, in this state, any drag or other attachment under the wheel of any vehicle, whereby such wheel or attachment or other part of the vehicle shall drag instead of rolling over said road, excepting a proper brake, to be applied to the wheel or wheels to restrain the speed thereof on an incline, and no part of such brake shall touch the ground, nor stop the revolution of any wheel; and any person wilfully offending against any provision of this act shall be deemed guilty of a misdemeanor, and on conviction shall be punished by fine, not exceeding twenty dollars.

Vehicles to have brakes on road leading from Palisades.

Penalty for violation of this act.

Salaries.

1. Compensation of certain officers.

Governor.
Comptroller.
Treasurer.
Attorney General.
Adjutant and Quartermaster General.
Private Secretary of Governor.
Assistant Secretary of State.
Commissioners of Sinking Fund.
Superintendent of Public Instruction.
State Librarian.
Salaries, how paid.

2. Employment of assistants. Annual cost for several departments.

3. Fees of Secretary of State.

Clerk in Chancery.
Clerk of Supreme Court.

4. When act to take effect.

5. Salary of governor in lieu of all fees.

6. Fees of governor for licenses, etc., to be paid to treasurer.

7. Per diem of common pleas judges.

8. Per diem of criers of county courts.

9. Salary of chancellor, chief justice and justices of supreme court.

10. Salary of clerks of grand juries.

11. Compensation of officers of assembly.

12. Compensation of officers of senate.

13. Repealer.