

An act to prohibit the riparian commissioners from granting any special oyster rights or privileges in Delaware bay.

P. L. 1894, p. 309.

Approved May 15, 1894.

Commissioners not to grant exclusive right to plant or take oysters in Delaware bay.

55. SEC. 1. That the riparian commissioners shall not have the right or power, in the name of the state or otherwise, by deed, grant, or lease, to give, grant or convey to any person or corporation the exclusive right or privilege to plant or take oysters from any part of Delaware bay.

Roads.

I. GENERAL ROAD LAW OF 1874, WITH SUPPLEMENTS.

1. APPOINTMENT OF SURVEYORS AND CHOSEN FREEHOLDERS AND THEIR PROCEEDINGS.

1. Amended by section 119.
2. Application to lay out road in two counties.
3. Road in three counties.
4. Amended by section 124.
5. How surveyors to proceed.
6. Return to be filed in fifteen days.
7. Not to be recorded for fifteen days.
8. Proceedings on caveat if road in one county.
9. If in two counties.
10. If in three counties.
11. Penalty for neglect of duty.
12. What to be quorum of surveyors or freeholders.

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

13. Surveyors to assess damages.
14. Return to be made.
15. Township liable for damages assessed.
16. Assessment if road in two or more townships.
17. Proceedings to review assessment.
18. No assessment in favor of applicant.
19. Road not to be opened till damages paid.
20. Notice of re-assessment.
21. Laying out or altering of road may be reviewed.
22. Suit for damages assessed.
23. Fees.

3. ASSESSMENT OF DAMAGES IN LAYING OUT A PRIVATE ROAD.

24. Damages in case of a private road.
25. Assessment to be returned.
26. Amended by section 171.
27. Road opened when damages paid.
28. Suit for amount of assessment.
29. Fees.

4. WORKING AND REPAIRING PRIVATE ROAD, SWINGING GATES, BRIDGES, ETC.

30. How private road worked and maintained.
31. When several owners, each may have a swinging gate.
32. May make bridges.
33. Bridges considered as swinging gate.
34. Expenses of road or bridge when two or more benefited.
35. Expenses, how collected.

5. BY-ROADS.

36. Amended by section 113.

6. WORKING AND MAINTAINING PUBLIC ROADS.

37. Division assigned to overseers.
38. Duty of overseers.
39. Money for roads, how raised.
40. Overseer to account.
41. Overseer liable if township fined.
42. Persons may elect to work out road tax.
43. Roads laid over dams.
44. When owner need not repair bridge.
45. Overseer may enter lands to make and open drains.
46. Trees not to be girdled.

47. Penalty.
48. Penalty for extorting from travelers.
49. Encroachments to be removed.
50. Penalty for obstructing.
51. Inhabitants may determine how roads worked.
52. Township committee to assign district.
53. Penalty for neglect or refusal to work.
54. Overseer to keep account of labor.
55. Delinquents to make up deficiency.
56. If money not supplied, roads to be repaired by inhabitants.
57. Penalty on overseers for neglect.
58. Posts and milestones to be set.
59. Penalty for neglecting to prosecute.
60. Fees.
61. Surveyors and freeholders to act after term of office.
62. Roads dividing townships, how kept in order.
63. Commissioners' oath and duty.
64. Duty of townships.
65. Trees protected.
66. Penalty for injuring.

7. CONSTRUCTION OF SIDEWALKS.

67. Inhabitants may by vote provide for sidewalks.
68. Owner of land may make sidewalk.
69. Penalty for driving over.

8. ALTERING THE GRADE OF STREETS AND HIGHWAYS.

70. Damages for alteration of grade of road recoverable.
71. Repealer of inconsistent provisions.
72. Not to apply in certain cases.
73. Consent requisite to warrant alteration of grade.
74. Damages, by whom paid and how assessed.
75. Not to affect contracts.

9. MISCELLANEOUS PROVISIONS.

76. Amended by section 162.
77. Width of private road.
78. Vacation of certain old roads.
79. Amended by sections 160 and 167.
80. Certain roads public highways.
81. Certain other roads public roads.
82. Map or survey accepted may be put on record.
83. Applications in Cape May.
84. Construction of road, township, &c.
85. No road to be laid on lands of state.
86. Penalty.
87. Abandoned turnpikes laid out over public roads.
88. Proceedings in case of land injured by water from neglect of overseer.
89. Appeal in such cases.
90. Turnpikes, when deemed in possession of corporation.
91. Law of the road.
92. Regulation of wheel carriages.
93. Road land free from tax.
94. Between what time roads to be worked.
95. Railroad companies may alter grades of roads.
96. Landing place in Cape May.
97. Proceedings of surveyors not set aside for defect in official oath.
98. Map, return and assessment may be amended.
99. Saving clause.

10. SUPPLEMENTS.

100. After refusal to lay out road, no new application within one year.
101. Surveyors to perform duties notwithstanding term expires after appointment.
102. Overseers to keep accounts of work and labor.
103. What amounts may be paid for labor.
104. Private roads unused declared vacated.
105. Assent of owners to such vacation to be filed.
106. Fees.
107. Townships may raise money to open dedicated roads.
108. Act, how applied.
109. Where public road terminates on margin of stream, owner of private ferry may demand tolls.
110. Repealer.
111. Disputes between overseers and owners to be settled by township committee.
112. Repealer.
113. Chosen freeholders may lay out, change or alter by-road.
114. Township committee may alter boundaries of road districts.
115. Notice of first election of overseer in new district to be given.
116. Subsequent elections, how conducted.
117. Road not to be worked between October 1st and April 1st.
118. Proceedings for alteration or vacation of dedicated road.
119. Application to lay out, vacate or alter public road. Appointment of surveyors.
120. Proceedings when surveyors have neglected to perform their duty. Appointment of other surveyors.
121. Amended by section 133.
122. Money for repairing roads with gravel, &c., how raised.
123. Repealer.
124. Proceedings for laying out a private road.
125. Township committees in second-class counties may notify overseers to remove rubbish.
126. How notice served. How rubbish removed on neglect of overseer.
127. Amended by section 141.
128. Amended by section 142.
129. Overseer to give notice to assessor of sum fixed for improving roads.
130. Overseers may use broken stone in repairs.
131. Repealer.
132. How money for maintenance of sidewalks may be raised in certain townships.
133. Township may appropriate money for crushed stone, &c., for public roads.
134. Roads unused or unworked for fifteen years from date of dedication vacated.
135. County clerk to file and record assent of owners to such vacation.
136. Fees.
137. Act not applicable to certain municipalities.
138. Proceedings for altering a public road by relaying it in a new place, &c. Consent of landowners and township committee required.
139. On application of owners, township committee may vacate streets.
140. Persons aggrieved may appeal.
141. When township fails to raise money for improving roads, special election may be called in each road district.
142. Voters to determine sum to be expended in district.
143. Repealer.
144. Township committee to have full supervision of all roads and may appoint road superintendents.
145. May procure machinery, &c., and purchase gravel pits and stone quarries.
146. May pledge credit of township for loans before tax is collected.
147. Road taxes, how collected.
148. Township committee to publish estimate of amount of money advisable to be expended on roads.
149. Township cannot raise more than the estimate.
150. Amended by section 157.
151. Persons may construct sidewalks along their lands.
152. Penalty for driving over sidewalks.
153. Repealer.
154. Power of freeholders to determine whether by-road has been obstructed.
155. Overseer to present itemized bill to township treasurer.
156. Repealer.
157. Provision respecting the voluntary raising of money by landowners and others for road improvement.
158. Certain streets and avenues not opened or worked for fifteen years vacated.
159. Assent of owners to such vacation to be recorded by county clerk.
160. Amended by section 167.
161. Repealer.
162. Width of public roads.
163. Dedicators of lands for roads may alter the course thereof.
164. Amended by section 169.
165. Act applies only to township roads.
166. Amended by section 170.
167. Restrictions as to narrowing or altering streets in cities, towns or villages.
168. Proceedings to vacate part of public road with consent of landowners and township committee.
169. What portion of road altered by dedicators shall be vacated.
170. When act to take effect.
171. Proceedings where landowner or applicants are dissatisfied with assessments made by surveyors on laying out a private road, &c.
172. Sidewalks not to exceed five feet in width.

II. SUPPLEMENTS TO ROAD ACT OF 1846 STILL IN FORCE.

173. Assessment and collection of road tax.
174. Election of commissioners of highways.
175. Taxes to be paid over to commissioners.
176. Proportion of cities, boroughs and towns.
177. Election of overseers of roads.
178. Overseer to advertise for proposals for working roads.
179. District aggrieved may appeal.
180. Manner of repairing roads.
181. Inhabitants of district to furnish gravel.
182. Limitation of assessment.
183. Removal of obstruction.
184. Roads to be scraped.
185. Roads along streams or rivers.
186. Compensation of surveyor.
187. Assessment of damages.
188. Copy of return to be served on township clerk.
189. Collection of assessments.
190. Review of assessments.
191. Part of assessment may be laid on township.
192. Damages for want of repairs of road.
193. Damages for want of repairs to bridges on public roads.
194. Repealer. Act not to apply to certain counties.
195. Return of surveyors, when defective or erroneous, may be amended.
196. Amended return may be again amended.
197. Surveyors may make amended return though term expired.
198. After determination of *certiorari* to remove appointment of freeholders to review finding of surveyors, common pleas may make new appointments.
199. When report of freeholders set aside, court may make new appointment.
200. Act extended to streets in any municipal corporation.
201. Amended by sections 208 and 212.
202. In proceedings for alteration of short sections of road, notice to be served.
203. Notice to be given of meeting of surveyors.
204. Meeting and duties of surveyors.
205. Papers to be filed with county clerk.
206. Review of proceedings.
207. Repealed by section 209.
208. Amended by section 212.
209. Repealer.
210. Overseers to remove briars, &c., during months of August and September.
211. Broken stone or gravel may be procured for repairs.
212. Proceedings to alter or vacate short sections of public roads.
213. Repealer.

III. COUNTY ROADS FORMERLY CONTROLLED BY PUBLIC ROAD BOARDS.

214. Name by which they shall be known.
215. Mode of appointing.
216. Election of officers.
217. Proceedings for laying out roads.

218. Rights and powers of board.
 219. May take lands, buildings, &c.
 220. Survey and map to be made and filed.
 221. Board to establish width of road and sidewalks.
 222. May plant trees and keep road in repair.
 223. May enter upon lands, &c.
 224. Work to be done by contract.
 225. Horse or dummy railroad not allowed on roads.
 226. Assessment for costs to be according to benefit.
 227. What may be included in road.
 228. Road may be constructed in sections.
 229. Compensation to owners to be ascertained by commissioners.
 230. Parties interested may be heard.
 231. Majority of commissioners necessary to any act.
 232. Compensation for damages not expressly provided for, how ascertained.
 233. If parties cannot be found, payment to be made into court.
 234. Interest on assessments, when to become due.
 235. Assessments to be a lien. Sale.
 236. Notice of expiration of time limited for redemption.
 237. Mistake in name of owners not to invalidate assessment.
 238. Lease of premises purchased.
 239. Costs to be assessed on lands benefited.
 240. Money to be paid by public at large to be raised by tax.
 241. Board may borrow money and issue bonds.
 242. Clerk of board to transmit statement of bonds, &c.
 243. Certificate of indebtedness.
 244. Member or officer of board not to be interested in contract.
 245. Treasurer and other employes to give bond.
 246. Board may have common seal.
 247. Make rules and regulations.
 248. Proceedings, minutes, &c., to be matters of public record.
 249. Copies of reports and assessment maps to be transmitted to county collector.
 250. Board may sue and be sued.
 251. Commissioners of sinking fund. Duties.
 252. Rules of construction of act.
 253. Repealer.
 254. Vacancies in board of commissioners, how filled.
 255. Previous consent of chosen freeholders to be had for opening roads, &c.
 256. What expense for repairs may be incurred.
 257. Report to be made to chosen freeholders.
 258. Repealer.
 259. Compensation of members of public road boards.
 260. Repealer.
 261. Who to be commissioners of public road boards.
 262. Repealer.
 263. Roads macadamized by Telford process may be maintained at county expense.
 264. Public road boards may maintain certain roads previously macadamized by townships.
 265. Costs to be assessed and paid as provided by law.
 266. Act deemed public.
 267. Board of chosen freeholders vested with powers and duties of public road boards.
 268. Public road boards abolished.
 269. Compensation to members of public road board.
 270. Compensation of officers and employes of public road board.
 271. Board of chosen freeholders to complete all contracts.
 272. All laws applicable to public road boards shall apply to freeholders.
- IV. COUNTY ROADS GENERALLY.
273. Amended by section 276.
 274. No damages for changing grades of road to be incurred by board of freeholders.
 275. Liability for safe keeping of prisoners put at work on roads.
 276. Board of freeholders authorized to work prisoners on roads.
 277. Freeholders to keep in repair new roads connecting portions of former toll road.
 278. Freeholders may by ordinance prohibit persons from locking wheels on macadamized roads.
 279. Freeholders may improve certain roads formerly toll roads.
 280. Freeholders may expend certain sum annually for repairs.
 281. May light roads for four miles from court-house.
 282. May make annual appropriation for lighting roads, &c.
 283. Freeholders may lay out and maintain public road in first-class counties.
 284. May take lands upon making compensation.
 285. Manner of laying out road. Map to be filed.
 286. Notice of filing map to be given.
 287. May alter surveys, &c., after filing map.
 288. May revise, alter, &c., location of road. Proceedings for condemnation of lands.
 289. Proceedings in case of appeal.
 290. Estates by mortgage, &c., to be appraised.
 291. Bonds may be issued to pay awards.
 292. Bonds to be paid by tax.
 293. Power to lay out road and improve the same. May improve sidewalks.
 294. Work to be done by contract.
 295. No railroad allowed thereon.
 296. Costs and expenses of road to be raised by tax.
 297. Certificates of indebtedness may be issued. When and how paid.
 298. Entire cost not to exceed \$1,000,000.
 299. Board to maintain and keep road in repair.
 300. May issue bonds to pay costs of road or certificates of indebtedness.
 301. Bonds to be paid by tax.
 302. Accounts of expenditures on road to be kept separate from other accounts.
 303. May employ officers, surveyors, &c.
 304. May establish rules and regulations, &c.
 305. Proceedings, maps, &c., matters of public record.
 306. Upon completion of road, copies of all papers relating thereto to be filed with county clerk.
 307. Certain words, how construed.
 308. Act not applicable until accepted by voters.
 309. Notice to be given of application to construct highway, &c., by boards of freeholders in any two adjoining counties.
 310. Boards to consider estimates if decision of two-thirds of each board is favorable.
 311. Notice to be given for proposals to construct highway.
 312. Boards empowered to construct highway.
 313-315. These sections unconstitutional.
 316. Board of freeholders may order election to determine whether public road through the county shall be constructed.
 317. Manner of conducting election.
 318. Map and survey to be filed. Width of road.
 319. Notice of filing of maps and time and place of meeting to consider the question to be published.
 320. Board may alter or revise maps and surveys.
 321. Board may revise and correct map and location of road. Proceedings for condemnation of land.
 322. Proceedings in case of appeal.
 323. Mortgages, leases, &c., to be appraised and paid.
 324. Bonds may be issued to pay awards or assessments of damages.
 325. Bonds to be paid by tax. Sinking fund to be established.
 326. Board to have power to lay out and construct road and establish width of carriage-way and sidewalks.
 327. Work to be done by contract.
 328. No railroad allowed thereon.
 329. Costs of road to be raised by tax.
 330. Certificates of indebtedness may be issued.
 331. Entire cost not to exceed \$1,000,000.
 332. Board to keep road in repair.
 333. Bonds may be issued to pay costs of road or certificates of indebtedness. Bonds, how sold.
 334. Bonds to be paid by tax.
 335. "Public road account" to be kept.
 336. Board may employ officers, engineers, &c. Member not to be interested in contracts, &c.
 337. Rules and regulations may be adopted.
 338. Proceedings to be matter of public record.
 339. Copies of maps, &c., to be filed with county clerk.
 340. Certain words, how construed.
 341-343. These sections unconstitutional.
 344. Board of chosen freeholders may submit question of construction of road through county to voters.
 345. Manner of conducting election.
 346. If result of election be in favor of road, board may lay out the same. Map and survey to be filed.
 347. Notice of filing map and of meeting of board to be given.
 348. Board may alter survey and map or abandon road.
 349. When board may lay out road. Proceedings for condemnation of land.
 350. Proceedings in case of appeal.

351. Money for purposes of act may be raised by bonds.
352. Bonds to be paid by tax.
353. Board to establish width of carriage-way and sidewalks. Manner of constructing road.
354. Work to be done by contract.
355. No railroad allowed thereon.
356. Board may issue certificates of indebtedness. Certificates, how paid.
357. Entire cost not to exceed \$1,000,000.
358. Board to maintain and light road.
359. Board to keep public road account.
360. Board may employ officers, engineers, &c. Member not to be interested in contract, &c.
361. Chief engineer and his assistants, how appointed. Salary of chief engineer.
362. Board may establish rules and regulations.
363. Proceedings to be matter of public record.
364. On completion of road, maps, &c., to be filed with county clerk.
365. Certain words, how construed.
366. Provision concerning appointment of commissioners to condemn lands, &c.
367. Buildings may be taken or required to be removed.
368. Proceedings where it is deemed necessary to fix location of portion of road in advance of fixing the whole line thereof.
369. Amended by section 385.
370. Board may acquire lands by gift, &c., in certain cases.
371. Provision for crossing private property above or below the surface thereof.
372. Board shall adopt rules whereby sewer connections shall be made in public road.
373. Proceedings for obtaining sewer connections.
374. Provisions concerning extension of water-supply system beneath surface of road.
375. Provisions concerning extension of gas-pipe system beneath surface of road.
376. Permission to be obtained from board before sewer, water or gas-pipe systems are extended.
377. Foregoing provisions to apply when pipes, &c., are laid across the road.
378. Penalty for violating rules of board.
379. Authority of justices of the supreme court.
380. Repealer.
381. Provision for further improvement of roads.
382. Work to be done by contract. Limitation of expense.
383. Bonds may be issued.
384. Repealer.
385. Provision concerning construction of roads and branches to connect with convenient points in cities, &c.
386. Amended by sections 393 and 395.
387. Boards may grade, pave and improve county roads. Work to be done by contract.
388. Amended by sections 394 and 396.
389. Expense of improvement, by whom paid.
390. Amended by section 401.
391. County roads extending through municipalities to be kept in repair by local authorities.
392. Act not to repeal Essex public road board act.
393. Amended by section 398.
394. Amended by section 396.
395. Repealer.
396. Provision concerning issue of bonds by board of freeholders for grading, paving or improving roads.
397. Repealer.
398. Board of chosen freeholders may acquire, improve and maintain public roads.
399. Repealer.
400. If any township issue bonds for road improvements it shall not in certain cases be liable for any part of cost of improvement made by board of freeholders.
401. Limit of bonds that may be issued in second-class counties.
402. Roads in second-class counties to be improved with money obtained from sale of bonds.
403. Repealer.
404. Board may employ engineer to survey county roads, &c. May also appoint inspector.
405. Repealer.
406. Board of freeholders may contract for materials for improving roads.
407. Repealer.
408. Certain counties authorized to issue bonds to a sum not exceeding \$250,000.
409. Repealer.
410. Governor, with consent of senate, to appoint state commissioner of public roads. Term of office.
411. Duties of commissioner.
412. His compensation.
413. Board may cause specifications and survey to be made for permanent improvement of road. Duties of state commissioner. Advertisement for bids. Contract awarded.
414. State commissioner to appoint a supervisor. His salary and duties. Payments on account to contractor.
415. Supervisor to make itemized statement of cost.
416. One-third of cost to be paid out of the state treasury.
417. Board of freeholders to certify amount to be raised by county to county board of assessors.
418. When board may issue bonds. Conditions and sale of bonds.
419. Road to be a county road. Appointment and duties of county supervisor. Duties and power of board.
420. Board shall improve roads on petition of property-owners.
421. Commissioners to be appointed to assess benefits. Notice of their meeting to be published.
422. Oath of commissioners.
423. Proceedings before commissioners.
424. Commissioners to make report of assessments.
425. Court shall appoint a hearing of objections on coming in of report. Proceedings for confirmation of report.
426. Limitation of time for allowing *certiorari*.
427. Assessments to be a lien on lands.
428. Property-owners to be notified of amounts of assessments.
429. Proceedings for enforcing collection of assessments.
430. Proceedings where property-owners are willing to contribute the whole expense of improving any section of a road.
431. Repealer.
432. Board of freeholders to maintain improved roads that have been moved from their original position, &c.

V. TOWNSHIP ROADS AND STREETS.

433. Commissioners appointed by circuit court in certain cases. Benefits for street improvements in townships.
434. Assessments payable in annual installments.
435. Commissioners to take oath.
436. To make report and give notice to parties.
437. Assessments to be a lien on lands.
438. Deduction allowed for payment of assessments in advance.
439. Collector to collect assessments and give notice.
440. On failure to pay assessments, land to be sold.
441. Appeal from report of commissioners.
442. Township committee may issue bonds.
443. When township committee may proceed to pave or macadamize streets or roads.
444. Grades, how fixed.
445. Kind and quality of pavement, how determined.
446. Kind, quality and dimensions of curbing.
447. Contracts for paving or macadamizing.
448. Assessment of benefits.
449. Assessment, how made.
450. Curbs to be laid and relaid.
451. Assessments for curbing.
452. Copies of assessments to be filed in county clerk's office.
453. Assessments to be a lien.
454. Duties of county clerk.
455. On failure to pay assessments, lands to be sold.
456. For what term to be sold.
457. Limitation of term.
458. Certificates of sale to be delivered.
459. Certificates to be recorded by county clerk.
460. Redemption of lands.
461. On failure to redeem, deed to be delivered.
462. Notice to be given to mortgagee.
463. Fees of township committee.
464. Lands may be bought by township.
465. Expiration of term of township committee not to affect their powers.
466. Township committee to account for assessments collected.
467. Satisfaction of assessment recorded in county clerk's office.
468. Expenses of advertising to be paid by township.
469. In what newspapers notices to be published.
470. Township committee not to have control of roads within towns, boroughs or cities.
471. Townships may vote to establish grades for public roads.

- 471a. Grades to be established by ordinance.
472. Township committee not to supervise road expenses in boroughs.
473. Repealer.
474. Legal voters of township may place all roads under control of township committee.
475. Duties of township committee in such cases.
476. When township committee to enter upon discharge of duties.
477. Overseers of roads not to be elected after such action.
478. Road tax in certain townships, to whom paid.
479. Repealer.
480. Proceedings where any road district having public road board has omitted to elect road commissioner.
481. Repealer.
482. Legal voters of township may direct all roads to be placed under control of township committee.
483. Upon such action road overseers not thereafter to be elected.
484. Proceedings when it is desired to vote upon such resolution at a special town meeting.
485. Legal voters may direct the issue of bonds for improving streets and roads. Election to be had.
486. Manner of conducting election.
487. Manner of conducting special election.
488. Act not to affect road districts.
489. Provision upon condemning lands, &c., in certain townships.
490. Repealer.
491. Townships having street commissions may vote money for road improvements.
492. Work to be done by contract.
493. Repealer.
494. Proceedings for altering grades of streets, &c., in townships.
495. Repealer.
496. Proceedings for improving streets in townships where owners have presented petition therefor.
497. Township committee may advertise for bids and award contract.
498. May appoint inspector over work and materials.
499. Committee to notify property-owners before accepting the work.
500. Appointment and proceedings of commissioners to assess benefits. Confirmation of assessment by township committee. Proceedings to enforce collection of assessments.
501. Rate of interest on overdue assessments. Minutes of township committee, &c., evidence of statements therein contained.
502. Township committee may issue improvement certificates.
503. Bonds may be issued for redemption of certificates.
504. Compensation of commissioners.
505. Costs to be allowed on writ of *certiorari*. Practice on defective return to writ of *certiorari*.
506. Proceedings for new assessment when former assessment is set aside. Limit of time for allowing *certiorari*.
507. Procedure where injunction or *certiorari* is allowed.
- VI. MISCELLANEOUS ACTS.
508. Proceedings to lay out road to and from railroad depots.
509. Repealer.
510. By whom road to depot to be opened when there are no road commissioners.
511. Penalty for failure of overseer to open roads.
512. Townships to erect guide-posts at crossings.
513. Overseers of highways to report when guide-posts are necessary.
514. On receiving report, township committee to cause posts to be erected.
515. Penalty for neglect.
516. Penalty for injuring posts.
517. Vehicles to have brakes but not drags on road leading from Palisades.
518. Commissioners to purchase turnpike roads, &c., may fill vacancy in boards.
519. General powers.
520. Per diem allowance and expenses, how paid.
521. When lawful to buy one or more toll roads.
522. Purchase to be paid by direct tax.
523. Proceedings for appointment of new commissioners to purchase turnpike roads, &c.
524. Proceedings for vacating turnpike road in certain cases.
525. Penalty if macadamized road company fail to keep road in repair.
526. Road taxes paid to such company, how applied.
527. Proceedings when road taxes have not been properly applied.
528. Penalty for receiving excessive tolls.
529. Repealer.
530. When road company may sue for road taxes assessed.
531. Duplicate receipts to be given for road taxes paid.
532. Public road board may macadamize on either side of railway tracks.
533. Cost of such macadamizing, how assessed and paid.
534. Repealer.
535. Amended by section 538.
536. Supplied by section 538.
537. Amended by section 538.
538. District election of overseers in certain townships, when to be held.
539. Public road board, township committee or railroad corporation may construct road through tunnel.
540. Public road not to be laid out across railroads within 500 feet of any other road.
541. Township commissioners of highways not entitled to compensation.
542. Repealer.
543. Public road boards or commissions in adjoining townships may lay out roads, &c.
544. Persons aggrieved may appeal to common pleas.
545. Assessments to be a lien on lands.
546. Employment of surveyors, engineers, &c.
547. Proceedings for collection of assessments.
548. Organization of joint road board.
549. How roads shall be maintained.
550. Adjustment of road taxes and assessments.
551. Application for appointment of arbitrators by supreme court.
552. Appointment and proceedings of.
553. Report and compensation of.
554. Repealer.
555. Amended by sections 559, 562, 563 and 564.
556. Salaries of overseers.
557. Duties of overseers.
558. Repealer.
559. Amended by sections 562, 563 and 564.
560. Road districts may vote moneys for macadamizing roads, &c.
561. Repealer.
562. Amended by sections 563 and 564.
563. Election of road overseers in certain townships.
564. Election of road overseers in certain townships.
565. Repealer.
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I. General road law of 1874, with supplements.

An act concerning roads.(1)

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

Revision—Approved March 27, 1874. R. S. 515, § 2.

1. [Amended by Sec. 119, *post.*]
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 between or in two counties.
R. S. 515, § 3.

(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; *Ib.*, p. 428—Ocean township, Monmouth. P. L. 1856, p. 141—Ocean and Manalapan townships, Monmouth; *Ib.*, p. 142—Blairstown township, Warren, and New Providence and Union townships, Essex (now Union); *Ib.*, 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. 1863, p. 696). P. L. 1861, p. 179—second assembly district, Camden county; *Ib.*, p. 474—New Barbadoes township, Bergen. P. L. 1862, p. 11—Piscataway township, Middlesex, and Middletown township, Monmouth; *Ib.*, p. 196—Tewksbury township, Hunterdon; *Ib.*, p. 271—Hackensack and Washington townships, Bergen. P. L. 1863, p. 187—Middletown township, Monmouth. P. L. 1865, p. 254—New Hanover township, Burlington; *Ib.*, p. 453—county of Cape May; *Ib.*, p. 769—Piscataway township, Middlesex. P. L. 1867, p. 611—Plainfield township, Union. P. L. 1868, p. 414—Middletown township, Monmouth; *Ib.*, p. 1085—Warren township, Somerset; *Ib.*, p. 1174—Franklin township, Gloucester. P. L. 1869, p. 53—Linden township, Union county; *Ib.*, p. 115—Hackensack township, Bergen; *Ib.*, p. 830—West Orange township, Essex; *Ib.*, p. 1031—town of Somerville, Somerset; *Ib.*, p. 1104—Hackensack township, Bergen; *Ib.*, pp. 1129 and 1362—Livingston township, Essex. P. L. 1870, pp. 220 and 508—Hackensack township, Bergen; *Ib.*, p. 163—Shrewsbury township, Monmouth; *Ib.*, p. 669—Warren township, Somerset; *Ib.*, p. 895—Plainfield township, Union. P. L. 1871, p. 209—county of Middlesex; *Ib.*, p. 598—Harrington township, Bergen; *Ib.*, p. 605—Shrewsbury township, Monmouth; *Ib.*, pp. 613 and 1513—Lodi township, Bergen; *Ib.*, p. 758—Dover township, Ocean; *Ib.*, p. 784—Wayne and Landis townships, Cumberland; *Ib.*, p. 1260—Randolph township, Morris; *Ib.*, p. 808—Hackensack township, Bergen; *Ib.*, p. 1177—Manchester townships, Passaic; *Ib.*, p. 786—Union township, Union; *Ib.*, p. 808—Hackensack township, Bergen; *Ib.*, p. 1169—East Orange township, Essex; *Ib.*, p. 1372, 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—Maurice River township, Cumberland; *Ib.*, p. 472—Millburn 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. 656—Warren county; *Ib.*, p. 679—Hidgefield township, Bergen; *Ib.*, p. 498—Montclair township, Essex. P. L. 1875, p. 846—county of Warren; *Ib.*, p. 441—Plainfield township, Union; *Ib.*, p. 285—North Bergen township, Hudson; *Ib.*, p. 283—Upper Penn's Neck township, Salem; *Ib.*, pp. 310 and 521—Paldades township, Bergen; *Ib.*, p. 386—Jackson township, Ocean; *Ib.*, p. 591—Caldwell township, Essex.

Application.
Advertisement.

Appointment.

Road in three
counties.
P. L. 1847, p. 119.
Amended.

How surveyors
to proceed.
Ib., § 5.
Amended.
P. L. 1847, p. 119.
Amended.

road necessary, on any part of the line between two counties, (a) 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.

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 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. [Amended by Sec. 124, *post.*]

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

(a) 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, *663.

shall be made, signed and 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. (a)

(a) 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. *Ib.* 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. & E. R. E. Co.*, 4 C. E. Gr. 396, 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 Bushkirk*, 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 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 seventy-ninth 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. *Ib.* A billiard saloon attached to a hotel, 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 Har. 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, purports 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 Har. 105. *Shough, Ex parte*, 1 Har. 264. 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. *Ib.* 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. *Ib.* 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, Charter 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. *280. 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. *Ib.* *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. Clement*, 2 Har. 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. 394. 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. *Ib.* 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. *Ib.* 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. *Ib.* It is not necessary that the return should show where the road laid out crosses the township line. *Ib.* 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, *Ib.* 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. *Ib.* 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 Har. 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. *Ib.* In laying out a private road, the surveyors must certify that they had regard to the public and private convenience. *State, Farmley v. White*, 6 Vr. 208. 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. 518. 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. *Mount Olive v. Hunt*, 22 Vr. 274. 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 words "improvements" means inclosures or inclosed fields—lands fenced in, as distinguished from wastes or commons. *State v. Hopping*, 3 Har. 423. It is not necessary that the map should show the lines, and the courses and distances of the several sides of every inclosed 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 inclosures, and the names of the owners or reputed owners of the several lots. *Ib.* *State, Taylor v. Hulick*, 3 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. 467. 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 Har. 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*, 4 Zab. 736. 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

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 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.

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. *Id.* If the application is to lay a road running a northwesterly direction, and one of the many courses of the road, as laid, is southwesterly, this is not a sufficient variance to set aside the 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. 383. A mere clerical error in the name of one of the landowners 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. *Id.* 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. *Id.* 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 21st, 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 center 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 center or upon either side of the road. *Id.* 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*, Case 228. 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 Har. 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 the order of the court. *State v. Miller*, 3 Zab. 483. Nor on the ground that the appointment of one of the surveyors was not made under hand and seal of township committee. *State, Garrabrant 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 Zab. 801. *State v. Barnes*, 1 Gr. 263. *Hoagland v. Culbert*, Spen. 387. *State v. Davis*, 1 Gr. 10. *Road in Middlesex*, 2 South. *866.

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 Har. 271. *State v. Green*, 3 Gr. 88; case reversed May 21st, 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 *alunde*, 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 Har. 432. Nor the error of the township clerk in filing copies instead of the originals. *Id.* 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. Willingham Road*, Case 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 Har. 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*, 5 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 Har. 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. Cowover*, 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. *Id.* 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 \$8,000, and the damage awarded but nominal, does not show that the prosecutor has been injured. *State, Vanderbeek v. Blauvelt*, 5 Vr. 250, 263. Nor the fact that the road is laid in part over a highway already dedicated to public use. *Id.* 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. Stiles*, 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 *alunde* 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 Har. 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. Eastman*, 10 Vr. 282. Where the surveyors have certified that the statutory requirements have been observed by them, their judgment will not be reviewed on *certiorari*, either as to location or as to the necessity for the road. Where an applicant offered to pay all damages and expenses and the township committee were thereby induced to offer no opposition to the road, the return of the surveyors was set aside. *Hampton v. Poland*, 21 Vr. 367.

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

Time allowed to enter caveat.
Ib., § 7.

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; (a) 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. (b)

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

Application for freeholders and appointment.

Notice.

Oath.

Certificate.

Record.

New application.

(a) Surveyors may be appointed to make an alteration in a road within one year after the road has been laid out. *Smock v. Vanderveer*, 12 Vr. 303.

(b) 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, 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 Har. 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, Hubbard v. Reckless*, 9 Vr. 393. *State v. Waldron*, 2 Har. 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 Har. 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 Har. 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 Har. 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, Hubbard v. Reckless*, 9 Vr. 393. *State v. Northrop*, 3 Har. 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

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

Application and appointment of freeholders.

Notice.

Oath.

Certificate.

Record.

New application, when.

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, on 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

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. *Ib.* 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 days after the judgment setting aside the first appointment. *Ib.* 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 Har.* 91, 94. If stated on the face of their certificate, it is *prima facie* sufficient; if not so stated, proof *abundante* must be made. *Ib.* 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. *Ib.* 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, Case* 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. *Ib.* "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. *Ib. 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. *Ib.* 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.* 23. 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. *Ib. State v. Potts, 1 South.* *347. *Matter of Highway, Pen.* *1033. 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.

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; 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.

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.

Proceedings on caveat if road in three counties. P. L. 1847, p. 119.

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.

Penalty for neglect of duty. R. S. 515, § 11.

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.

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

Proviso.

May adjourn.

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

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)

Surveyors to assess damages. P. L. 1860, p. 601.

(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. Bunyon*, 4 Zab. 258. *State, Price v. Bennett*, 1 Dutch. 319. *Kearnsley v. Gibbs*, 15 Vr. 169. *Mount Olive v. Hunt*, 22 Vr. 274. 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. 383. It is not necessary to assess the damages for land taken for a public road of a landowner 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

Return to be made.
P. L. 1850, p. 162,
§ 2.

Township liable for damages assessed.
Ib., § 3.

Assessment if road in two or more townships.
Ib., § 4.

Proceedings to review assessment.
Ib., § 5.

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.

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)

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.

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

it appear by the return that they owned the land as joint tenants or tenants in common. *State, Kellogg v. Fisher, 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. 208.* In laying out a highway over lands of anyone not an applicant therefor, the surveyors must certify their adjudication, as to the damages sustained by such landowner, together with their return. *State, Troutman v. Cooper, 3 Zab. 381.* It is error, in assessing the damages sustained by landowners 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. *Ib.* 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. *Ib.* In a road case, an assessment of damages made in behalf of heirs or devisees by that designation alone, is neither in consonance with 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, if 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. Cake, 4 Zab. 116.* Since the supplement to the road act of March 1st, 1850, if a road is laid out by surveyors without adjudicating as to the damages which each landowner 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. Evereti, 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 landowner 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 landowner 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. *Ib.* An assessment of surveyors will not be disturbed in this court, merely on the ground of its inadequacy as a compensation to the landowner; 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 landowner 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 defense 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, 3 Vr. 23.* The assessment against landowners must be in proportion to benefits. *State, Airey v. Cannon, 4 Vr. 218.* The surveyors cannot assess any part of the damages of landowners in one township to the landowners in another. *Ib.* 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. *Ib.* *State, Kelley v. Garretson, 3 Zab. 388.* The constitutional provision requiring compensation to be made for private property taken for public use, does not apply to lands taken for streets within municipalities, except to the extent that such compensation is required by their respective charters. The compensation so prescribed is the measure of the landowner's legal right, whether it be just or unjust. *Simmons v. Passaic, 13 Vr. 619.* Where the surveyors of the highways have, in the legal exercise of their judgment, assessed benefits, the assessments will not be reviewed on *certiorari* if the prosecutor has stood by until the completion of the work. *Hildreth v. Rutherford, 23 Vr. 501.*

(a) The town committee will be ordered to pay the damages to the landowners, so that a road may be opened. *Minhinnach v. Hannes, 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.* *Whitnack v. Bernards, 10 Vr. 60.*

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 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. (a)

Appointment of freeholders.

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.

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 appropriation thereof to the purpose aforesaid. (b)

Damages in case of private road. *P. L. 1854, p. 169, § 1.*

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 assess-

Assessment to be returned. *Ib.*, § 2.

(a) The provision of this section makes legal the report of an assessment made by two of the three freeholders appointed to review and correct the same. *Eatontown v. Wolley*, 20 *Vr.* 886.

(b) In assessing the damages for lands taken for private roads,

benefits and advantages to the owner are not, as in public roads, to be considered. *Crater v. Fritts*, 15 *Vr.* 374. Lands taken for private roads are intended for public use. *Klicker v. Gullbaud*, 18 *Vr.* 278.

ment 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.

26. [Amended by Sec. 171, *post.*]

Road opened
when damages
paid.
Ib., § 4.

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.

Suit for amount
of assessment.
Ib., § 5.

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.

Fees.
Ib., § 6.

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.

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

How private road
worked and
maintained.
R. S. 515, § 13.

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 offense, 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)

Swinging gate.

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

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 offense, 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.

May make
bridges.
Ib., § 15.

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.

(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 defense that he had a private way where the road in question is laid. *Ib.*

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 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 offense, 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.

Bridges considered as swinging gates.
Ib., § 16.

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.

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

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.

How collected.
Ib., § 18.

5. BY-ROADS.

36. [Amended by Sec. 113, *post.*]

6. WORKING AND MAINTAINING PUBLIC ROADS.

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 overseer or overseers of the highways to observe and conform themselves

Divisions assigned to overseers.
Ib., § 20.

to such assignments as have at any time heretofore been made in the said township. (a)

Duty of overseers.
Ib., § 21.

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)

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

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.

Overseers to
account.
Ib., § 23.

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 offense, 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.

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 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. Kleinhans*, 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. *Ib.* 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 taxpayers 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 theretofore been made. *Ib.* 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. *Ib.* If a township neglects to raise money for the roads, the overseers are required to call out the inhabitants to work them. *Ib.* The overseer has no right to dig and take away the soil of an adjacent landowner 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. 214. 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. *Ib.* 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, Whittenack v. Township Committee*, etc., 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, Whittenack 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. *Ib.* 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. *Dunster v. Smith*, 20 Vr. 150. If the roads be not repaired, the township is not liable at the suit of one who has sustained special injury thereby. *Ib.* 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. & A. E. E. Co. v. Greenwich*, 9 C. E. Gr. 217, 10 C. E. Gr. 565. The township committee cannot assign limits and divisions under the above section where the overseer has been elected by the inhabitants of the road district, after such an election during that year. *Dunster v. Smith*, 20 Vr. 150.

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

overseer may, in the first instance, be presented as aforesaid, and fined on 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)

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)

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 flood-gates 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 flood-gates, 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 flood-gates, such highway, if it go near to or over the said dam, races or flood-gates, 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

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

Roads laid over dams to be kept in repair. *Ib.*, § 25.

Under whose direction.

Duty of millers, &c.

Penalty for neglect.

(a) As to overseer's liability, see *Mendham v. Losey*, *Pen.* *347, *353. *Freeholders of Sussex v. Strader*, 1 *Har.* 103, 113. *Harris v. Moore*, *Coze* 44. *Morgan v. Monmouth County*, 2 *Dutch*, 99.

(b) In a township where roads are worked by hire, any resident taxpayer, 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. *Eyerson v. State*, 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.

dollars, to be recovered by action of debt, with costs, by the overseer of the township where the offense shall be committed, who is hereby required 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 offense was committed. (a)

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

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.

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

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 offense, 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. (b) [See P. L. 1880, p. 200, under title TOWNSHIPS, *post.*]

Trees not to be girdled. *Ib.*, § 29.

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.

Penalty. *Ib.*, § 30.

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 for extorting from travelers. *Ib.*, § 31.

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.

Encroachments to be removed. *Ib.*, § 32.

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, or 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. (c) [See P. L. 1884, p. 319, under title TOWNSHIPS, *post.*]

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

(b) That portion of the forty-fifth section which authorizes the overseer to enter upon private property and cut and make a drain is unconstitutional, it providing for the taking of private property for public use without compensation. *Ward v. Peck*, 20 *Vr.* 42. See, also, *Seaver v. Hartshorn*, 8 *N. J. L.* 32.

(c) A house built between the time of appointing surveyors, and the laying out of the road, is an encroachment. *State v. Waldron*, 2 *Har.* 889, 871. If a prior owner has encroached, the continuance by the present owner is his encroachment. *State, Clark v. Pierson*, 8 *Vr.* 128. 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. *Winter v. Mayor of Morristown*, 4 *C. E. Gr.* 48. 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 *Hol.* 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 defense in an action brought by the turnpike company to recover tolls. *Ib.* 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. *Vantilburgh v. Shann*, 4 *Zab.* 740, 744. In proceedings the word "highway" will be taken to mean a lawful public road. *Ib.* The phrase "the highway within my limits and division," sufficiently describes the road. *Ib.* It is not necessary that a commission be appointed

50. That if any person shall narrow, encroach upon, stop, or obstruct any highway, he shall, for every such offense, 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.

Penalty for obstructing.
Ib., § 33.

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.

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

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. (a)

Township committee to assign districts.
Ib., § 38.

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.

Penalty for not working on the road.
Ib., § 39.
P. L. 1870, p. 687.

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.

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

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. Morrystown*, 4 C. E. Gr. 47. In proceedings to remove encroachments, each landowner 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 landowner to show that it was not served. *Ib.* A notice to an adjacent landholder to appear, given on the day of the meeting, is not sufficient. *Lindsley v. Freeman*, 3 Dutch. 250. Where the justices and surveyors certify that they have determined that the landowner has encroached, and define the center line of the road, as originally laid out, by fixed monuments, courses and distances, give the width and place stakes along the center 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. *Vanderburgh v. Shann*, 4 Zab. 740. A simple reference to movable stakes is not sufficient. *Vanderburgh v. Shann*, 4 Zab. 746. In determining whether there is an encroachment, the surveyors and justices decide in a summary way by inspection. *Gutick v. Groendyke*, 9 Vr. 114, 115. Lands cannot be taken for the purpose of altering roads by justices and surveyors. *Ammermann v. Briggs*, 21 Vr. 114. As to the authority of justices and surveyors respecting encroachments, see, also, *Christie v. Vanderburgh*, 17 Vr. 280. *Jameson v. Hoppock*, 17 Vr. 516. *Darby v. Nash*, 23 Vr. 127. (a) See *Wallace v. Bradshaw*, 24 Vr. 315, 25 Vr. 175, 26 Vr. 117, 27 Vr. 389.

Delinquents to
make up
deficiency.
Ib., § 41.

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

Penalty on over-
seer for neglect.
Ib., § 43.

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

Prosecution for
defacing.

Penalty for
neglecting to
prosecute.
Ib., § 45.

Fees.
Ib., § 46.

Overseer.

Court.

Surveyor.
P. L. 1867, p. 148.

Freeholder.

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.

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 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. [See P. L. 1880, p. 200, under title TOWNSHIPS, *post.*]

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.

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 milestones, at the expense of the counties respectively; and if any person shall throw down, demolish, or deface any such post or stone guides or milestones, appendages, letters, or figures thereon engraved or painted, or be aiding or assisting in such offense, 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 offense has been committed, and when recovered to be applied to the use of the county.

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.

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

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

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;

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

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

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 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.

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

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. (b)

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

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.

Commissioners oath and duty.
Ib., § 49.

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.

Duty of townships.
Ib., § 50.

65. That no overseer of the highway or other persons, except the owner or owners thereof, shall cut down, willfully 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 center of the same, unless the township

Trees protected.
Ib., § 52.

(b) The description of a public road given in an act of legislation as the boundary of townships created by said act, is sufficiently certain when used in the preliminary proceedings to

divide and assign said road between the adjoining townships for repairs. Long public user may fix the true location of the road. *Marboro v. Atlantic*, 18 Vr. 259.

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 offense, 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 offense 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.

7. CONSTRUCTION OF SIDEWALKS.

Inhabitants by
vote may provide
for sidewalks.
P. L. 1851, p. 288,
§ 1.

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. (b) [See Sec. 172, *post.*]

Proviso.
P. L. 1854, p. 257.

Owner of land
may make side-
walk.
P. L. 1851, p. 288,
§ 2.

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.

Penalty for
driving over.
Ib., § 3.

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.

8. ALTERING THE GRADES OF STREETS AND HIGHWAYS.

Damages from
alterations of
grade of road
recoverable.
P. L. 1858, p. 415,
§ 1.

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. (c)

Limitation of
suit.

Inconsistent pro-
visions in city
charters repealed.
Ib., § 2.

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.

(a) See *Winter v. Peterson*, 4 Zab. 524. *Davidson v. Schenck*, 2 Vr. 174.
(b) This section does not apply to incorporated towns or cities. *Cross v. Morristown*, 3 C. E. Gr. 805, 398. *State, Twinter v. Morristown*, 4 Vr. 57.

(c) 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. 258. *Fritts v. Somerville*, 7 N. J. L. J. 90. *Latta v. Hoboken*, 19 Vr. 68, 67. *Vorrath v. Hoboken*, 20 Vr. 285. *Stretch v. Hoboken*, 18 Vr. 288.

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. (a)

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

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. (b)

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

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 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.

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

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.

Not to affect contracts.
Ib., § 6.

9. MISCELLANEOUS PROVISIONS.

76. [Amended by Sec. 162, *post.*]

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.

Width of private roads.
R. S. 515, § 1.

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. (c)

Roads in certain cases vacated.
P. L. 1859, p. 624.

79. [Amended by Secs. 160 and 167, *post.*]

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.

Certain roads, public highways.
Ib., § 85.

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.

Certain roads, public roads.
Ib., § 86.

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, indorsed thereon, the same may be put upon record as a public highway, and shall thenceforth be a public highway to all intents and purposes.

Map or survey of road accepted by township committee may be put on record as a public highway.
P. L. 1872, p. 47.

(a) See *Reed v. Camden*, 25 Vr. 372.
(b) No formal instrument in writing is necessary to show consent. A petition to the common council, asking for the improvement, is sufficient. *State, Vannatta v. Morristown*, 5 Vr. 445. *Stretch v. Hoboken*, 18 Vr. 268. *Reed v. Camden*, 24 Vr. 323.
(c) See *Smith v. State*, 3 Zab. 712. *State v. Snedeker*, 1 Vr. 80. *State, Bodine v. Trenton*, 7 Vr. 138. *Tainter v. Morristown*, 4 C. E. Gr. 46. *Humphreys v. Woodstown*, 19 Vr. 588.

Application for appointments of freeholders in Cape May.
R. S. 515, § 9.

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.

Construction of word "township."
Ib., § 51.

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

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.

Penalty.
Ib., § 55.

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.

Overseer to take charge of abandoned turnpikes laid over public roads.
P. L. 1855, p. 580.

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.

Proviso.

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.

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 willfully 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

Penalty for neglect.

be liable in damages to any landowner of an adjoining township or ward, or to the adjoining township or ward for any injury sustained by reason of such neglect or refusal.

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. 428.

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,

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 offense, to be recovered with costs of suit.

Law of the road.
R. S. 534.

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 center to center 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 offense, 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 offense is committed.

Regulation of wheel carriages.
R. S. 533.

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

Road land free from taxes.
P. L. 1867, p. 378.

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

Between what times road to be worked by inhabitants.
Ib., § 2.
P. L. 1868, p. 193.

in this section shall prevent the macadamizing of roads according to law, during the months of March, October, and November. (a) [Amended by Sec. 117, *post.*]

Railroad company may alter grades of public road.
P. L. 1862, p. 326.

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. (b)

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 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.

Proceedings of surveyors not set aside on account of defect in official oath.
P. L. 1870, p. 10.

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.

Map, return and assessment may be amended. Revision.

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. (c)

Not to repeal act of March 23d, 1859.

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

(a) See *Matawan v. Horner*, 19 Vr. 446.
(b) 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.
(c) This section does not authorize the correction of assessments for benefits or damages, made under supplement of March 1st, 1850, and March 23d, 1859. The supplement of March 12th,

1874, p. 83, does not authorize such correction. *Field v. Field*, 9 Vr. 290. As to amendment of proceedings, see *Kearstey v. Gibbs*, 15 Vr. 169. *Craig v. Brands*, 17 Vr. 524. *Evers v. Vreeland*, 21 Vr. 356. *Mount Olive v. Hunt*, 22 Vr. 274. *Brands v. Craig*, 20 Vr. 185. *Field v. Field*, 9 Vr. 290.

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) (a)

10. SUPPLEMENTS.

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. (b)

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.

Supplement.

Approved March 11, 1880.

P. L. 1880, p. 193.

101. SEC. 1. That whenever any surveyors of the highways shall have been or shall be duly appointed by the inferior court of common pleas of any county in this state to meet and lay out, alter or vacate a public road in such county, the persons so appointed as such surveyors shall be required to meet and perform the duties assigned them by such appointment, notwithstanding the term of office of any or all of them may have expired subsequent to such appointment, and any act or acts by them done, or to be done, in pursuance of such appointment, shall be as valid to all intents and purposes as if the persons so appointed were at the time of doing such act or acts surveyors of the highways duly qualified and sworn as such.

Surveyors to meet and perform duties notwithstanding term expires after appointment.

Supplement.

Approved March 11, 1880.

P. L. 1880, p. 248.

102. SEC. 1. That in any of the townships of this state where the highways are opened, cleared out, made, worked, amended, repaired and kept in order by hire, the town committee of such township or townships may, at their discretion, provide the overseers of the roads of the respective districts in their townships with books, in which said overseers shall set down and keep accurate accounts of all work and labor done by each man and team on the roads in their respective road districts, and they shall submit their respective books containing said accounts, properly verified, under oath, to the town committee of the township in which said road district is situate, on or before the first Saturday in December of each year, for their examination, and when said accounts are examined and marked approved by the said town committee, the amount so found due to each and every person owing tax to the township shall be credited thereon and be deducted by the collector of taxes of said township from the amount of tax due from such person.

Overseers to keep accurate accounts of all work and labor performed in books.

Books to be verified by oath.

Amounts due to be credited on tax.

103. SEC. 2. That in the townships in this state where said highways are opened, cleared out, made and worked by hire, the amount paid for labor, by men and teams thereon, shall not exceed the ordinary price paid for such labor to other parties for similar work in their respective neighborhoods.

What amounts may be paid for labor.

(a) See *Dupuy v. Union*, 17 Vr. 269.

(b) Surveyors may be appointed to make an alteration in a road within one year after it has been laid out. *Smock v. Vanderveer*, 12 Vr. 303. Surveyors cannot be appointed to vacate a

road while proceedings upon a previous appointment of surveyors to vacate the same road are still pending. *Parker v. Adams*, 26 Vr. 334.

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

Supplement.

Approved February 18, 1881.

P. L. 1881, p. 35.

Private roads
unused declared
vacated upon
assent of owners
of lands, &c.

104. SEC. 1. That in order to avoid the expenses necessarily attendant upon the vacation of private roads in the manner now authorized by law, whenever any private road, laid out according to law by the surveyors of the highways over one or more tracts of land lying in the same county, shall have been unworked and unused as such for a period of not less than five years, then and in such case, such private road, unworked and unused as such for said term, shall be and hereby is declared to be vacated, without the notice and application and other proceedings specified in the act to which this act is a supplement, or in any act supplementary thereto; *provided*, that the owner or owners of the land to or from which said private road leads, and the owner or owners of the lands over which the private road was laid as aforesaid, shall have filed in the office of the clerk of the county wherein said road lies their assent in writing to said vacation, proven or acknowledged before some officer authorized to take the proof and acknowledgment of deeds in this state, and indorsed by said officer with his certificate thereof.

Proviso.

Assent to be filed
and recorded in
county clerk's
office.

105. SEC. 2. That it shall be the duty of said clerk, upon receiving said assent in writing, to indorse upon it the date of its receipt in his said office and to file it therein, and also to record the same, with the certificate of the proof or acknowledgment thereon indorsed, in the book in which are recorded the returns made by the surveyors of the highways of roads laid out or vacated by them, and at the foot of such record to make a note of the time when said assent in writing was received for record in his said office.

Fees.

106. SEC. 3. That the officer taking the proof or acknowledgment aforesaid required by this act shall be entitled to receive therefor the sum of fifty cents, and said clerk, for said services by him rendered, shall be entitled to receive the same fees that he may at the time be, by law, entitled to receive for filing and recording such returns as aforesaid.

Supplement.

Approved February 17, 1882.

P. L. 1882, p. 15.

Townships may
raise money for
opening and
building public
roads laid out or
dedicated.

107. SEC. 1. That whenever any public road shall be laid out by surveyors of the highways, or by dedication and acceptance by the township committee, it shall be lawful for the qualified voters of any township in or through which the said road may be laid, at their annual meetings, to vote, grant and raise, by special resolution, such sum or sums of money as may be necessary for the purpose of defraying the expenses and damages of opening and building such road, or so much thereof as may lie in such township, which money so voted and granted shall be assessed, levied and collected by the same persons, in the same manner and at the same time that other township taxes are assessed, levied and collected, and shall constitute a special fund, to be used for the purpose of defraying the expenses and damages of opening and building such road so laid out or dedicated and accepted as aforesaid, and for no other purpose whatever; *provided, however*, that in case more money is raised than is required to open and build such road, then, upon the completion of the road, the surplus shall be used and disposed of in the same manner that other moneys raised for the maintenance, working and repair of roads in such township are used and disposed of.

Money, how
assessed and
collected.

Proviso.

Act, how applied.

108. SEC. 2. That this act shall apply to all roads heretofore laid out, or dedicated and accepted, as in the foregoing section mentioned, which have been, or have not as yet been, opened and built.

Supplement.

Approved March 1, 1883.

P. L. 1883, p. 36.

109. SEC. 1. That in all cases when any laid-out public road, or any road or street that has been heretofore or may hereafter be dedicated to the use of the public as a public highway, shall terminate and end at or upon the margin of a stream of water, and there now or hereafter may be a private ferry established on such stream, it shall be lawful for the owner or owners of such ferry or ferries to demand and receive such tolls as the board of chosen freeholders of the several counties of this state are authorized by law to fix and establish; *provided*, that this act shall not be operative within the limits of any incorporated town or city, nor shall such ferry be established as a public ferry within one mile above or below any chartered bridge company's bridge; *and provided further*, that no traveler or other person passing and repassing upon such public highway shall be hindered or prevented from fording such stream or streams by reason of the provisions of this act, if they shall desire to do so.

Where public road terminates upon margin of stream, the owner of private ferry may demand and receive tolls.

110. SEC. 2. That all acts and parts of acts inconsistent with this act are hereby repealed.

Repealer.

Supplement.

Approved February 21, 1883.

P. L. 1883, p. 43.

111. SEC. 1. That on and after the passage of this act, all disputes and differences between overseers of roads in the various townships of this state and the owners of lands bordering on said roads, as to the direction and diversion of surface-water and water-courses, or the removal of dirt, shall be settled by the township committee, and their decision and direction in the matter shall be final, and shall be carried out by said overseers.

Disputes between overseers and owners of lands to be settled by township committee.

112. SEC. 2. That all acts or parts of acts inconsistent with the provisions of this act be and the same are hereby repealed.

Repealer.

Supplement.

Approved May 9, 1884.

P. L. 1884, p. 302.

113. SEC. 1. That the thirty-sixth section of the act to which this is a supplement be amended to read as follows, to wit:

[That if any by-road, heretofore used as such by the inhabitants of this state although not laid out agreeable to law, shall be shut up or rendered impassable, whereby the said inhabitants may be put to immediate inconvenience or difficulty, or, if any person or persons over whose lands said by-road shall pass shall desire to change or alter the same, then any person so aggrieved or desiring to alter or change said by-road may apply in writing to three of the chosen freeholders of the county nearest to the said by-road, to lay out, alter or change the said road, and the said freeholders are hereby authorized to lay out, alter or change the same; *provided*, the said by-road shall not be so altered or changed as to place the same on any other person or persons' land, 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) [See Sec. 154, *post*.]

Chosen freeholders may lay out, change or alter by-road.

Proviso.

Supplement.

Approved January 28, 1885.

P. L. 1885, p. 12.

114. SEC. 1. That it shall be lawful for the township committee, in their discretion, in any township in this state in which overseers of the highways are elected by road districts, to change the number and alter the boundaries of the road districts of the township during the months of January and February of any year; such change or alteration shall be made

Township committee may change numbers and alter boundaries of road districts.

(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. 37. 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. *Id.* 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. 358. 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. *Id.*

by resolution of the said committee defining the boundaries of new districts and the changes to be made in any district or districts, and a copy of said resolution, certified by the township clerk, shall be served on the overseer of the roads in any district affected by the change on or before the first day of March following its adoption.

Notice of first election of overseer in new district to be given.

115. SEC. 2. That notice of the first election of an overseer of the highways in any road district so created or changed shall be given by the clerk of the township at the time, and in the manner, that overseers of the highways are now required by law to give notice of such elections, except that the notice to be given by the township clerk shall contain a description of the boundaries of the road district so created or changed by resolution.

Subsequent elections, how conducted.

116. SEC. 3. That all subsequent elections of overseers in such districts shall be noticed and conducted as in districts that have not been changed.

Supplement.

Passed February 17, 1885.

P. L. 1885, p. 24.

117. SEC. 1. That section ninety-four of the act to which this is a supplement, which reads as follows :

Road not to be worked between October 1st and April 1st.

["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," be amended by inserting at the end of the proviso the following : "nor the graveling of roads during the months of October and November.""]

Proviso.

Supplement.

Passed March 2, 1885.

P. L. 1885, p. 53.

Proceedings for alteration or vacation of road or street dedicated to the public.

118. SEC. 1. That any road or street which has been or may hereafter be laid out or dedicated by the owner or owners of the land over which the same is laid, by the making and filing of maps or plans of the same, or by any method other than the methods prescribed in the act to which this is a supplement, may be vacated or altered by proceedings to be commenced in the manner provided by the first section of the act to which this is a supplement for the vacation of public roads, and to be conducted in all things in the manner prescribed by said act ; *provided*, that this act shall not apply to cities and towns where the municipal authorities have, by special charter, power to vacate such roads and streets by methods prescribed in such charters.

Proviso.

Amendatory act.

Approved March 23, 1885.

P. L. 1885, p. 114.

119. SEC. 1. That section one of the act entitled "An act concerning roads" [Revision], approved March twenty-seventh, one thousand eight hundred and seventy-four, be and the same is hereby amended so as to read as follows :

Application to lay out, vacate or alter public road.

[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 make application (a) in writing to the inferior court of common pleas of the said

(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. 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 indorsed 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 Har. 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 Har. 391, 2 Hal. 87. *State v. Green*, 3 Har. 179. *State v. Hart*, 2 Har. 185. It need not designate intermediate points. *State v. Green*, 3 Har. 179, 181. But mathematical certainty as to the points is not necessary. *State v. Van Buskirk*, 1 Zab. 87. *State v. Waldron*, 2 Har. 369. Where a beginning point is precisely designated, it is not necessary that it should be the center of the road laid out. It is sufficient if included anywhere in the width of the road laid out. 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 Har. 369. "To commence at * * and near * * and to terminate * * to or near,"

county, in open court, having given previous notice^(a) 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,^(b) are hereby authorized and required to appoint six of the surveyors of the highways of the said county, ever having regard to the appointment of the surveyors of the highways of the township or townships where the said road shall be so applied for to be laid out, vacated or altered;^(c) *provided*, that no surveyor

Appointment of
surveyors.

Proviso.

is sufficient. *State v. Northrop*, 3 Har. 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 E.," 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 Har. 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, 423. General course is sufficient. *Id.* *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 Har. 179. *Green v. Loudenstager*, 25 Vr. 478. 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 Har. 179. It need not state the width. *State v. Shreve*, 1 South. *297. The petition 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. The ancient rule of the common law, that it was of the essence of a highway that it should be laid out to a market town, or from town to town, and be a thoroughfare having no terminus *a quo* or terminus *ad quem*, has been overruled. It is not now essential to a highway that it be a thoroughfare. If, in fact, it is open and common to all the public, it is a public highway, without regard to the place of termination. A road may be laid out, under our statute, though it have, at one end, no outlet, and terminate on private property. *State, Atkinson, pro.*, v. *Bishop*, 10 Vr. 228. Surveyors may be appointed to make an alteration in a road within one year after the road has been laid out. *Smock v. Vanderveer*, 12 Vr. 303. It is not necessary that a certified list of the qualified surveyors of the highways should be laid before the court of common pleas at the time of the appointment of surveyors to lay out a road. *Inhabitants of Oxford v. Brands*, 18 Vr. 332. Surveyors cannot be appointed to vacate a road while proceedings upon a previous appointment are pending. *Parker v. Adams*, 25 Vr. 334.

(a) The notice of an application for a road should designate the beginning and terminating points. *State v. Green*, 1 Har. 331, 3 Har. 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.

(b) 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.* 387. The judgment of the common pleas that the advertisements were signed in the proper handwriting of the applicant, is conclusive. *Id.* 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. *Id.* The common pleas have no jurisdiction to appoint surveyors without 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 Har. 291.

(c) 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. 378. *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. *Id.* In such cases the general act does not apply. *Cross v. Morristown*, 3 C. E. Gr. 805. *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. *Id.* 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 ad.* *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, 59. An order appointing surveyors, reciting that "the court, being satisfied that due and legal notice of this application has been given," sufficiently shows that proof has been given. *State v. Lewis*, 2 Zab. 564. 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. *Conover v. Bird*, 27 Vr. 223. 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. *Id.* The court, on an application for the appointment of surveyors to lay out a road, is required to exercise a discretion in respect to the appointment of the surveyors of the townships in which the road is applied for to be laid out, which discretion will not be reviewed. The court is not obliged to announce to counsel attending at the application the reasons for rejecting any surveyor. *Id.* That the surveyors were ordered to meet, and do meet, at the house of one of the applicants for the road, will not invalidate their acts, in the absence of proof of undue influence or improper conduct. *Id.* There is no material variance between the application and return, if the former designates the lands of A. and B., who are tenants in common, as the lands of A., over which the road is proposed to run, and the latter lays out the road over lands of both, and awards damages to both; nor if the application designates lands belonging to the heirs of T. C. as lands of R. C. and the heirs of T. C., and the return lays out the road over lands of the heirs of T. C. and awards damages accordingly, when, in fact, R. C. was at the time in occupation of the land. 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. Wittingborough Road, Coxe* 128. *State v. Elmer, Coxe* 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. *Id.* 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. 233, 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.

shall be appointed 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 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 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) [See Secs. 138 and 168, *post*.]

Supplement.

Approved March 24, 1885.

P. L. 1885, p. 129.

Proceedings when surveyors have neglected to perform their duty.

Appointment of other surveyors.

120. SEC. 1. That in every case where the surveyors of the highways have been or shall hereafter be appointed, under the provisions of the act to which this is a supplement, for the purpose of laying out, altering or vacating any public or private road, and have heretofore or shall have hereafter neglected for an unreasonable length of time, or refused to perform or complete their duties under such appointment, or shall refuse to lay out, alter or vacate any such public or private road, the applicant or applicants may, upon giving five days' notice in writing to said surveyors, or to the major part of them, apply to the court which made the appointment, whereupon the court may, in a summary manner, investigate the matter, and if such neglect or refusal shall be made to appear, the court may revoke the appointment of said surveyors and appoint other surveyors in their place and stead; and such last-mentioned surveyors shall thereupon proceed in all things in like manner as if appointed in the first instance; and any such surveyors, whose appointment shall be so revoked, shall receive no compensation for the services by them rendered, unless allowed in the order of the court revoking their appointment.

Supplement.

Approved May 11, 1886.

P. L. 1886, p. 359.

Money for repairing roads with gravel, &c., how raised.

Repealer.

121. SEC. 1. [Amended by Sec. 133, *post*.]
122. SEC. 2. That the money so appropriated shall be assessed and collected at the same time and in the same manner that taxes for other township purposes are or may be assessed and collected, and the said money shall be used and expended and the said stone, gravel or cinders placed upon the roads of the township under the exclusive direction and control of the township committee.

123. SEC. 3. That all acts and parts of acts inconsistent with the provisions of this act be and the same are hereby repealed, and this act shall take effect immediately.

Supplement.

Approved March 8, 1888.

P. L. 1888, p. 156.

Proceedings for laying out a private road.

124. SEC. 1. That section four of the act entitled "An act concerning roads," approved March twenty-fourth, one thousand eight hundred and seventy-four, shall be and the same is hereby amended so that it shall read as follows:

[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

(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 Har. 374. It is insufficient if made before only two of them, who met at the time and place appointed and adjourned to another day. *Id.* 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 Har. 284. Where the notice did not state definitely a place of meeting of the surveyors their return was set aside. *In re Johnson*, 20 Vr. 381. 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 Har. 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.

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 three 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 advertisement and to the notice to the surveyors shall be deemed sufficient.] (a)

Supplement.

Approved April 3, 1888. P. L. 1888, p. 384.

125. SEC. 1. That it shall be the duty of the township committee of the townships in the counties of the second class of this state to notify each road overseer, within one week from the time of his election or appointment, to go or send some competent person over his road district on the first Monday in each month between April and October, and remove all improperly loose stones and all sticks, broken glass, tinware, wooden or iron hoops and any other rubbish whatsoever, from the several roads under his charge.

Township committees in second-class counties may notify overseers to remove rubbish.

126. SEC. 2. That the service of such notice shall be made either personally or by mailing the same to the usual post-office address of such overseer; and in case of the neglect or refusal of such overseer to comply with the requirements of such notice, then upon the complaint in writing of any citizen of the county wherein such overseer resides, of such neglect or refusal, it shall be the duty of the township committee forthwith to employ some competent person or persons to go over such road district and to remove such rubbish as aforesaid, and to charge the expense thereof to the road district in which such removal is made, and the expense thereof shall be deducted from the road taxes due such district before any road taxes or moneys are paid by the township collector to the overseer for work done on such district.

How notice served.

How rubbish removed in case of neglect of overseer.

Expense.

Supplement.

Approved April 9, 1888. P. L. 1888, p. 419.

127. SEC. 1. [Amended by Sec. 141, *post.*]

128. SEC. 2. [Amended by Sec. 142, *post.*]

129. SEC. 3. That within five days after such election the overseer shall give notice to the assessor of the township of the sum so fixed, who shall assess the sum upon the taxable property within such district; and the same shall be collected as other road taxes are collected, and paid over to the overseer of such road district for the purposes provided for in this act; and for the assessing and collecting of such tax, the assessor and collector shall each be entitled to receive out of the money so assessed and collected, the sum of five cents for each and every name appearing on the assessor's duplicate of such assessment.

Overseer to give notice to assessor of township of sum fixed for improving roads.

130. SEC. 4. That it shall be lawful for the overseers of the highways of the various districts to use broken stone, as well as gravel and other materials heretofore provided for by law, in forming or repairing the roads in their respective districts.

Overseers may use broken stone in repairing roads.

131. SEC. 5. That all acts and parts of acts inconsistent with this act be and the same are hereby repealed, and that this act shall take effect immediately.

Repealer.

Supplement.

Approved April 9, 1888. P. L. 1888, p. 421.

132. SEC. 1. That hereafter in all townships of this state where the overseer of any road district is now authorized by law to call a public meeting of the legal voters of said road district to be held therein, for the purpose of

How money for maintenance of sidewalks in certain townships may be raised.

(a) This section does not limit the public right of laying public roads. Its purpose is solely to provide 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. The court has not power, under

the above section, to appoint surveyors of the highways, to lay out a private road, the sole purpose of which is to communicate between two lots of the applicant. One terminus should be at a mill, market, public landing or public road. *Klicker v. Gullaud*, 18 Vr. 277.

having the legal voters so convened, or a majority of them, to vote and raise, over and above the regular taxes for the improvement and repair of public roads, such sum or sums of money in such district as they may determine, for the purpose of making and repairing the roads, streets, highways or avenues in such district, it shall also be lawful at such meeting for said voters so convened, or a majority of them, to determine what, if any, amounts shall be raised for the purpose of maintaining and repairing such sidewalks as may have been laid therein, in addition to the tax for the repair of the roads as aforesaid, which tax shall be assessed and levied against and collected from the inhabitants of such road district by the same means and at the same time and in the same manner as the township taxes are assessed, levied and collected, and when collected shall be paid by the township collector to the overseers of the various road districts of said townships, for the time being, for the use of such road districts.

A supplement to the act entitled "A further supplement to an act entitled 'An act concerning roads,' approved March twenty-seventh, one thousand eight hundred and seventy-four," which further supplement was approved May eleventh, one thousand eight hundred and eighty-six.

P. L. 1888, p. 475.

Approved April 23, 1888.

133. SEC. 1. That section one of the act to which this is a supplement [see Sec. 121, *ante*] be amended so as to read as follows :

Lawful for voters of township to appropriate money for crushed stone, &c., for public roads.

[That it shall and may be lawful for the legal voters of any township in this state, by a majority of all the votes cast at the annual town meeting, or at any special meeting to be called for that purpose, by ballot to vote for and appropriate such sum of money as they may determine for the purpose of crushing or providing crushed stone, gravel or cinders, and placing the same upon the public roads of the township; and it shall be the duty of the township committee, upon request to them, by petition in writing, signed by one-quarter of the freeholders of any township, specifying the amount to be raised for the aforesaid purposes, to fix a time and place for such special meeting, and of the same shall give five days' notice, specifying the time and place where the same shall be held, and the purpose and object thereof, by notices printed or written, posted in five or more of the most public places in said township, at which special meeting the legal voters of the township shall, under such lawful rules as the township committee shall prescribe, vote, by printed or written ballots, "for the appropriation" or "against the appropriation."]

Supplement.

P. L. 1890, p. 148.

Approved March 31, 1890.

Preamble.

WHEREAS, It has become necessary to alter the several courses of certain public roads which have been dedicated by the owner or owners of the lands over which the same are laid; and whereas, to relieve the unused lands included in said roads from the burden of such dedication; therefore,

Roads unused or unworked for fifteen years from date of dedication vacated.

134. SEC. 1. That in order to save the expense necessarily attendant, both to applicants and townships, upon the vacation of public roads in the manner now authorized by law, whenever any road or any portion of such road which has heretofore been legally dedicated for the public use, and lying in the same county, shall have been unworked and unused for public travel for a period of not less than fifteen years from the date of deed of dedication, then, in such case, such road or such portion thereof as shall have been unused for public travel for the term aforesaid, shall be and hereby is declared to be vacated without the notice and application and other proceedings specified in the act to which this act is a supplement or any act supplementary thereto; *provided*, that the owner or owners of the lands on both sides of said roads or said portion thereof, unused as aforesaid, shall file in the office of the clerk of the county wherein such road or such portion of road lies, an assent in writing to said vacation, proven and

Proviso.

acknowledged before some officer authorized to take the proof and acknowledgments of deeds in this state, and indorsed by said officer with his certificate thereto.

135. SEC. 2. That it shall be the duty of said clerk upon receiving said assent in writing to indorse upon it the date of its receipt in said office, and to file it therein, with the certificate of the proof of acknowledgment thereon indorsed, in the book in which are recorded the returns made by the surveyors of the highways of roads laid out or vacated by them, and at the foot of the record to make a note of the time when said assent in writing was received for record in his said office.

County clerk to file and record assent of owners to such vacation.

136. SEC. 3. That the officer taking the proof or acknowledgment aforesaid, required by this act, shall be entitled to receive therefor the sum of fifty cents, and said clerk the same fees that he at the time may be by law entitled to for filing and recording such returns as aforesaid.

Fees for taking acknowledgments, filing and recording assent.

137. SEC. 4. That this act shall not apply to cities, towns or other municipalities which have the governing power over the roads and streets under their jurisdiction, but to township roads only, and shall take effect immediately.

Act not to apply to certain municipalities.

Supplement.

Approved April 14, 1890.

P. L. 1890, p. 247.

WHEREAS, As is set forth in the preamble to "A further supplement to 'An act concerning roads' [Revision], approved April sixteenth, one thousand eight hundred and forty-six," which supplement was approved March twenty-seventh, one thousand eight hundred and seventy-four, "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.

138. 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 such road or a portion thereof vacated, and the same relaid or another road substituted therefor, they may make application in writing to the inferior court of common pleas of such county, or to one of the judges thereof, setting forth in writing the road or portion thereof as aforesaid which it is proposed to have vacated, describing the same by courses and distances, and also describing the road as it is to be relaid, or the road which is to be substituted therefor, to which description there shall be attached a map showing the location of the road or portion of road to be vacated and the road as relaid, or the road which is to be substituted therefor; and if within ten days after such application shall have been made as aforesaid, or if at the time of making such application there shall be presented to said court or judge the consent in writing of the owners of all the lands intersected by such old road or portion thereof proposed to be vacated, and of all the property intersected by the road as proposed to be relaid, or by the road which it is proposed to substitute therefor, and also the written consent of the township committee of the township wherein such road or roads do lie, that said application shall be granted, then it shall be lawful for said court or judge to cause said application, with the accompanying survey, map and return, and the written consents of the owners of lands as aforesaid, and of the township committee, to be filed with the clerk of the county, to be by him recorded in the book of roads for said county; and when said application and other papers shall have been so filed, such old road or portion thereof shall thereupon and thereby be deemed to be vacated, and the road as relaid, or the new road substituted therefor, shall thereupon and thereby be deemed and taken to be a public road.

Proceedings for altering a public road by relaying it in a new place, &c.

Consent of owners of lands and township committee to be had.

Supplement.

Passed May 5, 1890.

P. L. 1890, p. 286.

Preamble.

WHEREAS, Owners of real estate have by map or deed made dedication of land for public roads which have neither been opened as public roads by surveyors of the highway or by acceptance of the same by the township committee of the township in which said lands are situate, and which roads are unnecessary;

Upon application of owners, township committee may vacate streets.

139. SEC. 1. That upon application of the owners of said lands and of all persons owning lands fronting on said streets or claiming a right of way over the same to other lands belonging to them, by reason of said map or deed, the township committee of the township in which said lands are situate may, by resolution, vacate said street or streets, which resolution, with a map of said street or streets so vacated, shall be filed in the clerk's office of the proper county.

Persons aggrieved may appeal.

140. SEC. 2. That any person aggrieved by any such resolution may appeal to the court of common pleas of said county at any time within thirty days after the filing of such resolution and map, and said court shall have power to review and confirm or annul the same.

An act to amend the first and second sections of the act entitled "A supplement to an act concerning roads, approved March twenty-seventh, one thousand eight hundred and seventy-four," which was approved April ninth, one thousand eight hundred and eighty-eight.

P. L. 1890, p. 471.

Approved June 17, 1890.

That the first and second sections of the act entitled "A supplement to an act concerning roads, which was approved March twenty-seventh, one thousand eight hundred and seventy-four," which supplement was approved the ninth day of April, eighteen hundred and eighty-eight [see Secs. 127 and 128, *ante*], be and the same is hereby amended so as to read as follows :

When voters of townships fail to raise money for improving roads, election for that purpose to be held in each road district.

141. SEC. 1. [That whenever the legal voters of any of the townships of this state, at their annual township meeting, shall fail or neglect, for any cause whatever, to raise money for opening or improving the public roads and for defraying the costs, charges and expenses of opening, clearing out, making, working, amending, repairing and keeping in good order the public roads, and procuring material for the same, and also the compensation allowed for the services of the overseers thereof, then it shall be the duty of the said overseers in each road district to give notice of an election to be held by the legal voters therein, at any time before the first day of June next ensuing for that purpose ; and shall set up at least two notices, in writing, in two of the most public places in each road district, stating the time and place of such election, which shall be between the hours of two and eight o'clock, post meridian, five days before the day fixed for such election, and also stating the object and purpose of such election.]

Notices of election to be posted.

Voters to determine sum to be expended in district.

142. SEC. 2. [That at the election provided for in the last preceding section, the legal voters then and there assembled may determine by the votes of two-thirds of all the voters voting at such election the sum of money to be raised and expended within such district for the purpose of opening, working and keeping the roads of such district in repair during the ensuing year ; and the sum of money so fixed shall be in lieu of all other road taxes and all other means of opening, working and keeping in repair the roads in such district for that year ; and that in no township or district where roads are opened, worked and repaired by hire shall the overseers be authorized to call out the inhabitants and compel them to open, work or repair the same by labor.]

Such sum to be in lieu of all other road taxes.

Inhabitants not to work and repair roads when done by hire.

Repealer.

143. SEC. 3. That all acts and parts of acts inconsistent with this act be and the same are hereby repealed.

Supplement.

Approved March 12, 1891.

P. L. 1891, p. 137.

144. SEC. 1. That the township committee of each township shall have the full supervision, management and control of the making and repairing of all roads in said township, and may make and repair the same by hire or by contract, and for that purpose may annually appoint a competent person or persons to superintend the making and repairing of all roads and cutting and removal of all briars and weeds, and who shall hold his position at the pleasure of the township committee. (a)

Township committee to have full supervision of all roads, and may annually appoint a person to have charge and superintend such roads.

145. SEC. 2. That the township committee of each township may procure machinery, implements, stone, gravel and other material, and hire laborers and teams necessary and proper for making and repairing all roads aforesaid, and to make and repair the same, and may have the power to purchase gravel pits and stone quarries and take title to the same in the name of the township.

May procure machinery, &c., and purchase gravel pits and stone quarries.

146. SEC. 3. That it shall and may be lawful for the said township committee, at any time after the road tax in any year shall be ordered to be assessed and before the same is collected, to pledge the credit of the township for a loan or loans of any sum of money not exceeding in all four-fifths of so much of such tax as shall be assessed, to be by them expended in paying the expense of such making and repairing of the roads of said township for the current year, and the road tax for that year, when collected, shall be first applied to repay such loan, and so much thereof as shall not be needed for such payment shall be used by said township committee in paying the expenses of making and repairing the roads as aforesaid.

May pledge credit of township for loans before road tax is collected.

147. SEC. 4. That hereafter all taxes assessed for making and repairing roads, shall be paid in money and collected by the collector of said township at the same time and in the same manner as other taxes are collected in said township for other township and county purposes, and the taxes so collected to be immediately paid over to the township treasurer, who shall disburse the same on warrants drawn by the township committee.

Road taxes, how collected.

148. SEC. 5. That it shall be the duty of the township committee of each township to estimate the amount of money they deem advisable to expend for making and repairing the public roads for their respective townships for the ensuing year, and to publish the same at the same time and in like manner as the financial statement of the township is now required to be published. [P. L. 1892, p. 48, and P. L. 1895, p. 711.]

Township to publish estimate of amount of money advisable to be expended on roads.

149. SEC. 6. That it shall not be lawful for any township to raise by tax, for road purposes, in any year, a greater amount than is estimated and published by the township committee in the annual statement of that year, except as hereinafter provided for.

Township cannot raise more than the estimate.

150. SEC. 7. [Amended by Sec. 157, *post.*]

151. SEC. 8. That it shall be lawful for any person or persons owning lands adjoining a public road or highway in any township to construct sidewalks on said highway along the line of said land.

Persons may construct sidewalks along their lands.

152. SEC. 9. That when a sidewalk shall have been constructed as aforesaid, every person who shall ride or drive a horse, team, or other vehicle 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 shall sue for the same.

Penalty for driving over sidewalks.

153. SEC. 10. That all general acts inconsistent with this act are hereby repealed, and this act shall take effect immediately; *provided*, that nothing in this act shall be construed to repeal or in anywise affect the act constituting "Essex public road board," approved March thirty-first, one thousand eight hundred and sixty-nine, or any supplement thereto, or any act amendatory thereof or relating or applicable thereto, or any act in rela-

Repealer. Not to affect certain acts.

(a) This act is general and applies to Harrington township, in the county of Bergen, notwithstanding a special act of 1871, creating a road commission for that township. *Road Commission*

v. Harrington Township, 25 *Vr.* 275. The act is also constitutional. *Road Commission v. Harrington Township*, 28 *Vr.* 327.

tion to turnpike roads, or any act which has been or may be passed to enable boards of chosen freeholders to acquire, improve or maintain public roads.

Supplement.

P. L. 1891, p. 369.

Approved April 14, 1891.

Power of freeholders to determine whether by road has been obstructed.

154. SEC. 1. That whenever the chosen freeholders shall meet to lay out, alter or change any by-road, pursuant to the provisions of section thirty-six of an act entitled "An act concerning roads," approved March twenty-seventh, one thousand eight hundred and seventy-four [Revision, page one thousand and two], as amended by supplement approved May ninth, one thousand eight hundred and eighty-four [supplement to Revision, page eight hundred and seventy-four, section thirteenth] [see Sec. 113, *ante*], the said freeholders so met shall have power, and it shall be their duty to determine whether a by-road heretofore used as such shall have there existed, whether the same shall have been shut up or rendered impassable, whereby the inhabitants may be put to immediate inconvenience or difficulty as aforesaid; and to that end shall have power as well to take testimony as to proceed upon their own view and knowledge as to the existence, use and obstruction of said by-road; and it shall be their duty to make a report of their proceedings, which report shall fully set forth the application, the time and place of hearing, the names of witnesses by them examined, if any, their final determination of the matter, and all proceedings by them had; which said report shall be by them filed within ten days, in the office of the clerk of the court of common pleas of the county, and by him recorded.

To take testimony.

To make report of their proceedings.

To be recorded by county clerk.

Supplement.

P. L. 1891, p. 372.

Approved April 14, 1891.

Overseer to present itemized bill to township treasurer.

155. SEC. 1. That the treasurer of the township committee of any township within this state shall not pay any moneys to any overseer of roads of such township, unless the said overseer of roads shall present an itemized bill, stating where, when and by whom the work charged for had been done, together with the cost of tools, materials, &c., the said bill and work having been first approved by the said township committee and such approval indorsed thereon.

Repealer.

156. SEC. 2. That all acts or parts of acts inconsistent with this act shall be and the same are hereby repealed, and that this act shall take effect immediately.

Act to amend an act entitled "A further supplement to an act entitled 'An act concerning roads' [Revision], approved March twenty-seventh, one thousand eight hundred and seventy-four," and which further supplement was approved March twelfth, one thousand eight hundred and ninety-one.

P. L. 1892, p. 50.

Approved March 7, 1892.

Provisions respecting the voluntary raising of money by land-owners and others for road improvement.

157. SEC. 1. That the seventh section of the act entitled "A further supplement to an act entitled 'An act concerning roads' [Revision], approved March twenty-seventh, one thousand eight hundred and seventy-four," which further supplement was approved March twelfth, one thousand eight hundred and ninety-one [see Sec. 150, *ante*], be and the same is hereby amended so as to read as follows:

[That whenever the inhabitants of any township owning lands along any section of road therein, or other persons shall contribute a certain amount of money for the improvement of said road, they shall make such proposition to the town committee in writing, who shall publish the same in their next annual statement, and the said committee shall submit such proposition to the legal voters of such township, and the said voters shall vote upon the same, and if a majority of the voters shall vote an equal or less amount, then such amount so voted shall be levied and assessed in addition to the annual road tax, in the same manner as other township taxes are assessed and collected; but if the property-owners along any section in any

township shall contribute the whole amount necessary in making or repairing said road, then they shall have the control of the expenditure of the same, with the approval of the township committee ; *provided*, that the rate of taxation of the property assessed for the purposes of this act in any one year shall not exceed one per centum of the assessed valuation of said property as shown by the assessment made for the preceding year.] Proviso.

Supplement.

Approved March 28, 1892. P. L. 1892, p. 297.

WHEREAS, Under and by virtue of certain acts of the legislature of this state, commissioners have from time to time been appointed to lay out streets and avenues through lands lying in certain townships of this state, which commissioners have proceeded in pursuance of the said acts to lay out said streets and avenues, and to delineate them on maps which have been filed in accordance with the directions of the said acts so as to become public records ; *and whereas*, many of the said streets and avenues so laid out as aforesaid have never been opened or used, but are merely streets on paper which have been disregarded by the public and by the township authorities of the townships through which the said streets and avenues have been laid, and are not now, and are not likely to be, required for the use of the public ; *and whereas*, said streets and avenues, so laid out as aforesaid and delineated on said maps, constitute a cloud upon the title of the owners of the lands through which the said streets and avenues are laid out which should be removed ; now, therefore, Preamble.

158. SEC. 1. That any street or avenue which has been laid out through lands in any township or townships of this state by commissioners appointed by virtue of the provisions of any act or acts of the legislature of this state, and which street or avenue has not been opened, used or worked for a period of fifteen years next before the date of the passage of this act, shall be, and hereby is declared to be, vacated, and all the proceedings of the said commissioners had and taken by them in laying out such street or avenue shall be, and hereby are declared to be, null and void ; *provided*, that all owners of the lands fronting on or bounded by such street or avenue, and over which the same has been laid, shall file, in the office of the clerk of the county in which the said street or avenue has been laid as aforesaid, their assent, in writing, to the said vacation, proven or acknowledged before some officer authorized to take the proof and acknowledgment of deeds in this state, and indorsed by said officer with his certificate thereof. Certain streets and avenues not opened or worked for fifteen years, vacated.

159. SEC. 2. That it shall be the duty of said clerk upon receiving said assent in writing to indorse upon it the date of its receipt in his said office, and to file it therein, and also to record the same, with the certificate of the proof or acknowledgment thereon indorsed, in the book in which are recorded the returns made by the surveyors of the highways of roads laid out or vacated by them, and at the foot of such record to make a note of the time when such assent in writing was received for record in his said office, and the said clerk, for said services by him to be rendered, shall be entitled to receive the same fees that he may at the time be by law entitled to receive for filing and recording such returns as aforesaid. Proviso.

Supplement.

Approved March 28, 1892. P. L. 1892, p. 311.

160. SEC. 1. [This section, amending Sec. 79, *ante*, is amended by Sec. 167, *post*.]

161. SEC. 2. That all acts and parts of acts inconsistent with the provisions of this act be and are hereby repealed, and that this act shall take effect immediately. Repealer.

Supplement.

P. L. 1892, p. 322.

Approved March 28, 1892.

Width of public roads.

162. SEC. 1. That the seventy-sixth section of the act to which this is a supplement be and the same is hereby amended so as to read as follows :
 [That every public road or highway which shall hereafter be laid out or altered shall not be laid more than one hundred feet wide, unless a greater width shall be specified in the notices and application for the same ; nor shall any such road be less than two rods wide, unless the same be laid out in a city, town, village or borough, and where, by reason of buildings or other permanent erections, such road cannot be conveniently laid out of such width.]

Supplement.

P. L. 1892, p. 322.

Approved March 28, 1892.

Preamble.

WHEREAS, There are what are commonly termed dead-end roads, which have been dedicated for the public use by the owners of the lands over which they are laid, and in order to provide outlets for the same ; therefore,

Dedicators of lands for roads may alter the course thereof.

163. SEC. 1. That any road, or any portion of any road, lying in the same county, which has been legally dedicated for the public use by the owner or owners of the lands over or upon which the said road, or portion thereof, has been laid and having no outlet to the same, it shall and may be lawful for the dedicator or dedicators, their heirs and assigns, of the lands over or upon which the end or portion of the said road has been laid, to alter or change the course of the end portion of the said road in order that an outlet to the said road, or portion thereof, may be obtained ; *provided*, that a map describing the lands to be given for such purpose, and giving the courses and distances of the original road, together with the courses and distances of the alteration or extension to be made (not to exceed in length five hundred feet), be filed in the clerk's office and to be recorded by him in the road-book of the county in which the said road, or portion thereof, lies.

Proviso.

164. SEC. 2. [Amended by Sec. 169, *post.*]

Act applies only to township roads.

165. SEC. 3. That this act shall apply only to such roads, or portions of such roads, which are under the control or jurisdiction of the township committees of this state and known as township roads.

166. SEC. 4. [Amended by Sec. 170, *post.*]

Amendatory act.

P. L. 1893, p. 254.

Approved March 13, 1893.

Restrictions as to narrowing or altering streets in cities, towns or villages.

167. SEC. 1. That section seventy-nine of the act of which his is amendatory [see Secs. 79 and 160, *ante*] be amended to read as follows :

[That nothing in this act 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 ; *provided, however*, that the grade of any street may be altered or any street therein may be narrowed, widened or altered ; *provided*, that three-fourths of the owners in interest of the lots fronting on the part of said road or street so proposed to be narrowed, widened or altered, or the grade thereof to be changed, shall consent in writing thereto ; *and provided, further*, that nothing in this act shall be construed to deprive any person not so consenting, of damages, as heretofore.] (a)

Supplement.

P. L. 1893, p. 291.

Approved March 14, 1893.

Preamble.

WHEREAS, By reason of the opening and grading of streets and avenues in new towns and colonies in various portions of this state, parts of old laid-out roads running through the wild lands thereof have become useless

(a) See *Green v. Loudenslager*, 25 Vr. 480. *Carpenter v. Brown*, 24 Vr. 182.

and practically abandoned, the said new streets and avenues affording better access to the same points than by the said parts of old roads; *and whereas*, for small changes or vacations, proceedings under the present act to which this is a supplement, are both expensive and troublesome, and attended with much delay, so much so that few persons are willing for the public good to incur the expenses of such proceedings; for remedy whereof,

168. SEC. 1. That whenever ten or more persons, being freeholders, shall think the vacation of a part of any public road necessary in any part of the county wherein they reside, they may make application in writing to the inferior court of common pleas of such county, or to one of the judges thereof, setting forth in writing the road or portion thereof, which it is proposed to have vacated, describing the same by courses and distances, to which description there shall be attached a map showing the location of the road, or portion thereof to be vacated, and if within ten days after such application shall have been made as aforesaid, or if at the time of making such application, there shall be presented to said court or judge the consent in writing of the owners of all the lands by such old road of portion thereof proposed to be vacated, and also the written consent of the township committee of the township wherein such lands do lie, that such application shall be granted, then it shall be lawful for said court or judge to cause said application, with the accompanying survey, map and return, and the written consents of the owners of lands as aforesaid, and of the township committee, to be filed with the clerk of the county, to be by him recorded in the book of roads for said county, and when said application and papers have been so filed, such portion of such old road shall thereupon and thereby be deemed to be vacated; *provided*, that no portion of any old road proposed to be vacated under this act, shall exceed one thousand yards in length.

Proceedings to vacate part of public road with consent of land-owners and township committee.

Proviso.

An act to amend an act entitled "A further supplement to an act entitled 'An act concerning roads,' approved March twenty-seventh, one thousand eight hundred and seventy-four" [Revision], which supplemental act was approved March twenty-eighth, one thousand eight hundred and ninety-two.

Approved March 16, 1893.

P. L. 1893, p. 336.

169. SEC. 1. That section two of said supplemental act [see Sec. 164, *ante*] be and the same is hereby amended so that henceforth said section shall be and read as follows, to wit:

[That the portion of said road other than that which shall be used by reason of any alteration or change which shall be made respecting the original course of the said road, or portion thereof, shall, irrespective of use, be declared finally vacated, without the notice and application and any other proceedings specified in the act to which this is a supplement, or any act supplementary thereto, and not subject to an appeal or certiorari after two days from the date and time of the filing of the map as aforesaid.]

What portion of road altered by dedicators shall be vacated.

170. SEC. 2. That section four of said supplemental act [see Sec. 166, *ante*] be and the same is hereby amended so that henceforth said section four shall be and read as follows, to wit:

[That this act shall be deemed a public act and shall take effect immediately.]

When act to take effect.

Amendatory act.

Approved March 28, 1895.

P. L. 1895, p. 709.

171. SEC. 1. That section twenty-six of "An act concerning roads," approved March twenty-seventh, one thousand eight hundred and seventy-four, is hereby amended so as to read as follows:

[That if any such owners, applicant or applicants shall be dissatisfied with the assessment of the surveyors, such owner or applicant or applicants, within two years 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 the justice of the supreme court

Proceedings where landowner or applicants are dissatisfied with assessment made by surveyors on laying out a private road, &c.

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.]

An act to amend an act entitled "A supplement to an act entitled 'An act to provide for the construction of sidewalks along highways for the accommodation of foot travelers,' approved March third, one thousand eight hundred and fifty-four."⁽¹⁾

P. L. 1877, p. 68.

Approved March 6, 1877.

172. SEC. 1. That section one of an act entitled "A supplement to an act entitled 'An act to provide for the construction of sidewalks along highways for the accommodation of foot travelers,' approved March third, one thousand eight hundred and fifty-four," which reads as follows [see P. L. 1854, p. 257], be amended so as to read as follows :

Sidewalks not to exceed five feet in width.

[That the provisions of the act to which this is a supplement shall not authorize the construction of sidewalks of a greater width than five feet on each side of any public road or highway in this state which hath been or which shall hereafter be laid out of a less width than three rods, except in such place or places where they pass through the cities, towns or villages of this state.]

II. Supplements to road act of 1846 still in force.

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

P. L. 1859, p. 626.

Approved March 23, 1859

Assessment and collection of road tax.

173. 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.

174. 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.

175. 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.

(1) The act of 1851 (see P. L. 1851, p. 288) and the supplement thereto of March 3d, 1854 (see P. L. 1854, p. 257), have been incorporated in the revised road act, Secs. 67 to 69, *ante*.

176. 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.

Proportion of cities, boroughs and towns.

177. 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.

Election of overseers of roads.

178. 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.

Overseers to advertise for proposals for working roads.

179. 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.

180. 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 center when formed not less than twelve inches, and when formed twenty-five feet wide, not less than fifteen inches in the center, measuring from the bottom of the ditch on the side of the road, with a regular curve from the center 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 inclosure of any person owning lands on said highways, and

Manner of repairing roads.

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 offense 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.

Inhabitants of district to furnish gravel.

181. 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.

Limitation of assessment.

182. 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. (a)

Removal of obstructions.

183. 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 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.

184. 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.

185. 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 traveling public, and pay for the said railing out of the moneys received for the respective district.

(a) See *Norcross v. Veal*, 22 Vr. 87.

186. 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.

Compensation of surveyor.

187. 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.

Assessment of damages.

188. 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 landowners may examine the same and appeal therefrom as hereafter provided, if they or either of them shall desire so to do. (1)(a)

Copy of return to be served on township clerk.

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

Collection of assessments.

190. 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.

191. 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

Part of assessment may be laid on township.

(a) See *Inhabitants of Oxford v. Brands*, 16 Vr. 338.

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

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 landowners, who may also have been assessed therefor.

Damages for want
of repairs of road.

192. 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 collectible 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. (a)

Damages for want
of repairs to
bridges on public
roads.

193. SEC. 21. That if any damage shall happen to any person or persons, his, her or their team, carriage, or other property, (b) 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 collectible 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.

Proviso.

Repealer.

Act not to apply
to certain
counties.

194. SEC. 22. That all acts and parts of acts repugnant hereto shall be, and the same are hereby, repealed ; *provided*, *nevertheless*, that nothing in this act contained shall apply to the counties of Burlington, Morris, Salem, Sussex, Warren, Monmouth, Cumberland, Hunterdon, Gloucester, and Mercer. (1)

(a) See *Dupuy v. Township of Union*, 17 Vr. 270. *Carter v. Rahway*, 28 Vr. 177 ; affirmed, 28 Vr. 196. *Platt v. Plainfield*, 3 N. J. L. J. 81.

(b) See *Livermore v. Freeholders of Camden*, 5 Dutch. 215, 2 Vr. 507. *Jerne v. Monmouth*, 23 Vr. 556.

(1) By supplement approved March 9th, 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 22 are revived. By supplement approved March 12th, 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 4 repealed as to Camden county. By supplement approved March 15th, 1860 (P. L. 1860, p. 264), the second, third, fourth, fifth, sixth and seventh sections shall not apply to the townships of Bernards, Bedminster, Bridgewater and Warren, in the county of Somerset. By supplement approved March 22d, 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 7th, 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 14th, 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 17th, 1862 (P. L. 1862, p. 222), act repealed as to Cape May county. By supplement approved February 16th, 1864 (P. L. 1864, p. 21), provisions of act repealed as to Hudson county. By supplement approved April 17th, 1868 (P. L. 1868, p. 1122), act extended to West Windsor township, Mercer county. By supplement approved February 22d, 1871 (P. L. 1871, p. 289), sections 15, 16, 17, 18 and 19 of act of 1859 extended to township of Chatham, county of Morris.

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

Approved March 12, 1874.

P. L. 1874, p. 33.

195. 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. (a)

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

196. 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.

Amended return may be amended.

197. 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 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.

Surveyors may make amended return though term expired.

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. 33.

198. 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

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

(a) See *Crater v. Fritts*, 15 Vr. 375. *Eours v. Vresland*, 21 Vr. 386, 389. *Mount Olive v. Hunt*, 22 Vr. 276. *Stokes v. Parker*, 24 Vr. 185.

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.

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

199. 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. (*a*)

Proviso.

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 any municipal corporation.

200. 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 within the limits of any municipal corporation.

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

P. L. 1874, p. 118.

Approved March 27, 1874.

201. SEC. 1. [Amended and supplied by Secs. 208 and 212, *post.*]

In proceedings for alteration of short sections of road, notice to be served.

202. 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.

Notice to be given of meeting of surveyors.

203. SEC. 3. That like notices, required to be put up by the second section of the act to which this is a supplement shall be given of the time and place of meeting of said surveyors.

Meeting and duties of surveyors.

204. SEC. 4. That said three surveyors so selected, when met as aforesaid, or a majority of them, on due proof being made to them of the putting up of the notices of their said meeting, as required by this supplement, on which said surveyors shall decide, and their decision shall be final and conclusive, and they shall thereupon proceed, as surveyors are now required to proceed by the fifth section of the act to which this is a supplement, and the first and second sections of a supplement thereto, approved March first, eighteen hundred and fifty, and the certificate and return of said surveyors

(*a*) See *Easton v. Wolley*, 20 Vt. 385.

shall be final and conclusive as to the alteration of any road made in pursuance herewith, and the same may be opened, on tendering to the owner of the lands not applicants the damages assessed to him, her or them, and on his, her or their refusal to accept the same, then by paying the same to the clerk of the county wherein said road is situated.

205. SEC. 5. That the said applicants shall cause to be returned with the certificate of said surveyors, to the clerk of the county, the order made by said judge and the notice whereon said order was founded, and such certificate and proceedings shall not be set aside for matters of form, and any omission may be supplied by affidavit, and an order of the court amending such return in matters of substance, and said clerk shall receive ten cents per folio for recording said proceedings and return.

Papers to be filed with county clerk.

206. SEC. 6. That if the township committee, or the owner of lands or real estate so taken as aforesaid, shall be dissatisfied with the assessment of said surveyors, they may have the same reviewed by proceeding in the manner provided by the fifth section of the supplement to the act to which this is a further supplement, which supplement was approved March first, eighteen hundred and fifty.

Review of proceedings.

207. SEC. 7. [Repealed by Sec. 209, *post.*]

An act to amend an act entitled "A further supplement to an act entitled 'An act concerning roads' [Revision], approved April sixteenth, one thousand eight hundred and forty-six," approved March twenty-seventh, one thousand eight hundred and seventy-four.

Approved March 4, 1880. P. L. 1880, p. 110.

208. SEC. 1. [This section, amending Sec. 201, *ante*, is amended by Sec. 212, *post.*]

209. SEC. 2. That so much of the seventh section of the said act of which this is amendatory [see Sec. 207, *ante*] as excepts the counties of Sussex and Somerset from the operation of said act, be and the same is hereby repealed.

Repealer.

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

Approved February 23, 1885. P. L. 1885, p. 36.

210. SEC. 1. That it shall be the duty of the overseers of the highways of the several townships of this state to remove or cause to be removed, during the months of August and September of each year, the briars, thistles and weeds growing on the highways of their respective districts, and to clear out and open to all gutters, drains and ditches along or across said roads within their respective limits and divisions, or so much thereof each year as may be determined upon by the legal voters of their respective districts at the annual road district meeting.

Overseers to remove briars, &c., during months of August and September.

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

Approved March 19, 1885. P. L. 1885, p. 112.

211. SEC. 1. That it shall be lawful for the overseers of the highways of the various districts to use broken stone as well as gravel and other material heretofore provided for by law in forming or repairing the roads in their several districts, in order that the roads may be permanently repaired or improved; and if any overseer shall be unable to procure gravel or broken stone for the purpose aforesaid, it shall be lawful for the township committee to procure the same at the expense of the township; *provided*, that the expense thereof shall not exceed ten per cent. of the whole amount of road tax assessed in the township that year.

Broken stone or gravel may be procured for repairs.

Proviso.

An act to amend an act entitled "An act to amend an act entitled "A further supplement to an act entitled "An act concerning roads" [Revision], approved April sixteenth, one thousand eight hundred and forty-six," which supplement was approved March twenty-seventh, one thousand eight hundred and seventy-four," and which amending act was approved March fourth, one thousand eight hundred and eighty.

P. L. 1893, p. 298.

Approved March 14, 1893.

212. SEC. 1. That the said act of which this is amendatory, entitled "An act to amend an act entitled 'A further supplement to an act entitled "An act concerning roads" [Revision], approved April sixteenth, one thousand eight hundred and forty-six,' which supplement was approved March twenty-seventh, one thousand eight hundred and seventy-four," which amending act was approved March fourth, one thousand eight hundred and eighty, be so amended that section one of said act, which is as follows [see Secs. 201 and 208, *ante*], be and the same is hereby amended so as to read as follows :

Proceedings to alter or vacate short sections of public roads.

[That whenever six or more persons, being freeholders residing in the township, shall think any alteration of any public road, or the vacation of a portion of any public road necessary in any part of the county wherein they reside, either by having a portion of such road, not exceeding in length six hundred yards, vacated, or by changing such road by vacating a portion thereof, not exceeding in length six hundred yards, and by relaying it in another place (the road so relaid not to exceed in length six hundred yards), they may make application in writing to one of the judges of the court of common pleas of the county wherein said portion of such road lies, at his chambers, for the appointment of three surveyors of the highways, one of which shall be from the township in which that portion of road to be vacated or changed lies ; of which application to said judge the said applicants shall give at least ten days' notice of the time and place when and the name and residence of the judge before whom said application is to be made, by putting up written notice thereof, signed by themselves, and put up in three of the most public places in the said township in which the said road to be vacated or changed lies ; which notice shall contain a description of the portion of the road proposed to be vacated or changed, and in case of a change of such road, as is herein defined, a general description of the road proposed to be laid out in lieu of the one so vacated, and upon proof being made to the said judge of the putting up of said notices, he shall thereupon appoint three surveyors of the highways, as aforesaid, by an order in writing under his hand, and shall, in and by said order, fix the time and place of meeting of said surveyors, and for so doing he shall receive the sum of one dollar ; *provided, nevertheless*, and it is hereby further enacted, in order to save the expenses necessarily attendant both to applicants and townships, upon the vacation of roads, that whenever any road which has heretofore been laid out by the surveyors of the highways according to law, or any portion of such road shall have been unused for public travel for a period of not less than five years, then and in such case the said road, or such portion thereof as shall have been unused for public travel for the term aforesaid, shall be and hereby is declared to be vacated ; *provided*, the owners of the lands on both sides of said road, or of said portion thereof unused as aforesaid, shall file in the office of the clerk of the county where such road or such portion of road lies, their assent in writing to said vacation.] (a)

Notice of application to be given.

What notice to contain.

Appointment of surveyors.

Proviso.

Proviso.

Repealer.

213. SEC. 2. That all acts and parts of acts inconsistent with the provisions of this act be and the same are hereby repealed, and that this act shall take effect immediately.

(a) Notice of the application for the appointment of surveyors to alter a public road must show in what township the road proposed to be altered lies. *Purkhurst v. Vanderover*, 19 Vr. 80. The above act does not authorize a change in the width of a public road. *Id.* The word "unused," in the above act, signifies abandonment by the public; therefore, an allegation that before and at the time of the passage of the above act, legal proceedings were pending in the supreme court by the relators to

compel defendants to rebuild bridges which they had removed, and that by the wrongful refusal of the defendants to do so, the road could not be used, sufficiently negatives the averment of non-user; it shows that there had not been an abandonment of the highway, and consequently not such non-user as the statute contemplates. *Freeholders of Mercer v. Penna. R. E. Co.*, 16 Vr. 82. See, also, *Chasmer v. Convery*, 24 Vr. 599. *Chasmer v. Blew*, 26 Vr. 67.

III. County roads formerly controlled by public road boards.**An act concerning public road boards.**

Approved April 21, 1876.

P. L. 1876, p. 385.

214. 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.

Name by which public board shall be known and designated.

215. 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

Mode of appointing road boards.

Proviso.

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.

Election of president, secretary and other officers.

216. 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.

Proceedings for laying out, constructing and improving public road.

217. 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.

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

218. 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.

May take lands, buildings and improvements.

219. 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 noth-

ing 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.

220. 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 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

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

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

Other expenses to be estimated.

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.

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.

Road board to determine the width of the carriage-way and of the sidewalks of such road.

221. 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 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; *provided*, 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 insure 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); 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; *provided*,

Proviso.

Improvement of roads, &c.

Proviso.

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; *and provided also*, that no road shall be laid out and opened under the provisions of this act, exceeding one hundred feet in width.

222. 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.

May plant trees and keep road in repair.

223. 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 enter upon lands, &c.

224. 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.

Work to be done and furnished by contract.

Proposals to be advertised for.

225. 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.

Horse or dummy railroad not allowed on such road except to cross the same.

Road board may remove tracks from line of road.

Proviso.

226. 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 names of the owners of such land benefited by such

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

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, 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.

227. 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.

228. 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.

229. 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 improve-

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.

What the board may include in road.

Road may be constructed in sections.

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

ment 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.

230. 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.

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

231. 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.

Majority of the commissioners required to perform any act.

Vacancy, how filled.

232. 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.

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

233. 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.

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

234. 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 installment 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 installment 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 installment of interest which shall consist of one year's interest on the amount of the assessment, at seven per centum per annum, until five installments of interest shall become due and payable, and all assessments, with the interest thereon, shall be payable in twenty installments, as follows: the first installment shall consist of one-twentieth of the principal of the assessment, together

Interest on assessments when to become due and payable.

Payment of installments.

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 installment 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 installment 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 installment 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 installments shall respectively become due and payable on the first Monday in each succeeding October; in case any interest or installment 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 installment 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.

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

Proviso.

Assessments to be a lien.

Proceedings in case of sale.

Proviso.

235. 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, or the balance thereof remaining unpaid, or the installment 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 installments 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 advertise-

ment 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

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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.

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

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

Proviso.

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

Cost to be assessed on the lands benefited.

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

236. 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.

237. 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.

238. 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 service of notice on all the parties entitled to redeem, as required by this act, and the expiration of the time given them 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.

239. 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.

240. 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.

241. 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 bonds 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.

May borrow
money and issue
bonds.

242. 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 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.

List and state-
ment of all bonds
issued to be made
by the secretary
of the board.

Sale of bonds, &c.

- Certificates of indebtedness.** **243. 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.
- How paid.** **244. SEC. 31.** That no member of said public road board, or officer, agent, clerk or employe 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.** **245. SEC. 32.** That the treasurer appointed by said public road board, and such other employes 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.** **246. 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 employe by their title as aforesaid.
- May have a seal.** **247. 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.** **248. 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.** **249. 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.** **250. 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 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.
- May sue and be sued.**
- Certificate of indebtedness to be considered public stock created under the laws of this state.**

251. 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 re-invest 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, re-investments, 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.

Commissioners of the public road board sinking fund, how constituted.

Duties and powers.

252. 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 of construction.

Rules to apply.

253. 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)

Repealer.

Supplement.

Approved March 4, 1879.

P. L. 1879, p. 68.

254. SEC. 1. That any and all vacancies hereafter occurring by death, resignation or any other cause whatever, in the board of commissioners of any public road board, lawfully created and existing in and for any county of this state (prior to the passage of the act to which this is a supplement, and not governed by the provisions of said act), shall be filled only by election or appointment, to be made by the board of chosen freeholders of such county from the members of such board of chosen freeholders, for the time being, which persons so elected or appointed shall continue in office as commissioners only during the term for which they shall have been elected such chosen freeholders, but shall be subject to removal at the pleasure of such board of chosen freeholders, and shall receive such compensation per diem (in lieu of salary) as chosen freeholders are entitled by law to receive; *provided*, that no more than three of the members of said public road board shall be of the same political party.

Vacancies in board of commissioners, how filled.

(1) For act to constitute the Essex public road board, see P. L. 1869, p. 957, and supplements, P. L. 1870, pp. 181, 714; P. L. 1872, pp. 1096, 1269; P. L. 1873, pp. 424, 1622.

Previous consent of chosen freeholders to be had for opening roads or avenues, &c.

What expense for repairs may be incurred.

Reports to be made to chosen freeholders.

Repealer.

255. SEC. 2. That no roads or avenues, or sections thereof, shall hereafter be laid out, constructed or appropriated by any of the public road boards mentioned in the first section of this act, without the previous consent of the board of chosen freeholders of the county wherein said road or avenue may be.

256. SEC. 3. That no expense shall hereafter be incurred by any of the public road boards mentioned in the first section of this act, for repairs to any existing road or avenue, without the previous order or consent of the board of chosen freeholders of the county wherein such road or avenue is situate.

257. SEC. 4. That the said public road boards shall make reports in writing of their receipts and disbursements in detail, to the directors of the boards of chosen freeholders, whenever and as often as required by the last-mentioned boards.

258. SEC. 5. That all acts and parts of acts inconsistent with the provisions hereof be and the same are hereby repealed, and that this act shall take effect immediately.

Supplement.

P. L. 1880, p. 318.

Chosen freeholders to fix compensation of members of public road boards.

Repealer.

259. SEC. 1. That the members of the public road boards of the several counties of this state shall hereafter receive only such compensation as shall be fixed by the boards of chosen freeholders of said counties respectively; *provided*, that this act shall not be construed to apply to any members of said road boards who were elected or appointed as such prior to the year one thousand eight hundred and seventy-nine, and whose terms of office, by virtue of such election, have not yet expired.

260. SEC. 2. That all acts and parts of acts inconsistent herewith be and the same are hereby repealed, and that this act shall take effect immediately.

Approved March 12, 1880.

An act to reduce the expenses of public road boards, and to place them under the control of the boards of chosen freeholders of the several counties of this state.

P. L. 1881, p. 19.

Commissioners of public road boards to consist of members of boards of chosen freeholders.

How appointed, &c.

Proviso.

Proviso.

Proviso.

261. SEC. 1. That the commissioners constituting the county public road boards, which now exist or may hereafter exist in any of the counties of this state, under the laws thereof, shall consist of members of the boards of chosen freeholders of said counties respectively, to be appointed in the same manner as the standing committees of the said boards of chosen freeholders are or may be appointed, for the time being, which persons so appointed shall continue in office only during the time for which they shall have been elected as such chosen freeholders, but be subject to removal at the pleasure of said boards of chosen freeholders, and shall receive only such compensations for their services as such commissioners as shall be fixed from time to time by the said boards of chosen freeholders; *provided*, that no more than a major part of the commissioners of any public road board shall be of the same political party; *and provided further*, that nothing herein contained shall be construed to affect the tenure of office or compensation of any commissioner now in office and in actual service as a member of any such road board; but that every such person who duly qualified and entered on the discharge of his duties on or before the first Monday of January, one thousand eight hundred and eighty-one, and has ever since been actually serving as such member, whether elected by the people or by the said boards of chosen freeholders under any general or special law of this state, shall be entitled to hold his said office during the time for which he was so elected; *provided*, that the provisions of this act shall not apply to or affect in any way township road boards. (a)

Approved February 10, 1881.

(a) This act is constitutional. *Pointier v. Schmidt*, 15 Vr. 483. See, also, *Miles v. Freeholders of Bergen*, 23 Vr. 304. *Road Commission v. Harrington Township*, 26 Vr. 323.

262. SEC. 2. That all acts and parts of acts inconsistent with any of the provisions of this act be and the same are hereby repealed, and that this act shall take effect immediately. Repealer.

An act in relation to the powers of county public road boards.

Approved February 21, 1883.

P. L. 1883, p. 43.

263. SEC. 1. That wherever any county public road board in any county of this state has, or shall have, macadamized or paved, according to the Telford process, any public roads or avenues in such county, by virtue of authority granted by law for that purpose, it is hereby authorized and empowered to maintain and keep in repair, at the expense of the county, the whole and every part of any pavement so laid by it according to said process. Roads macadamized by Telford process may be maintained at county expense.

An act to authorize and empower county public road boards to extend, grade, improve and macadamize or pave, according to the Telford process, public roads and avenues, and maintain and keep the same in repair.

Passed March 3, 1892.

P. L. 1892, p. 44.

264. SEC. 1. That whenever any county public road board in any county of this state has or shall have laid out, constructed, reconstructed, appropriated, improved, macadamized or paved according to the Telford process, or maintained for the purpose of free carriage roads, the whole or any part of any public road or avenue in any county in this state by virtue of authority granted by any law for that purpose, it shall be lawful, and any such county public road board is hereby authorized and empowered to take, appropriate, maintain and keep in repair, the whole or any part of any public road or avenue within such county that has been macadamized by the authorities of any township, the macadamized part of which connects with any public road or avenue under the control of any county public road board; and any such county public road board is also hereby further authorized and empowered to appropriate, grade, improve and macadamize or pave, according to the Telford process, any existing public road or avenue not under its control connecting with any such public road or avenue, or any part of the same, that has been macadamized or paved as aforesaid by any township in the county, beginning at or near the terminal point where any such public road or avenue has been macadamized as aforesaid by any such county public road board, or by any township within the county, for the purpose of making a continuous free carriage road within the county making any such extension or improving and macadamizing any such public road or avenue, with the object of connecting the same with any public road or avenue in any other county of this state adjoining the county or counties wherein such extension is or shall be made, and it is hereby made the duty of any such county public road board to maintain and keep in repair, at the expense of the county, the whole and every part of any such public road or avenue so taken, appropriated, graded, improved and macadamized or paved as aforesaid; *provided, however,* that no such public road or avenue shall be extended, taken, appropriated, graded, improved, macadamized or paved as aforesaid, until a certified copy of the resolution of the county public road board authorizing and recommending the same shall be submitted to and approved by the board of chosen freeholders of the county wherein any such county public road board may or shall exist. Public road boards may maintain certain roads previously macadamized by townships.

Proviso.

265. SEC. 2. That the costs of any improvement or improvements in the extending, grading, improving and macadamizing as aforesaid by any such county public road board any such existing public road or avenue not under its control, including all expenses connected therewith, shall be assessed and paid in the same manner as now provided by law in respect to the grading, improving and macadamizing, according to the Telford process, of avenues under the laws constituting and regulating such county public road board. Costs to be assessed and paid as provided by law.

266. SEC. 3. That this act shall be deemed and taken to be a public act, and shall take effect immediately. Act deemed public.

An act to abolish public road boards in counties of this state and to transfer to and vest in the board of chosen freeholders in and for the counties in which such public road boards may now exist, all the powers, rights and property now vested in and belonging to such public road boards.

P. L. 1894, p. 128.

Board of chosen freeholders vested with powers and duties, &c. of public road boards.

Public road boards abolished.

Compensation to members of public road board.

Compensation of officers and employes of public road board.

Board of chosen freeholders shall complete all lawful contracts, &c.

All laws now in force relative to road boards shall apply to freeholders.

Approved April 24, 1894.

267. SEC. 1. That from and after the first Tuesday of May, one thousand eight hundred and ninety-four, the board of chosen freeholders in and for any county in this state in which any county public road board having charge of public roads may now exist, shall be vested with, possess and be subject to all the powers, rights, authority and duties which are now by law vested in or imposed upon such public road board.

268. SEC. 2. That all county public road boards having charge of public roads shall, on the first Tuesday in May, one thousand eight hundred and ninety-four, be and the same are hereby abolished, and all powers vested in such road boards, and all property, books, papers, rights, leases, titles and assessment liens belonging to or vested in such boards or under their control shall be transferred to and vested in and become the property of the board of chosen freeholders in and for the county in which any such public road board may now exist.

269. SEC. 3. That the terms of office of the members of the said public road board shall, on the thirtieth day of April, one thousand eight hundred and ninety-four, cease and be terminated, notwithstanding the members thereof may have been appointed or elected for a term extending beyond said date, and the salary or compensation of such members shall be apportioned so that they shall receive compensation for services rendered at the rate now allowed up to said date only.

270. SEC. 4. That the terms of office of all officers and employes of the said public road boards shall, on the thirtieth day of April, one thousand eight hundred and ninety-four, cease and be determined, notwithstanding such officers or employes may have been appointed for a term extending beyond that said date; and the salary or compensation of such officers or employes shall be so apportioned that they shall receive compensation for services rendered up to the said date only, and at the rate now paid.

271. SEC. 5. That the board of chosen freeholders in and for any county in which any public road board may now exist shall have full power and authority to fulfill, perform and carry out according to law any and all contracts and agreements and obligations theretofore lawfully made and entered into by any such public road board; and no suit or proceeding by or against any such public road board, and no proceeding or application for any public improvement shall abate or be discontinued by reason of the passage of this act but shall proceed and continue according to law, and proper amendments shall be made for this purpose.

272. SEC. 6. That all laws or parts of laws, general, special, local or private, now in force regarding any such public road board, shall apply to the board of chosen freeholders in and for the county in which any such public road board shall exist, and such board of chosen freeholders shall be solely vested with all the powers, duties, rights and authorities which are now by law vested and conferred upon any such public road board.

IV. County roads generally.

An act in relation to the improvement and maintenance of certain roads.

P. L. 1882, p. 40.

No damages for widening or changing grades of road to be incurred by board of freeholders.

Approved March 3, 1882.

273. SEC. 1. [Amended by Sec. 276, *post.*]

274. SEC. 2. That it shall not be lawful for any such board to incur any damages for widening or straightening, or for changing the lawfully-established grade of any road or highway; and that this act shall not be construed to alter the provisions of any city charter in relation to the improvement of streets or highways, and no street or highway within the

corporate limits of any city shall be improved or repaired by any board of chosen freeholders, under the provisions of this act, without the written consent of the corporate authorities of such city first had and obtained for that purpose by such board.

275. SEC. 3. That the warden or keeper of any county jail from which prisoners may be taken to be put and kept at work, as provided in the first section of this act, shall not be liable in any way for the escape of any prisoner during the time such prisoner shall be out of the custody of the warden or keeper and under the charge of the agents to be provided by the board of chosen freeholders as aforesaid, and every such agent shall give bonds to such board in such sum as shall be required, conditioned for the faithful performance of his duties and the exercise of due diligence in the safe custody of prisoners entrusted to him, and their prompt return to the jail whence they have been taken.

Liability for the safe keeping of prisoners put at work on roads.

Amendatory act.

Approved April 21, 1887.

P. L. 1887, p. 175.

276. SEC. 1. That the first section of the act of which this is amendatory, and which is in the words following [see Sec. 273, *ante*], be and the same is hereby amended to be and to read as follows :

[That in any county in this state, where the custody, rule, keeping and charge of the jail of such county and of the prisoners in such jail has been heretofore or shall be hereafter assumed by the board of chosen freeholders of such county according to law, it shall be lawful for such board to improve and keep in repair any road formerly a toll road in such county, and which has or shall have become the property of the public, and to put and keep at work thereon such prisoners detained in the county jail as may be lawfully required to work at hard labor; which prisoners may be each taken from and returned to the custody of the warden or keeper of the county jail appointed by such board, and under such rules and regulations as the said board may from time to time prescribe, and by such person or persons as the said board may employ for that purpose, and an escape from such person or persons shall be deemed an escape from jail; the said board may employ such agents and provide such implements as may be needed for carrying into effect the provisions of this act; *provided*, that the entire expense incurred hereunder in any one year shall not exceed one-twentieth of one per centum of the taxable valuation of such county for the next preceding year, which expenditure may be in excess of any limit heretofore fixed by law for the annual expenditures for account of "public works" by any such board.] (a)

Board of freeholders authorized to work prisoners on public roads.

Proviso.

277. SEC. 2. That where the line of any such former toll road has been changed, or a portion thereof abandoned and a new road laid out, opened and worked to connect the portions thereof still in public use, it shall be lawful for the board of chosen freeholders as aforesaid, to improve and keep in repair in the manner aforesaid such new line or such new road connecting the portions of such former toll road still in public use.

Freeholders to keep in repair new roads connecting portions of former toll road.

Supplement.

Approved March 6, 1888.

P. L. 1888, p. 182.

278. SEC. 1. That when any road shall have been macadamized wholly or in part, under the act to which this is supplementary, it shall be lawful for the board of chosen freeholders which may have caused such improvement to be made, to prohibit by ordinance any person or persons driving on any macadamized portion of such road from locking the wheels of any vehicle, or attaching any drag to such vehicle, while passing over or upon such macadam; and the violation of such ordinance shall be punishable by such penalty as such board of chosen freeholders shall prescribe in such

Freeholders may by ordinance prohibit persons from locking wheels on macadamized roads.

(a) See *Paterson v. Freeholders*, 27 Vr. 460.

ordinance, not exceeding twenty dollars for each offense, which penalty may be sued for and recovered with costs by such board or by any person who may bring the suit, in any court of competent jurisdiction.

Supplement.

Approved March 12, 1888.

P. L. 1888, p. 162.

Freeholders may improve certain roads formerly toll roads.

279. SEC. 1. That when the board of chosen freeholders of any county shall have expended not less than fifty thousand dollars in improving and keeping in repair any roads formerly toll roads, as authorized by the act to which this is a supplement, it shall be lawful for such board to improve and keep in repair any other roads in such county, being within seven miles of the court-house of such county; and such board may, by the votes of two-thirds of all its members, expend on such roads in any one year, a sum not exceeding one-half the amount it is now authorized by law to expend in improving and keeping in repair the former toll roads in such county; the expenditure herein authorized shall be in addition to any expenditure heretofore authorized for improving and keeping in repair any former toll road in such county.

Supplement.

Approved May 12, 1890.

P. L. 1890, p. 294.

Freeholders may expend certain sum annually for repairs.

280. SEC. 1. That it shall be lawful for any board of chosen freeholders which shall have expended upwards of seventy-five thousand dollars in the improvement and maintenance of roads under the provisions of the act to which this is a supplement, and the acts supplementary thereto, to appropriate, set apart and expend in each year, in addition to the sum or sums now authorized to be expended under said act and acts, a sum not exceeding one-thirtieth of one per centum of the taxable valuation of such county for the next preceding year, which sum, or so much thereof as shall be by such board deemed necessary for the purpose, shall be expended in repairing the roads previously macadamized by such board; and said sum so appropriated shall be available, and shall be expended only between the first day of January and the first day of June in any year.

Supplement.

Approved April 16, 1891.

P. L. 1891, p. 485.

May light roads' for four miles from court-house.

281. SEC. 1. That any board of chosen freeholders which shall have improved and maintained any roads under the act to which this is a supplement, or under any act supplementary thereto, may cause any or all roads over which it shall have acquired and assumed control in the manner provided by law to be suitably lighted for the accommodation of the traveling public, beginning nearest the county court-house and extending not more than four miles therefrom; which lighting shall be done by contract and awarded to the lowest responsible bidder.

A supplement to an act entitled "A supplement to 'An act in relation to the improvement and maintenance of certain roads,' approved March third, one thousand eight hundred and eighty-two," which supplement was approved April sixteenth, one thousand eight hundred and ninety-one.

P. L. 1892, p. 289.

May make annual appropriation for lighting roads, &c.

Approved March 26, 1892.

282. SEC. 1. That in any case where any contract has been heretofore or shall be hereafter made under the provisions of the act to which this is a supplement, for the lighting of public streets, roads or other public highways, it shall be lawful for the body corporate and politic in law entering into the same, to appropriate annually a sum sufficient to meet the payments called for by such contract from time to time as the same shall or may become due and payable.

An act to authorize the boards of chosen freeholders in counties of the first class in this state to lay out, open and improve a public road in each of the counties of the first class in this state.

Approved March 7, 1883. P. L. 1883, p. 65.

283. SEC. 1. That it shall be lawful for any of the boards of chosen freeholders in counties of the first class in this state, at any time hereafter, when it shall be deemed advisable and for the best interests of such county, to lay out, open, construct, improve and maintain a public road in each of the respective counties of the first class in this state, extending through such county, in any direction, from one boundary line to the other of such county of the first class; and each of said boards of chosen freeholders in the respective counties of the first class in this state are hereby invested with all the rights and powers necessary and expedient to lay out, open, construct, pave, flag, macadamize, or otherwise improve and maintain such public road and make the surveys for the same. (a)

Freeholders may lay out and maintain public road in first-class counties.

284. SEC. 2. That the said board of chosen freeholders in any county of the first class in this state 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, shop, church, engine or school-house or other public structure to be taken down, removed or destroyed, before the expiration of one month after compensation therefor shall be determined and paid or tendered 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; *and provided*, that the width of said road shall be one hundred feet, and no more nor no less.

May take lands upon making compensation.

Proviso.

Proviso.

Proviso.

285. SEC. 3. That said board of chosen freeholders, 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 the width of such road, which shall be one hundred feet in width; and after the completion of such survey and map it shall be filed in the office of the clerk of said board for public inspection; *provided*, that in making the surveys and map of 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, or recorded or filed in any public office in any city, town or township in such county, to which they shall at all reasonable times have full access; *provided*, that the same be not removed from such office; *and provided also*, that the said board may include in any such road, as a part thereof, and in the survey and map thereof, to be shown thereon, any road, street, highway or avenue, or part thereof, already laid out, opened or dedicated in such county, or in any city, town or township thereof, to public use, and said board shall have the exclusive control of such road and regulate the use thereof throughout the entire length thereof.

Manner of laying out road.

Survey and map to be filed with clerk of board for public inspection.

Proviso.

Proviso.

286. SEC. 4. That so soon as conveniently can be done after such map as is provided for in the third section of this act is filed with the clerk of said board, and before any further action is had by said board in the matter, the said board shall give public notice in one or more of the newspapers published and circulating in the said county of the filing of such map for public inspection, which said notice shall be published at least two weeks, and which said notice shall state the time and place when and where said board shall meet to take into consideration the question whether said proposed road shall be laid out and opened or not, which said meeting

Notice to be given of the filing of the map.

(a) Query—Is this act constitutional? See *Stedler v. Freeholders of Hudson*, 16 Vt. 462.

shall not take place for at least four weeks from the time of filing said map with said board, and which said meeting shall be open and public, for the purpose of hearing and considering any objection in writing to the opening of said road, or to the course or location thereof, which may be presented to said board at such time and place.

May alter or
change surveys,
&c., after filing
of map.

287. SEC. 5. That said board, after the filing of said map, and the hearing and considering any objections which may be presented, shall have power to alter, revise, correct or change said surveys and maps as to course and location of said road, and adopt the course and location as laid down originally on said survey and map, or adopt the course and location as altered, revised, corrected or changed, or abandon the whole project entirely; *provided*, that if the same be so abandoned, such abandonment shall in no case be construed as an exhaustion of the powers of said board under this act, but said board may at any time commence anew under the provisions of this act, and that the powers of said board under this act shall be treated as continuous until such road shall be laid out, opened and improved as aforesaid, or this act repealed.

Proviso.

May revise, alter,
&c., location of
road.

288. SEC. 6. That after said board shall have heard and considered any objections which shall, as aforesaid, have been presented to them, they may, if they deem it to the best interests of the county, revise, alter and correct said map and location and course of said road, and order all such alterations in the course and location of said road, and if it is deemed in their judgment to be desirable, declare by resolution of such board that said road shall be laid out, opened and improved in accordance with the provisions of this act; and such board, their agents, engineers, surveyors and others in their employ, shall have full power at all times to enter upon any 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, construction, improving and maintaining such road or any part thereof, may be taken therefor, and value and damage assessed be allowed for the same, in the manner herein provided—that is to say, the said board of chosen freeholders, after declaring by resolution that said road shall be laid out and opened, and the adoption of the location and course thereof, shall immediately, by a petition in writing signed by the director and clerk of said board, make application to the justice of the supreme court holding the county circuit court for said county, for the appointment of three commissioners, who shall be freeholders and residents in such county, and upon such application, when so presented, said justice shall make an order fixing a time and place when said commissioners will be appointed, which shall not be less than fifteen days from the making of such application; notice of which said order shall be published in at least three newspapers published and circulated in said county, or in such other manner as said justice may direct, for a time not less than two weeks, of the particular time and place for the appointment of said commissioners, at which time and place, upon satisfactory evidence to him of the publication of such notice as aforesaid, he shall appoint, in writing under his hand, three disinterested, impartial and judicious freeholders, residents in such county, commissioners to examine and appraise the value of the land and real estate to be taken for the laying out and opening of said road and the damage to be done to the owner or owners thereof by taking the same, upon such notice to be given to the persons interested as shall be directed by the justice making said appointment, either personally, by publication or otherwise; and it shall be the duty of the said commissioners (having first taken and subscribed an oath or affirmation before the said justice, faithfully and impartially to discharge the duties of their appointment, which oaths or affirmations shall be filed with the clerk of said board of chosen freeholders), to meet at the time and place appointed, and proceed to view and examine the said lands and real estate to be taken for the laying out and opening of said road, hear the statements of parties interested, and from time to time adjourn the said examination and hearing, if in their judgment such action shall be necessary, and to make a just and equitable estimate or appraisal of the value of the lands and real estate, and the value of the interest of each

May enter upon
lands.

Land may be
taken when
necessary.

Appointment of
commissioners.

Duty of commis-
sioners.

owner of the land and real estate to be taken, and the damage to be done to each 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 necessary for said opening ; and when the estates in any of said lands and real estate are not known, they shall appraise the value and damages to be done to the fee-simple (which amounts shall be paid by the board of chosen freeholders as hereinafter directed) and separate appraisements made for each separate tract ; and said commissioners shall, within three months from the date of their appointment, make their report in writing under their hands and seals, or any two of them, and shall file the same within ten days thereafter in the clerk's office of such county, and remain of record therein, together with their appointment and proof of notice as aforesaid, as directed by the justice aforesaid, a copy of which, certified by the clerk of the county, under his seal of office, shall be filed with the clerk of the board of chosen freeholders, and by him presented to the board at its next meeting, and filed of record in his office ; and thereupon and on payment or tender of payment of the amount awarded as hereinafter provided, the said board of chosen freeholders is hereby empowered to enter upon and take possession of the lands and real estate for the use of the inhabitants of such county ; and the said report, or a copy thereof, certified by the clerk of such county, and proof of payment or tender of the amount awarded, shall at all times be construed as plenary evidence of the right of such board of chosen freeholders to have, hold, use, occupy, possess and enjoy the said lands and real estate for the uses of said county ; and the said justice of the supreme court shall, upon application of either party, and on reasonable notice to the other, tax and allow such costs, fees and expenses to the commissioners or others performing any of the duties prescribed in this section of this act, as he shall think equitable and right, which shall be paid by the county collector upon certificate of such justice ; *provided*, that should any such board of chosen freeholders of any county acting under the provisions of this act, or the owner or owners of any lands, feel aggrieved by the decision of the commissioners aforesaid, he, she or they may appeal to the circuit court of such county at any time within sixty days after the filing of the said report by said commissioners.

289. SEC. 7. That every appeal from the decision of the commissioners appointed under the preceding section shall be made in writing, and in the form of a petition to said court, and filed with the clerk of the said circuit court of such county ; and notice in writing of such appeal shall be given to the opposite party within ten days after the filing thereof, which proceedings shall vest in the circuit court full right and power to hear and adjudge the same, and to direct a proper issue for the trial of said controversy to be formed between the said parties, and to order a jury to be struck and a view of the premises to be had, and the said issue to be tried at such time as said court shall order, upon the like notice and in the same manner as other issues in the said court are tried ; and it shall be the duty of the said jury to assess the value of the said land and damages sustained, and if they shall find a greater sum than the said commissioners shall have awarded in favor of the said owner or owners, then judgment thereon with costs, shall be entered against said board of chosen freeholders, and execution awarded therefor ; but if the said jury shall be applied for by the owner or owners, and shall find a less sum than the said commissioners shall have awarded, then said costs shall be paid by said applicant or applicants, and either deducted out of said sum found by the said jury or execution awarded therefor, as the said court shall direct ; but such application shall not prevent the said board of chosen freeholders from taking the said land upon the filing of the aforesaid report as aforesaid ; *provided*, that in no case whatever shall said board of chosen freeholders enter upon or take possession of any land of any person or persons until they have paid or tendered to the party or parties entitled to receive the same the amount assessed by the commissioners as the value of such lands and damages ; but in no case shall the proceedings of appeal stay the entry upon and possession by such boards of the lands and real estate so as aforesaid

Report to be filed
in office of county
clerk.

Copy to be filed
with clerk of
board.

Expenses of com-
missioners, how
paid.

Proviso.

Proceedings in
case of appeal.

Proviso.

- Proviso.** taken and appraised for the laying out and opening of said road ; *and provided, also*, that if any party entitled to the payment of the amounts so as aforesaid assessed shall refuse to receive the same, be out of the state or under any legal disability, then the amount assessed or found as aforesaid shall be paid to and kept on deposit by the county collector of any such county for the use of the party or parties entitled to receive the same ; *and further*, that the party or parties entitled to receive the amount assessed by the commissioners may, upon tender being made, receive the same without being barred thereby from his or her appeal from the report of the commissioners ; *and provided further*, that in case any money paid to or deposited as aforesaid with the county collector shall belong to any infant, insane person or idiot, said money shall be paid over by said county collector to any guardian appointed to take charge of such infant's, insane person's or idiot's estate, when it shall appear to the said circuit court that such guardian has filed a good and sufficient bond to cover said amount with the court or surrogate appointing such guardian, or the money may, by said court, be ordered to be invested by the county collector for the benefit of such infant, insane person or idiot.
- Estates by mortgage, &c., to be appraised.** **290. SEC. 8.** That if any person shall have a mortgage, lease, life estate or any other estate less than fee, in any lands taken, said estate shall be appraised by the commissioners or, in case of appeal, by the jury, and deducted and paid out of the amount assessed or awarded for the whole fee.
- May issue bonds to pay awards, &c.** **291. SEC. 9.** That in order to raise money to pay the award of the commissioner or assessment of damages by a jury in case of an appeal, for the lands and real estate taken by this act, it shall be lawful for any such boards of chosen freeholders to cause, by resolution, the bonds of such county, in the name of such board of chosen freeholders, to be issued for the same, in such sums as such board may deem proper, and that money realized from such bonds shall be paid to the county collector, to be by him applied to the payment of said awards and damages as directed by resolution of such board ; that the bonds authorized to be issued by this section of this act may be either coupon or registered bonds, as the board of chosen freeholders may determine, and the same shall be made payable, both principal and interest, at the office of the county collector of such county, and said bonds shall be sold by the board of chosen freeholders of such county, upon the orders and resolutions thereof, either upon bids for the same, duly advertised for or otherwise ; *provided*, that said bonds shall in no case be sold at less than par ; the director of such board and the county collector of such county shall sign said bonds, and the same shall be sealed with the seal of the county, and the county collector shall number and register the same, and registered bonds may be exchanged for coupon bonds, and coupon bonds exchanged for registered bonds, at the request of the holder thereof ; *provided*, that the board of chosen freeholders, by resolution, shall consent to such exchange ; and said bonds shall bear such interest as such board shall determine, not exceeding five per centum per annum, and said interest shall be paid semi-annually, and the said bonds shall have such time to run as said board of chosen freeholders may, at the time of the issue thereof, by resolution, determine, not exceeding thirty years.
- Proviso.** **292. SEC. 10.** That such board of chosen freeholders shall, each year, place in the tax levy for such county for such year, so long as such bonds shall run, a sufficient sum to pay all interest on said bonds during such year, and also a sufficient sum to pay the principal of said bonds falling due within the year, the same to be levied and raised in the same manner as other county taxes are levied and raised.
- Bonds, rate of interest.** **293. SEC. 11.** That said board shall have the full power to lay out, open, construct, improve and maintain such public road, as provided in the preceding sections of this act ; that such board shall establish and determine the width of the carriage-way and sidewalks of said road ; *provided*, that both carriage-way and sidewalk shall be one hundred feet in width and no more nor less ; and shall construct said road by grading the same in such way and manner, and according to such grade as the said board shall fix and
- When due.**
- Principal and interest of bonds to be paid by tax.**
- Power to lay out road.**
- Proviso.**

determine, by excavating and removing earth, rocks, trees, stumps, buildings, improvements and all obstructions, by disposing of such portion thereof as are not needed in the constructing and improving said road, to the best advantage, and by filling 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 ; *provided*, 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 insure 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 injured by such alteration of grade); said board shall have power at any time to improve said road or any part thereof by paving, macadamizing, or otherwise improving the roadbed thereof, and by flagging or otherwise improving the sidewalks or any part thereof, by curbing and guttering said road or any part thereof, by providing lamps for and lighting such road or any part thereof, and may use in making any such improvement any labor or materials which said board is authorized to use, and any materials now or at such time in use, for any of said purposes, within the lines of such road that may be found there, or that may have been placed there by or under any municipal authority whatsoever.

Proviso.

Further powers of board.

294. SEC. 12. That all work and materials of or exceeding one thousand dollars, done or furnished in and about the opening, laying out, constructing and improving such road, shall be done or furnished by contract, after advertisement, in the following manner : the said board shall advertise for proposals for doing any work or furnishing materials amounting in the whole to one thousand dollars or more, for at least two weeks, once in each week, in such of the newspapers of such county as they may deem expedient, and shall thereafter, at some stated or special meeting, award the contract or contracts to the lowest responsible bidder, who shall furnish such good and sufficient securities as may be approved by said board ; all bids must be opened at a regular or special public meeting of said board, and not otherwise ; but said board shall be under no obligation to accept the lowest bid, if they deem it to be against the public interest 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 ; *provided*, that the board may, in the laying out, opening, constructing and improving said road, use any labor or materials which said board is authorized now by law to use, and any materials now or at such time in use for any of said purposes within the lines of such road that may be found there, or that may have been placed there by or under any municipal authority whatsoever.

Work to be done and materials furnished by contract.

Proviso.

295. SEC. 13. That except to cross such road, no horse, dummy or other railroad shall be allowed on such road or any part thereof.

No railroad allowed on such road.

296. SEC. 14. That costs, charges and expenses of laying out, opening, constructing and improving such road in accordance with the provisions of this act, and all moneys required or necessary for any of the purposes aforesaid, shall be raised in the manner hereinafter provided, and shall be paid by the public of such county at large, and shall be raised by tax at the times and in the manner hereinafter provided.

Costs and expenses of road to be raised by tax.

297. SEC. 15. That said board shall have the power to issue certificates of indebtedness in payment for work done or materials furnished, or any expense incurred in the execution of this act (except to pay awards for lands taken and damages thereto, which are hereinbefore provided for), 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 as hereinafter authorized to be issued and sold, and shall

May issue certificates of indebtedness How paid.

Rate of interest.
When due.

Entire cost of
road not to
exceed \$1,000,000.

Duty of board to
maintain and
keep road in
repair.

May issue bonds
to pay costs of
road or
certificates of
indebtedness.

Proviso.

Proviso.

Bonds, rate of
interest.

When due.

Proviso.

Principal and
interest of bonds
to be paid by tax.

Accounts of
expenditures on
road to be kept
separate from
other accounts.

bear interest at the rate of four per centum per annum, and shall be made payable within one year from the date thereof, as the said board shall therein designate.

298. SEC. 16. That the entire costs of laying out, opening, constructing and improving said public road in any county of this state, shall not exceed (including awards for lands taken and damages thereto) the sum of one million dollars.

299. SEC. 17. That it shall be the duty of such board to maintain such road or any part thereof, and to keep the same in repair and fit for public use from year to year, at the expense of the public at large of such county, and that the appropriation for such purposes, when necessary, shall be made and raised in the same manner as the appropriations for other county purposes are made and raised.

300. SEC. 18. That in order to raise money to pay the costs, charges and expenses of laying out, opening, constructing and improving such road in accordance with the provisions of this act, and all moneys required or necessary for any of the purposes aforesaid, it shall be lawful for such board of chosen freeholders from time to time, either before or while such work or improvement is in progress, by resolution, to cause the bonds of such county, in the name of such board of chosen freeholders, to be issued for the same in such sums as such board may deem proper; and that the moneys realized from such bonds shall be paid to the county collector, to be by him applied to the payment of the costs, charges and expenses of laying out, opening, constructing and improving such road or the certificates of indebtedness issued thereon, as directed by resolutions of said board; that the bonds authorized to be issued by this section of this act may be either coupon or registered bonds, as such board of chosen freeholders may determine, and the same may be made payable, both principal and interest, at the office of the county collector of each county, and said bonds shall be sold by the board of chosen freeholders of such county, upon the orders and resolutions thereof, either upon bids for the same, duly advertised for, or otherwise; *provided*, that said bonds shall in no case be sold at less than par; the director of such board and the county collector of such county shall sign said bonds, and the same shall be sealed with the seal of the county, and the county collector shall number and register the same; and registered bonds may be exchanged for coupon bonds, and coupon bonds exchanged for registered bonds, at the request of the holder thereof; *provided*, that such board of chosen freeholders, by resolution, shall consent to such exchange; and said bonds shall bear such interest as such board shall determine, not exceeding five per centum per annum, and said interest shall be paid semi-annually, and the said bonds shall have such time to run as said board of chosen freeholders may, at the time of the issue thereof, by resolution, determine, not exceeding thirty years, and the costs, charges and expenses aforesaid incurred in the laying out, opening, constructing and improving said road, as provided for by this act, shall be paid in no other manner; *and provided*, that the issue of such bonds in all shall not exceed the sum of one million dollars.

301. SEC. 19. That such board of chosen freeholders shall, each year, place in the tax levy for such county for such year, so long as such bonds run, a sufficient sum to pay all interest on said bonds during such year, and also a sufficient sum to pay the principal of said bonds falling due within the year, the same to be levied and raised in the same manner as other county taxes are levied and raised.

302. SEC. 20. That the said board and the county collector shall keep the accounts of the expenditures on account of said road separate and apart from the accounts of the other expenditures of such county, which account shall be called "the public road account," and the clerk of said board shall, on the first days of May and December in each year, file with the county clerk, there to be and remain as a public record, a detailed, itemized account of the expenditures of such board in relation to such road, which said account shall have been submitted to said board, approved of by said board, and ordered to be filed as aforesaid, and that the county collector

shall also in like manner, at the times aforesaid, make and file his report of the moneys received by him on account of the issue and sale of bonds or otherwise, and the amounts paid out by him by order of such board, which said reports shall be included under separate and appropriate headings in the annual reports of the receipts and expenditures of said board as now made in accordance with law.

303. SEC. 21. That such board shall, under the laws now in force and in accordance therewith, employ such officers, surveyors, engineers, agents, clerks or employes, as shall be necessary and requisite to carry the provisions of this act into effect, but no member of said board, nor any officer, surveyor, engineer, agent, clerk or employe [except a contractor or employe, for work to be done or materials to be furnished for 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.

Power to employ officers, surveyors, &c.

304. SEC. 22. That said board may establish such rules and regulations for the authentication of all their acts, contracts, and for all other purposes necessary or expedient for the efficient execution of this act, as to them shall seem necessary or convenient; they shall keep a full record of all their meetings and proceedings, and regular accounts of all moneys received and expended, and include the same under the separate headings of "public road account" in the annual report of the receipts and expenditures of said board, and that all meetings and proceedings of said board relating to their duties under the provisions of this act shall be public.

May establish rules and regulations, &c.

305. SEC. 23. That all the proceedings and acts of said 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 open to the inspection of the public during the business hours of every day (except Sundays and holidays); and copies thereof, certified under the seal of the clerk of such board, shall be evidence in all courts and places, the same as the original would be if produced.

Meetings to be public.

Proceedings, maps, &c., matters of public record.

306. SEC. 24. That after the completion of the laying out, opening, constructing and improving of said road, such board shall forthwith make, or cause to be made, a copy of all map or maps, report or reports, record or records, in their office relating to the course and location of said road, and cause the same to be certified under the seal of such board, and the hand of the clerk thereof, and the director or other presiding officer, and file the same in the office of the county clerk, there to be and remain of record.

Upon completion of road, copies of all papers relating thereto to be filed with county clerk.

307. SEC. 25. That whenever in this act words importing the plural number are used in describing or referring to any matter, 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 persons 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.

Certain words, how construed.

308. SEC. 26. That this act shall not confer power to operate under it by the board of chosen freeholders of any county until the same shall have been accepted by a majority of the votes cast as hereinafter provided at the next regular annual election held for members of the board of chosen freeholders in such county; that the mode of voting shall be "for public road," or "against public road;" that the board of chosen freeholders shall cause notice to be given of the election at which such vote shall be taken, in at least six newspapers printed in the county where such vote is to be taken, for at least once a week for four successive weeks before such election; and shall provide tickets to be voted, both "for" and "against" such public road, and suitable boxes to receive such ballots; the same judges of election shall act as in the general election, and the result of the

Power not conferred until act is accepted by majority of votes at next annual election.

votes cast "for" and "against" the public road shall be canvassed and returned separately from the general election returns, but in the same manner, and the boxes and statements shall be filed with the clerk of the county.

An act authorizing the boards of chosen freeholders of any two adjoining counties to lay out, open and grade continuous public highways therein.

P. L. 1883, p. 223.

Notice to be given of application to construct highway, &c., by boards of freeholders in any two adjoining counties.

Approved March 23, 1883.

309. SEC. 1. That whenever twenty-five freeholders and residents in each of any two adjoining counties of this state, neither of which have a county public road board, shall make application in writing, accompanied by a map or maps, to their respective boards of chosen freeholders to lay out, open and grade a continuous public highway of not less than three nor more than five rods wide, to extend only from a point within one of such counties to a point within another thereof, it shall be the duty of said boards of chosen freeholders to give notice thereof by publication in at least two newspapers published in each of their respective counties of said application and of the time within which any objections in writing will be received, which shall be not less than thirty days from the date of publication, and, also, that they have placed on exhibition, at their respective offices, the said map or maps, together with the said application, showing and indicating the general course and grades of the said intended highway, for public inspection at all reasonable times; it shall then be lawful for the said boards of chosen freeholders to consider the said application either in separate or joint meeting, together with such objections to granting the same as may have been submitted in accordance with the aforesaid public notice.

Duty of boards to consider estimates if decision of two-thirds of each board is favorable.

310. SEC. 2. That if the decision of two-thirds of each of the said boards shall be favorable to laying out, opening and grading said highway, it shall be the duty of each of said boards to proceed to consider the estimates in their respective counties of a fair and just compensation for the lands and buildings taken for the construction of the same, and of the amount of money required to build the said highway in the most substantial manner, and to raise the amounts so required by assessment, as is now authorized by law.

Notice to be given for proposals to construct highway.

311. SEC. 3. That it shall be the duty of each of said boards to give notice, by publication in at least two newspapers published in each of said counties, that proposals in writing for the construction of said highway will be received at their respective offices, within not less than thirty days from the date of publication, which said proposals shall then be opened in public, and the contracts awarded to such person or persons as it shall then be found to have offered to construct the same at the lowest prices and in conformity with the terms prescribed in said public notice, reserving the right, however, to each of said boards to reject any or all offers which in their opinion may not be to the proper interest or advantage of their said respective counties, and if so rejected, thereupon to again advertise for new proposals, in accordance with said conditions and subject to the same terms.

Boards empowered to construct highway.

312. SEC. 4. That the said boards of chosen freeholders, or either of them, are hereby empowered to do all necessary acts to carry the provisions of this act into effect, and to construct the said highway, and to proceed with all expedition for the earliest completion and opening the same for public use.

An act to make certain roads, constructed by commissioners under the authority of the legislature, county roads, and to provide for the payment of the expense of constructing by the county, and for the mode of maintaining and repairing the same.

P. L. 1883, p. 225.

Approved March 23, 1883.

313-315. SECS. 1, 2, 3. [This act, consisting of three sections, has been held to be unconstitutional by the court of errors and appeals in *Freeholders of Hudson v. Buck*, 20 Vr. 228. See, also, 22 Vr. 158.]

An act to authorize the boards of chosen freeholders in the respective counties in this state to lay out, open and improve a public road in each of the counties of this state.

Approved May 28, 1886.

P. L. 1886, p. 369.

316. SEC. 1. That it shall be lawful for any of the boards of chosen freeholders in the respective counties in this state, except such counties as have a county road board, at any time hereafter, when it shall be deemed advisable and for the best interests of such county to lay out, open, construct, improve and maintain a public road extending through such county in any direction from one boundary line to the other of such county, to order and hold an election at the time and places of holding the general election in and for said county for members of the general assembly of this state, which election shall be conducted by the same officers as shall have been chosen to conduct such general election for members of the general assembly, and if a majority of the persons entitled to vote at such general election for members of assembly shall by separate ballot elect that such road shall be built, then such board of chosen freeholders shall be invested with all the rights and powers necessary and expedient to lay out, open, construct, pave, flag, macadamize or otherwise improve and maintain such public road and make surveys for the same; but if a majority of such persons shall by such separate ballot elect that such road shall not be built, then nothing in this act contained shall apply to or be effective in such county. (a)

Board of freeholders may order election to determine whether public road through the county shall be constructed.

Election, how conducted.

317. SEC. 2. That due notice shall be given by such board of chosen freeholders of the time and place of holding the election hereinabove provided for by public advertisement in at least two newspapers circulating in the county in which the same is ordered, for at least one month preceding the same; and that for the purpose of receiving such ballots a separate ballot-box shall be provided by such board of chosen freeholders at each polling place in such county, and that any person desiring to vote in favor of the building of such road under this act shall cast into such separate ballot-box a ballot with the words "in favor of public road" written or printed thereon, and any person desiring the contrary shall cast a ballot into said separate ballot-box with the words "against public road" written or printed thereon; and if a majority of the persons voting at such election in the manner hereinabove prescribed shall so elect, then the said board of chosen freeholders in any county of this state 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, shop, church, engine or school-house or other structure be taken down, removed or destroyed before the expiration of one month after compensation therefor shall be determined and paid or tendered as hereafter 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; *and provided*, that the width of said road shall not exceed one hundred feet.

Notice of election to be given.

What ballots to contain.

Majority of persons voting in favor, board of freeholders empowered to open road.

Proviso.

Proviso.

Proviso.

318. SEC. 3. That said board of chosen freeholders, 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 the width of such road, which shall not exceed one hundred feet in width; and after the completion of such survey and map it shall be filed in the office of the clerk of said board for public inspection; *provided*, that in making the surveys

Map and survey of road to be made and filed.

Width of road and owners of land to be stated.

Proviso.

(a) This act has been held to be unconstitutional by the supreme court. *Bray v. Hudson*, 21 Vr. 82.

and maps of the same they may use all the surveys and maps that now are or may hereafter be recorded or filed in any public office in any city, town or township in such county, to which they shall at all reasonable times have full access, provided that the same shall not be removed from such office; *and provided, also*, that the said board may include in any such road, as a part thereof, and in the survey and map thereof, to be shown thereon, any road, street, highway or avenue, or part thereof, already laid out, opened or dedicated in such county, or in any city, town or township thereof to public use, and said board shall have the exclusive control of such road and regulate the use thereof through the entire length thereof.

319. SEC. 4. That so soon as conveniently can be done after such map as is provided for in the third section of this act is filed with the clerk of said board, and before any further action is had by said board in the matter, the said board shall give public notice in one or more of the newspapers published and circulating in the said county of the filing of such map for public inspection, which said notice shall be published at least two weeks, and which said notice shall state the time and place when and where said board shall meet to take into consideration the question whether said proposed road shall be laid out and opened or not, which said meeting shall not take place for at least four weeks from the time of filing of said map with said board, and which said meeting shall be open and public for the purpose of hearing and considering any objection in writing to the opening of said road, or to the course or location thereof, which may be presented to said board at such time and place.

320. SEC. 5. That said board, after the filing of said map and the hearing and considering any objections which may be presented, shall have power to alter, revise, correct or change said board surveys and maps as to course and location of said road, and adopt the course and location as laid down originally on said survey and map, or adopt the course and location as altered, revised, corrected or changed, or abandon the whole project entirely; *provided*, that if the same be so abandoned such abandonment shall in no case be construed as an exhaustion of the powers of said board under this act, but said board may at any time commence anew under the provisions of this act, and that the powers of said board under this act shall be treated as continuous until such road shall be laid out, opened and improved as aforesaid or this act repealed.

321. SEC. 6. That after said board shall have heard and considered any objections which shall as aforesaid have been presented to them, they may, if they deem it to the best interests of the county, revise, alter and correct said map and location and course of said road, and order all such alterations in the course and location of said road, and, if it is deemed in their judgment to be desirable, declare by resolution of such board that said road shall be laid out, opened and improved in accordance with the provisions of this act; and such board, their agents, engineers, surveyors and others in their employ, shall have full power, at all times, to enter upon any 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, construction, improving and maintaining such road, or any part thereof may be taken therefor, and the value and damage assessed be allowed for the same, in the manner herein provided—that is to say: the said board of chosen freeholders, after declaring by resolution that the said road shall be laid out and opened, and the adoption of the location and course thereof, shall immediately, by a petition in writing signed by the director and clerk of said board, make application to the justice of the supreme court holding the county circuit court for said county, for the appointment of three commissioners, who shall be freeholders and residents in such county, and upon such application, when so presented, said justice shall make an order fixing a time and place when said commissioners will be appointed, which shall be not less than fifteen days from the making of such application, notice of which order shall be published in at least three newspapers published and circulated in said county, or in such other manner as said justice may direct, for a time not less than two weeks, of the particular time and place for the

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Notice of filing of maps to be published.

Notice of time and place of meeting of board.

Board may alter, revise or change maps and surveys, &c.

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Board authorized to revise and correct map and location of road.

How lands and real estate may be taken.

Board to make application for appointment of commissioners.

Notice of time and place of appointment of commissioners to be advertised.

appointment of said commissioners, at which time and place, upon satisfactory evidence to him of the publication of such notice as aforesaid, he shall appoint in writing, under his hand, three disinterested, impartial and judicious freeholders, residents in such county, commissioners to examine and appraise the value of the land and real estate to be taken for the laying out and opening of said road, and the damage to be done to the owner or owners thereof by taking the same, upon such notice to be given to the persons interested, as shall be directed by the justice making said appointment, either personally, by publication or otherwise; and it shall be the duty of the said commissioners (having first taken and subscribed an oath or affirmation before the said justice faithfully and impartially to discharge the duties of their appointment, which oaths or affirmations shall be filed with the clerk of said board of chosen freeholders) to meet at the time and place appointed, and proceed to view and examine the said lands and real estate to be taken for the laying out and opening of said road, hear the statements of parties interested, and from time to time adjourn the said examination and hearing, if in their judgment such action shall be necessary, and to make a just and equitable estimate or appraisal of the value of the lands and real estate, and the value of the interest of each owner of the land and real estate to be taken, and the damage to be done to each 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 necessary for said opening; and when the estates in any of said lands and real estate are not known, they shall appraise the value and damages to be done to the fee-simple (which amounts shall be paid by the board of chosen freeholders as hereinafter directed), and separate appraisements made for each separate tract; and said commissioners shall, within three months from the date of their appointment, make their report in writing, under their hands and seals, or any two of them, and shall file the same within ten days thereafter in the clerk's office of such county, and remain of record therein, together with their appointment and proof of notice aforesaid, as directed by the justice aforesaid, a copy of which, certified by the clerk of the county under his seal of office, shall be filed with the clerk of the board of chosen freeholders, and by him presented to the board at its next meeting and filed of record in his office; and thereupon, and on payment or tender of payment of the amount awarded, as hereinafter provided, the said board of chosen freeholders is hereby empowered to enter upon and take possession of the lands and real estate for the use of the inhabitants of such county; and the said report, or a copy thereof, certified by the clerk of such county, and proof of payment or tender of the amount awarded, shall at all times be construed as plenary evidence of the right of such board of chosen freeholders to have, hold, use, occupy, possess and enjoy the said lands and real estate for the uses of said county; and the said justices of the supreme court shall, upon application of either party, and upon reasonable notice to the other, tax and allow such costs, fees and expenses to the commissioners or others performing any of the duties prescribed in this section of the act as he shall think equitable and right, which shall be paid by the county collector upon certificate of such justice; *provided*, that should any such board of chosen freeholders of any county, acting under the provisions of this act, or the owner or owners of any lands feel aggrieved by the decision of the commissioners aforesaid, he, she or they may appeal to the circuit court of such county at any time within sixty days after filing of the said report by the said commissioners.

322. SEC. 7. That every appeal from the decision of the commissioners appointed under the preceding section shall be made in writing, and in the form of a petition to said court and filed with the clerk of said circuit court of such county; and notice in writing of such appeal shall be given to the opposite party within ten days after the filing thereof, which proceedings shall vest in the circuit court full right and power to hear and adjudge the same and to direct a proper issue for the trial of said controversy to be formed between the said parties and to order a jury to be struck and a view of the premises to be had, and the said issue to be tried

Justice of
supreme court to
appoint commis-
sioners.

Duty of commis-
sioners, &c.

When commis-
sioners to make
report.

Board authorized
to enter upon and
take possession
of lands, &c.

Fees, costs and
expenses, by
whom taxed and
paid.

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Proceedings in
case of appeal
from decision of
commissioners.

at such time as said court shall order, upon the like notice and in the same manner as other issues in the said court are tried ; and it shall be the duty of the said jury to assess the value of the said land and damages sustained, and if they shall find a greater sum than the said commissioners shall have awarded in favor of the said owner or owners, then judgment thereon with costs shall be entered against the said board of chosen freeholders and execution awarded therefor ; but if the said jury shall be applied for by the owner or owners and shall find a less sum than the said commissioners shall have awarded, then said costs shall be paid by said applicant or applicants and either deducted out of said sum found by the said jury or execution awarded therefor, as the said court shall direct, but such application shall not prevent the said board of chosen freeholders from taking the said land upon filing of the aforesaid report as aforesaid ; *provided*, that in no case whatever shall said board of chosen freeholders enter upon or take possession of any land of any person or persons until they have paid or tendered to the party or parties entitled to receive the same the amount assessed by the commissioners as the value of such lands and damages ; but in no case shall the proceedings of appeal stay the entry upon and possession by such boards of the lands and real estate so as aforesaid taken and appraised for the laying out and opening of said road ; *and provided*, also, that if any party entitled to the payment of the amounts so as aforesaid assessed shall refuse to receive the same, be out of the state or under any legal disability, then the amount assessed or found as aforesaid shall be paid to and kept on deposit by the county collector of such county, for the use of the party or parties entitled to receive the same ; *and further*, that the party or parties entitled to receive the amount assessed by the commissioners may, upon tender being made, receive the same without being barred thereby from his or her appeal from the report of the commissioners ; *and provided further*, that in case any money paid to or deposited as aforesaid with the county collector shall belong to any infant, insane person or idiot, said money shall be paid over by said county collector to any guardian appointed to take charge of such infant's, insane person's or idiot's estate, when it shall appear to the said circuit court that such guardian has filed a good and sufficient bond to cover said amount with the court or surrogate appointing such guardian, or the money may by said court be ordered to be invested by the county collector for the benefit of such infant, insane person or idiot.

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Mortgages, leases,
&c., upon lands
taken, how paid.

323. SEC. 8. That if any person shall have a mortgage, lease, life estate or any other estate less than fee in any lands taken, said estate shall be appraised by the commissioners, or in case of appeal, by the jury and deducted and paid out of the amount assessed or awarded for the whole fee.

Freeholders
authorized to
issue bonds to pay
awards or assess-
ments of
damages.

324. SEC. 9. That in order to raise money to pay the award of the commissioners or assessments of damages by a jury in case of an appeal, for the lands and real estate taken by this act, it shall be lawful for any such boards of chosen freeholders to cause, by resolution, the bonds of such county, in the name of such board of chosen freeholders, to be issued for the same, in such sums as such board may deem proper, and that money realized from such bonds shall be paid to the county collector, to be by him applied to the payment of said awards and damages as directed by resolution of such board ; that the bonds authorized to be issued by this section of this act may be either coupon or registered bonds, as the board of chosen freeholders may determine, and the same shall be made payable, both principal and interest, at the office of the county collector of such county, and said bonds shall be sold by the board of chosen freeholders of such county, upon the orders and resolutions thereof, either upon bids for the same duly advertised for, or otherwise ; *provided*, that said bonds shall in no case be sold at less than par ; the director of such board and the county collector of such county shall sign said bonds, and the same shall be sealed with the seal of the county, and the county collector shall number and register the same, and registered bonds shall be exchanged for coupon bonds and coupon bonds exchanged for registered bonds at the request of

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the holder thereof ; *provided*, that the board of chosen freeholders, by resolution, shall consent to such change ; and said bonds shall bear such interest as such board shall determine, not exceeding five per centum per annum, and said interest shall be paid semi-annually, and the said bonds shall have such time to run as said board of chosen freeholders may, at the time of the issue thereof, by resolution determine, not exceeding thirty years.

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325. SEC. 10. That such board of chosen freeholders shall, each year, place in the tax levy for such county for such year, so long as such bonds shall run, a sufficient sum to pay all interest on such bonds during such year, and also a sufficient sum to amount to two per centum of the whole principal of said bonds, which said sum of two per centum of said bonds shall be deposited in a sinking fund of said county for the purpose of paying said bonds as they may become due, said sinking fund to be managed by said boards of chosen freeholders as shall best subserve said object of its creation, and also a sufficient sum to pay the principal of any of said bonds falling due in any year, the said sums to be levied and raised in the same manner as other county taxes are levied and raised.

Board of freeholders to place in tax levy amount to pay interest and to establish a sinking fund.

326. SEC. 11. That said board shall have full power to lay out, open, construct, improve and maintain such public road as provided in the preceding section of this act ; that such board shall establish and determine the width of the carriage-way and sidewalks of said road ; *provided*, that both carriage-way and sidewalk shall not exceed one hundred feet in width, and shall construct said road by grading the same in such way and manner and according 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 and improving said road to the best advantage, and by filling 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 ; *provided*, 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 insure 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 injured by such alteration of grade) ; said board shall have power at any time to improve said road, or any part thereof, by paving, macadamizing or otherwise improving the roadbed thereof, and by flagging or otherwise improving the sidewalk, or any part thereof, by curbing and guttering said road, or any part thereof, by providing lamps for and lighting such road, or any part thereof, and may use in making any such improvement any labor or materials which said board is authorized to use, and any materials now or at such time in use, for any of said purposes, within the lines of such road that may be found there, or that may have been placed there by or under any municipal authority whatsoever.

Full power to construct road and determine width of carriage-way and sidewalks.

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327. SEC. 12. That all work and materials, of or exceeding one thousand dollars, done or furnished in and about the opening, laying out, constructing and improving such road, shall be done or furnished by contract after advertisement in the following manner : the said board shall advertise for proposals for doing any work or furnishing materials amounting in the whole to one thousand dollars or more, for at least two weeks, once in each week, in such of the newspapers of such county as they may deem expedient, and shall thereafter at some stated or special meeting award the contract or contracts to the lowest responsible bidder, who shall furnish such good and sufficient sureties as may be approved by said board ; all bids must be opened at a regular or special public meeting of said board and not otherwise ; but said board shall be under no obligation to accept the lowest bidder if they deem it to be against the public interest 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

All work and materials to be furnished by contract.

Board to advertise for proposals and award contract.

- Proviso. for proposals and proceed in all things as if no proposals had before been offered; *provided*, that the board may, in laying out, opening, constructing and improving said road, use any labor or materials which said board is authorized now by law to use, and any materials now or at any such time in use, for any of said purposes, within the lines of such road that may be found there, or that may have been placed there by or under any municipal authority whatsoever.
- No railroad to be allowed on road. **328.** SEC. 13. That except to cross such road, no horse, dummy or other railroad shall be allowed on such road or any part thereof.
- Costs, charges and expenses in laying out road and moneys required, how to be raised. **329.** SEC. 14. That costs, charges and expenses of laying out, opening, constructing and improving such road in accordance with the provisions of this act, and all moneys required or necessary for any of the purposes aforesaid, shall be raised in the manner hereinafter provided and shall be paid by the public of such county at large and shall be raised by tax at the times and in the manner hereinafter provided.
- Board authorized to issue certificates of indebtedness for work, materials and expenses. Certificates to bear interest, and when payable. **330.** SEC. 15. That said board shall have the power to issue certificates of indebtedness in payment for work done or materials furnished, or any expense incurred in the execution of this act (except to pay awards for lands taken and damages thereto, which are hereinbefore provided for), 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, as hereinafter authorized to be issued and sold, and shall bear interest at the rate of four per centum per annum, and shall be made payable within one year from the date thereof, as the said board shall therein designate.
- Entire cost of constructing road not to exceed \$1,000,000. **331.** SEC. 16. That the entire costs of laying out, opening, constructing and improving said public road in any county of this state, shall not exceed (including awards for lands taken and damages thereto) the sum of one million dollars.
- Road to be kept in repair for public use. **332.** SEC. 17. That it shall be the duty of such board to maintain such road or any part thereof, and to keep the same in repair and fit for public use from year to year, at the expense of the public at large of such county, and that the appropriation for such purposes, when necessary, shall be made and raised in the same manner as the appropriations for other county purposes are made and raised.
- Board of freeholders may issue bonds. **333.** SEC. 18. That in order to raise money to pay the costs, charges and expenses of laying out, opening, constructing and improving such road in accordance with the provisions of this act, and all moneys required or necessary for any of the purposes aforesaid, it shall be lawful for such board of chosen freeholders from time to time, either before or while such work or improvement is in progress, by resolution, to cause the bonds of such county, in the name of such board of chosen freeholders, to be issued for the same in such sums as such board may deem proper; and that the moneys realized from such bonds shall be paid to the county collector, to be by him applied to the payment of costs, charges and expenses of laying out, opening, constructing and improving such road or the certificates of indebtedness issued thereon, as directed by resolutions of said board; that the bonds authorized to be issued by this section of this act may be either coupon or registered bonds, as such board of chosen freeholders may determine, and the same may be made payable, both principal and interest, at the office of the county collector of such county, and said bonds shall be sold by the board of chosen freeholders of such county, upon the orders and resolutions thereof, either upon bids for the same, duly advertised for, or otherwise; *provided*, that said bonds shall in no case be sold at less than par; the director of such board and the county collector of such county shall sign said bonds, and the same shall be sealed with the seal of the county, and the county collector shall number and register the same, and registered bonds may be exchanged for coupon bonds, and coupon bonds exchanged for registered bonds at the request of the holder thereof; *provided*, that such board of chosen freeholders, by resolution, shall consent to such exchange; and said bonds shall bear such interest as such board shall
- Moneys received from bonds sold, how applied.
- Bonds may be sold either upon bids or otherwise.
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determine, not exceeding five per centum per annum, and said interest shall be paid semi-annually, and the said bonds shall have such time to run as said board of chosen freeholders may, at the time of the issue thereof, by resolutions determine, not exceeding thirty years, and the costs, charges and expenses aforesaid incurred in the laying out, opening, constructing and improving said road, as provided for by this act, shall be paid in no other manner; *and provided*, that the issue of such bonds in all shall not exceed the sum of one million dollars.

334. SEC. 19. That such board of chosen freeholders shall, each year, place in the tax levy for such county for such year, so long as such bonds shall run, a sufficient sum to pay all interest on said bonds during such year, and also a sufficient sum to amount to two per centum of the whole principal of said bonds, which said sum of two per centum of said bonds shall be deposited in a sinking fund of said county for the purpose of paying said bonds as they may become due, said sinking fund to be managed by said boards of chosen freeholders as shall best subserve said object of its creation, and also a sum sufficient to pay the principal of said bonds falling due within the year, the same to be levied and raised in the same manner as other county taxes are levied and raised.

335. SEC. 20. That the said board and the county collector shall keep the accounts and expenditures on account of said road separate and apart from the accounts of the other expenditures of such county, which account shall be called the "public road account," and the clerk of said board shall, on the first days of May and December in each year, file with the county clerk, there to be and remain as a public record, a detailed itemized account of the expenditures of such board in relation to such road, which said account shall have been submitted to said board, approved of by said board and ordered to be filed as aforesaid, and that the county collector shall also in like manner, at the times aforesaid, make and file his report of the moneys received by him on account of the issue and sale of bonds or otherwise, and the amounts paid out by him by order of such board, which said reports shall be included under separate and appropriate headings in the annual reports of the receipts and expenditures of said board as now made in accordance with law.

336. SEC. 21. That such board shall, under the laws now in force and in accordance therewith, employ such officers, surveyors, engineers, agents, clerks or employes as shall be necessary and requisite to carry the provisions of this act into effect, but no member of said board nor any officer, surveyor, engineer, agent, clerk or employe (except a contractor or employe for work to be done or materials to be furnished for 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.

337. SEC. 22. That said board may establish such rules and regulations for the authentication of all their acts, contracts, and for all other purposes necessary or expedient for the efficient execution of this act, as to them shall seem necessary or convenient; they shall keep a full record of all their meetings and proceedings, and regular accounts of all moneys received and expended, and include the same under the separate headings of "public road account" in the annual report of the receipts and expenditures of said board, and that all meetings and proceedings of said board relating to their duties under the provisions of this act shall be public.

338. SEC. 23. That all the proceedings and acts of said 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 parties shall be deemed to have due notice of the existence thereof, and the same shall be open 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 the clerk of such [board], shall be evidence in all courts and places the same as the original would be if produced.

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Board of freeholders to place in tax levy annually sum to pay interest and per centum of principal of bonds.

"Public road account" to be kept by board and county collector.

County collector to make and file report.

Board authorized to employ officers, engineers, &c.

Member not to be interested in contracts, &c.

Board may establish rules and regulations, and keep full record of meetings and proceedings.

Minutes, maps, contracts, &c., to be public records, and open to inspection.

Copies of maps, reports, records, &c., to be made, certified and filed with county clerk.

339. SEC. 24. That after the completion of the laying out, opening, constructing and improvement of said road, such board shall forthwith make or cause to be made a copy of all map or maps, report or reports, record or records in their office relating to the course and location of said road, and cause the same to be certified under the seal of such board and the hand of the clerk thereof and the director or other presiding officer and file the same in the office of the county clerk, there to be and remain of record.

Certain words used in act, how construed.

340. SEC. 25. That whenever in this act words importing the plural number are used in describing or referring to any matter, parties or person, 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.

An act to provide for the payment of certificates of indebtedness issued for the purpose of constructing or improving a road or roads in counties of this state.

P. L. 1887, p. 138.

Approved April 7, 1887.

341-343. SECS. 1, 2, 3. [This act declared to be unconstitutional by the court of errors and appeals in *Freeholders of Hudson v. Buck*, 22 Vr. 155.]

An act to authorize the board of chosen freeholders of any of the several counties of this state to lay out, open, construct, improve and maintain a public road therein.

P. L. 1888, p. 397.

Approved April 7, 1888.

Board of chosen freeholders authorized to submit questions of construction, &c., of public road to electors of county.

344. SEC. 1. That it shall be lawful for any board of chosen freeholders of any of the several counties of this state, when said board deem it for the best interests of such county to lay out, open, construct, improve and maintain a public road, extending through such county in any direction, to submit by resolution the question whether or not such public road shall be laid out, opened, constructed, improved and maintained as provided for in this act, to the electors of said county at an election to be held at the same time and place of holding the general election in and for said county for members of the general assembly of this state, which election shall be conducted by the same officers as may be chosen or designated to conduct such election for members of the general assembly, and if a majority of such electors voting on said question shall vote in the manner hereinafter provided for said public road, then such board of chosen freeholders shall be invested with all the rights and powers necessary and expedient to lay out, open, construct, improve and maintain such public road, but if the majority of such electors so voting shall vote against such public road, then nothing in this act shall apply to or be effective in such county; which said resolution shall specify approximately the termini and general course or route of such road, and name the townships, towns and the wards of aldermanic districts or other similar districts or divisions of cities through which the same is to run. (a)

Election, when held.

How conducted, &c.

Board of freeholders to give notice of election.

Provide ballot-boxes.

345. SEC. 2. That notice shall be given by such board of chosen freeholders of the time and place of holding the election hereinabove provided for, by public advertisement in at least two newspapers circulating in the county in which the same is to be held, for at least two weeks preceding the same, and that to carry into effect the purposes of this act, a separate ballot-box shall be provided by such board of chosen freeholders at each

(a) This act is constitutional. *Noonan v. Freeholders of Hudson*, 22 Vr. 454, 23 Vr. 398. The board of chosen freeholders has an interest in the grade of any street lying within a survey of a county road, and, as prosecutor, can try the legality of any ordinance changing the grade of such street. *Hudson v. Bayonne*, 25 Vr. 293.

polling place in such county, and that any such elector desiring to vote in favor of having such road under this act, shall cast into such separate ballot-box a ballot with the words "in favor of public road" written or printed thereon, and any such elector desiring the contrary shall cast a ballot into said separate ballot-box with the words "against public road" written or printed thereon; that the polls for such election shall be opened at the same hour in the forenoon and closed at the same hour in the afternoon as the polls for the said election of members of the general assembly, and such election officers shall make a true and correct statement in writing, under their hands, of the result of such election, the same to be canvassed and entered in the records or minutes of the board of canvassers; and the clerk of this last-named board is hereby required to transmit forthwith to such board of chosen freeholders, to be filed in the office of the clerk of such board, a brief statement of the result of the election herein provided for; any ballot-box heretofore used at any election for members of the general assembly aforesaid, or at any election for members of the board of chosen freeholders of such county, may be used for the purposes of the election in this act provided for; and any ballot-box heretofore used in any such county at any election like or similar in its nature to that provided for in this act may also be used for such election. (a)

346. SEC. 3. That if the result of said election be in favor of having said public road, then such board of chosen freeholders may proceed to lay out, open, construct and improve any such road, as follows: they shall, in the first place, make or cause to be made a survey of such road and a map thereof showing the termini and route of said 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 the width of such road, which shall not exceed one hundred feet in width, and after the completion of such survey and map, it shall be filed in the office of the clerk of said board, for public inspection; *provided*, that in making the survey and map of the same, said board or their agents may use all the surveys and maps that now are or may hereafter be recorded or filed in any public office of such county, or in any public office in any city, town or township in such county, to which surveys and maps they shall at all reasonable times have free access; *provided*, the same shall not be removed from such office; *and provided, also*, the said board may include in any such road as a part thereof and in the survey and map thereof, to be shown therein, any road, street, highway or avenue or part thereof already laid out, opened or dedicated in such county or in any city, town or township thereof, to public use, and said board shall have the exclusive control of such road and regulate the use thereof through its entire length.

347. SEC. 4. That as soon as conveniently can be done after such map as is provided for in the third section of this act is filed with the clerk of said board, and before any further action is had by said board in the matter, the said board shall give public notice in two or more of the newspapers published and circulating in the said county, of the filing of such map for public inspection, which notice shall be published at least two weeks, and which said notice shall state the time and place when and where said board shall meet to take into consideration the question whether said proposed road shall be opened or not, as provided in this act, which meeting shall not take place for at least four weeks from the time of the filing of said map, and which said meeting shall be open and public for the purpose of hearing and considering any objection in writing to the opening of said road or to the course of location thereof which may be presented to said board at such time and place.

348. SEC. 5. That said board, after the filing of said map and hearing and considering any such objections which may be presented, shall have power to alter, revise, correct or change said survey and map as to the

What ballots to state.

Opening and closing of polls.

Statement of the result of election.

Transmitted and filed.

What ballot-boxes may be used.

If result of election be in favor of road, board of freeholders may proceed to lay out same.

Map and survey filed.

Proviso.

Proviso.

Proviso.

Notice of filing map and of meeting of board to be given.

Board empowered to alter survey and map, or abandon road.

Proviso.	course and location of said road, in any or every particular, or adopt the course and location laid down originally on said survey and map, or adopt the course and location as altered, revised, corrected or changed, or may abandon the proposed road as shown on said map; <i>provided</i> , that if the same be so abandoned, such abandonment shall in no case be construed as an exhaustion of the power of said board under this act and said election, but said board may at any time commence a new survey and map under the provisions of this act, and the powers of said board under this act and said election, shall be treated as continuous until such road shall be laid out, opened and improved as aforesaid, or this act repealed.
When board may declare by resolution that road be laid out.	349. Sec. 6. That after said board shall have heard and considered any objections which shall, as aforesaid, have been presented to them, they may, if they deem it for the best interest of the county, declare by resolution, provided a majority of all the members of said board vote in favor of the resolution, that said road shall be laid out, opened and improved in accordance with the provisions of this act, and such board, their agents and employes, shall have full power at all times to enter upon any lands for any of the purposes contemplated by this act; and any land and real estate deemed necessary by the said board for the laying out, opening, constructing, improving and maintaining such road or any part thereof, may be taken therefor, and the value and damage assessed be allowed for the same in the manner herein provided, that is to say, the said board of chosen freeholders, after declaring by resolution as aforesaid, that the said road shall be laid out and opened, and after the adoption of the location and course thereof, shall immediately, by a petition in writing signed by the director and clerk of said board, make application to a justice of the supreme court of this state for the appointment of three commissioners, and upon such application when so presented, said justice shall make an order fixing a time and place when said commissioners will be appointed, which time shall be not less than fifteen days from the making of such application, which order shall be published in at least one newspaper published and circulated in said county, and in such other manner as said justice may direct, for a time not less than fifteen days, at which said time and place, upon satisfactory evidence of the publication of such order as aforesaid, he shall appoint under his hand three discreet and impartial freeholders, residents in this state, commissioners to examine and appraise the land, real estate and other property to be taken for the laying out and opening of said road, and the damage to be done to the owner or owners thereof by taking the same upon such notice to be given to the persons interested as shall be directed by the justice making such appointment, either personally or by publication or otherwise; and it shall be the duty of the said commissioners, having first taken and subscribed an oath or affirmation faithfully and impartially to discharge the duties of their appointment (which oath or affirmation shall be filed with the clerk of said county), to meet at the time and place appointed in said notice, and proceed to view and examine the said lands, real estate and other property to be taken in laying out and opening of said road, and to make a just and equitable estimate and appraisal of the compensation and damages each owner of the real estate and land to be taken will sustain by reason of such taking, considering in such appraisal the condition in which each owner's parcel will be left after taking so much thereof as will be necessary for said opening, and the benefits that will result from such road to the owner or owners of such land and real estate, and when the estates in any of said lands and real estate are not known they shall appraise the compensation to be made for and damages to be done to the fee-simple, and separate appraisal shall be made for each separate tract, and said commissioners, or any two of them, shall, within three months from the date of their appointment, make their reports in writing, which shall contain a description of each separate tract of land and real estate taken and be under their hands and seals, and shall file the same within ten days thereafter in the clerk's office of such county, to remain on record therein, together with their appointments and proof of notice aforesaid; a copy of which report, certified by the clerk of the county under his seal of office, shall be filed with the clerk of the board of chosen freeholders and by
May enter upon and take lands.	
Value and damages assessed, how allowed.	
Application and appointment of commissioners.	
Duties of commissioners.	
Make report in writing.	
Filed.	
Copy filed.	

him presented to the board at its next regular meeting, and thereafter such report shall remain of record in his office, and thereupon, and on the payment or tender of payment of the amount awarded as hereinafter provided, the said board of chosen freeholders is hereby empowered to enter upon and take possession of the said lands and real estate, and the said report, or a copy thereof certified by the clerk of said county, and proof of payment or tender of the amount awarded, shall at all times be construed as evidence of the right of said board of chosen freeholders to have, hold, use, occupy, possess and enjoy the said lands and real estate for the purposes of said road; and the said justice of the supreme court shall, upon application of either party, and upon reasonable notice to the other, tax and allow such costs, fees and expenses to the commissioners, county clerk or others performing any of the duties prescribed in this section, as he shall deem equitable and right, which shall be paid by the county collector upon certificate of such justice; *provided*, that if for any reason the said commissioners are unable to appraise the compensation and damage for the taking of any land and real estate within the three months above mentioned, the said commissioners may make report, or supplementary report or reports, within such further time or times as the said justice on the application of said board may direct; *and provided*, that if any or all of said commissioners shall die, or for any other reason be unable to make such report, then the said justice, or any justice of said supreme court, upon like notice, may appoint other freeholders qualified as aforesaid, in the place or stead of the commissioners so deceased or otherwise unable to act, who, after taking oath or affirmation as aforesaid, shall proceed as if originally appointed; *and provided, further*, that should any such board of chosen freeholders of any county acting under the provisions of this act, or the owner or owners of any land or real estate, feel aggrieved by the decision of the commissioners aforesaid, he, she or they may appeal to the circuit court of said county at any time within thirty days after the filing of the said report by the said commissioners. (a) [See Secs. 366 and 379, *post*.]

350. SEC. 7. That every appeal from the decision of the commissioners appointed under the preceding section shall be made in writing, and in the form of a petition to said court, and filed with the clerk of said circuit court of such county at the next term of said court to be holden in said county; which proceedings shall vest in the circuit court full right and power to hear and adjudge the same, and to direct a proper issue for the trial of said controversy to be formed between the said parties, and to order a jury to be struck and a view of the premises to be had, and the said issue may be tried in the same manner as other issues in said court are tried, and upon such notice as the court may order, and if such jury shall find a greater sum than the said commissioners shall have awarded in favor of the said owner or owners, then judgment thereon, with costs, shall be entered against the said board of chosen freeholders, but if the said jury shall be applied for by the said owner or owners, and shall find a less sum than the said commissioners shall have awarded, then said cost shall be paid by said applicant or applicants, and either deducted out of said sum found by the said jury or execution awarded therefor as the said court shall direct, but such application shall not prevent the said board of chosen freeholders from taking the said land upon filing of the said report as aforesaid; *provided*, that in no case whatever shall said board of chosen freeholders enter upon or take possession of any land of any person or persons except to make survey and maps as aforesaid, until they have paid or tendered the party or parties entitled to receive the same, the amount assessed by the commissioners as the value of said lands and damages, but in no case shall the proceedings of appeal stay the entry upon and possession by said board of the lands or real estate so as aforesaid taken and appraised in laying out and opening of said road; *and provided also*, that if any party entitled to the payment of the amount so as aforesaid assessed, shall refuse to receive the same, or be out of the state,

When payment of award tendered, board may take possession of lands.

Justice to allow costs, &c.

Proviso.

Proviso.

Proviso.

Proceedings on appeal from decision of commissioners.

Proviso.

Proviso.

or under any legal disability, or such lands or real estate be incumbered by any judgment, mortgage or other lien, then the amount assessed as aforesaid shall be paid into the court of chancery of this state, and shall there be distributed according to law, and such payment into court shall be taken and deemed a valid and legal payment. (a)

Money for purposes of act to be raised by the issue of bonds.

351. SEC. 8. That in order to raise money to pay the costs, charges and expenses in laying out, opening, constructing and improving such road in accordance with the provisions of this act, and all moneys required or necessary for any of the purposes of this act, including money necessary to pay for awards of the commissioners or finding of the jury as herein provided, it shall be lawful for such board of chosen freeholders from time to time, either before or while the improvement provided for as aforesaid is in progress, by resolution, to cause the bonds of such county, in the name of such board of chosen freeholders, to be issued for the same, in such sums as the board may deem proper; that the moneys realized from such bonds shall be paid to and received by the county collector and be by him applied to the payment of the cost, charges and expenses of, in and about the laying out, opening, constructing and improving such road or the certificate of indebtedness issued thereon or therefor, as directed by resolution of said board; that the bonds issued may be either coupon or registered bonds, as such board of chosen freeholders may determine, and the same may be made payable, both principal and interest, at the office of the county collector of said county; said bonds shall be sold by the board of chosen freeholders of said county upon the orders and resolutions thereof, either upon bids for the same duly advertised for or otherwise; *provided*, that said bonds shall in no case be sold less than par; the director of such board and the county collector of such county shall sign said bonds, and the same shall be sealed with the seal of the county; the county collector shall number and register the same; the registered bonds may be exchanged for coupon bonds and coupon bonds be exchanged for registered bonds, at the request of the holder thereof; *provided*, that such board of chosen freeholders by resolution shall consent to such exchange, and said bonds shall bear such interest as such board shall determine, not exceeding five per centum per annum, and said interest shall be paid semi-annually, and the said bonds shall have such time to run as said board of chosen freeholders may at the time of the issue thereof by resolution determine, not exceeding thirty years, and the costs, charges and expenses aforesaid, incurred in the laying out, opening, constructing and improving said road as provided for by this act, shall be paid in no other manner; *and provided*, that the issue of such bonds, in all, shall not exceed the sum of one million dollars.

Proviso.

Proviso.

Proviso.

Payment of bonds to be provided for by taxation.

352. SEC. 9. That such board of chosen freeholders shall each year place in the tax levy of such county for such year as long as such bonds shall run, a sufficient sum to pay all interest on such bonds falling due during such year, and also to pay such per centum of the principal of such bonds as said board may determine, which per centum so raised shall be deposited in the sinking fund of said county for the purpose of paying said bonds as they may become due; and said board shall also place in the tax levy for such county a sufficient sum to pay the principal of any of said bonds falling due in any year as may not be provided for by the said sinking fund, and the said sums so ordered to be levied and provided shall be levied and raised in the same manner as other county taxes are levied and raised.

Board to establish width of carriage way and sidewalks.

How road constructed.

353. SEC. 10. That said board shall establish and determine the width of the carriage-way and sidewalks of said road, provided that both carriage-way and sidewalk shall not exceed one hundred feet in width, and shall construct said road by grading the same in such way and manner according to such grade as the said board shall fix and determine, by excavating and removing earth, rocks, trees, stumps, buildings and all obstructions, and the disposal of such portion thereof as not needed in the construction and improving of said road to the best advantage; by filling any low

(a) See *Ringle v. Freeholders*, 27 Vr. 661.

parts or otherwise in preparing the premises for said road, and building all bridges needed on such road; by building all sewers, culverts and receiving basins, and providing all necessary sewerage and outlets of 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 said road; *provided*, that such road may be constructed upon the grades established by any municipal authority (if any have been established) as near as conveniently may be or can be done, so as to insure an easy, and as near as can be, 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), by such alteration of grade, such injury to be ascertained in the same manner hereinbefore provided in the case of land taken; said board shall have power at any and all times to improve and repair said road or any part thereof, and to provide for properly lighting said road or any part thereof; and said board, in constructing said road and in making such improvements as aforesaid, may use therefor any material which said board is authorized to use for any purpose whatever, and any material which can be used for any of said purposes that may be found within the lines of said road, or may have been placed there by or under any municipal authority whatsoever.

Proviso.

354. SEC. 11. That all work and material over and exceeding one thousand dollars, done or furnished in and about the opening, laying out, constructing and improving such road, shall be done or furnished by contract after advertisements in the following manner: the said board shall advertise for proposals for doing any work and furnishing material amounting in the whole to one thousand dollars or more for at least two weeks, not less than once in each week, in such two or more of the newspapers of such county as they may deem expedient, and shall thereafter, at some regular or stated public meeting, award the contract or contracts to the lowest responsible bidder, who shall furnish such good and sufficient sureties as may be approved by said board; all bids must be opened at such regular or stated public meeting of said board, and not otherwise; but said board shall be under no obligation to accept the lowest bidder if they deem it to be against the public interest so to do, and may reject any or all bids, in whole or in part, 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 as above provided.

Work and materials over certain sum, to be done or furnished by contract.

Board to advertise for proposals.

Award contract.

Not obliged to accept lowest bid.

355. SEC. 12. That except to cross such road, no horse, dummy or other railroad shall be allowed on such road, or any part thereof.

No railroad allowed on road, except to cross same.

356. SEC. 13. That said board shall have the 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, as hereinabove authorized to be issued and sold, and shall bear interest at a rate not exceeding four per centum per annum, and shall be made payable within one year from the date thereof, as the said board shall designate.

Board empowered to issue certificates of indebtedness.

How paid.

357. SEC. 14. That the entire costs of laying out, opening, constructing and improving said public road in any county of this state, shall not exceed (including awards for lands taken and damages thereto) the sum of one million dollars.

Cost of road not to exceed one million dollars.

358. SEC. 15. That it shall be the duty of such board to maintain and properly light such road or any part thereof, and to keep the same in repair and fit for public use from year to year, at the expense of the public at large of such county, and that the appropriation of moneys for such purposes when necessary, shall be made and raised in the same manner as the appropriations for other county purposes are made and raised.

Board to maintain and light road.

359. SEC. 16. That the said board and the county collector shall keep the accounts and expenditures on account of said road separate and apart from the accounts of the other expenditures of such county, which account shall be called the public road account, and the clerk of said board shall,

Accounts and expenditures of road, how kept, &c.

on the first days of May and December in each year, file with the county clerk, there to remain as a public record, a detailed, itemized account of the expenditures of such board in relation to such road, which said account shall have been submitted to said board, approved of by said board and ordered to be filed as aforesaid, and that the county collector shall also in like manner, at the times aforesaid, make and file his report of the moneys received by him on account of the issue and sale of bonds or otherwise, and the amounts paid out by him by order of such board, which said reports shall be included under separate and appropriate headings in the annual reports of the receipts and expenditures of said board as now made in accordance with law.

Board may employ officers, engineers, &c., and fix compensation and term of office.

Not to be interested in contract.

Chief engineer, how appointed.

Salary.

Subject to removal.

No money to be paid without his approval.

To nominate assistants.

How assistants removed.

Board may establish rules.

Proceedings, maps, contracts, &c., to be public records.

360. SEC. 17. That such board may, for the purpose of carrying this act into effect, employ, except as in the next succeeding section of this act otherwise provided, such officers, surveyors, engineers, agents, clerks or employes as shall be necessary and requisite, and fix their compensation, and their tenure of office or employment shall be during and at the pleasure of the board; no member of said board, nor any officer, surveyor, engineer, agent, clerk or employe in this section mentioned shall at any time be interested in any contract to be awarded as above specified, nor in any proposal or bid made or offered to said board for any work or materials to be supplied to said board; but neither this provision or prohibition nor anything contained in this act shall be construed as affecting the right of such board to employ the officers and other employes and persons in this section before specifically mentioned and provided for.

361. SEC. 18. That a chief engineer, who shall have the supervision of the laying out and building of said road in accordance with the provisions of this act, shall be appointed by the judges of the inferior court of common pleas of such county or a majority of them; said appointment shall be certified in writing under the hands of said judges to such board of chosen freeholders; the salary of such chief engineer shall be determined and fixed by said judges at the time of making the appointment, and the same shall be paid by such board in equal monthly installments; the chief engineer shall be subject to removal by said judges or a majority of them at any time, whereupon said judges or a majority of them shall in the same manner appoint his successor; no moneys shall be paid to any contractor or person engaged in the building and construction of said road, with the exception of those provided for in section seventeen of this act, until the bill or claim therefor shall have been approved of by said chief engineer, except that said board may order the payment of any bill or claim without such approval by a two-thirds vote of all the members of such board; all subordinates and assistants to said chief engineer, as such board shall from time to time by resolution declare necessary and requisite, shall be nominated for employment by said chief engineer to said board, but before any person so nominated shall enter into the service of such board, his nomination shall be confirmed by a majority vote of the members thereof; all such subordinates and assistants to the chief engineer may be removed or discharged by said board at any time.

362. SEC. 19. That said board may establish such rules and regulations for the authentication of all their acts and all contracts, the government of officers and employes, and for all other purposes necessary or expedient for the efficient execution of this act, as to them shall seem necessary or convenient; and all meetings and proceedings of said board relating to their duties under the provisions of this act shall be public.

363. SEC. 20. That all the proceedings and acts of said 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, relative to or concerning said road, shall be matters of public record, and parties shall be deemed to have due notice of the existence thereof; and the same shall be open to the inspection of the public during the business hours of every day (except Sunday and holidays), and copies thereof, certified by the clerk of such board under its seal, shall be evidence in all courts and places the same as the original would be if produced.

364. SEC. 21. That after the completion of the laying out, opening, constructing and improvement of said road, such board shall carefully preserve and keep in its office or the office of the clerk thereof, all surveys, map or maps, report or reports, record or records whatever, relating to said road and the course and location thereof, there to be and remain of record.

When road completed, records to be preserved.

365. SEC. 22. That whenever in this act words importing the plural number are used in describing or referring to any matter, parties or person, 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 singular number or the masculine gender, the 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.

Certain words, how construed.

Supplement.

Approved March 4, 1891.

P. L. 1891, p. 79.

366. SEC. 1. That in lieu of and in substitution for, the one set of, or the three commissioners provided for in the sixth section of the act to which this is a supplement [see Sec. 349, *ante*], there shall be appointed in the manner in said section provided, such number, sets or divisions of commissioners, to consist of three members in each set or division, and not exceeding six sets or divisions in all, as the justice of the supreme court in said section mentioned, in his discretion shall deem it expedient to appoint, for the performance of the duties and services therein mentioned ; and in the order making the appointment of each of said sets or divisions of such commissioners, the said supreme court justice shall designate and specify the territory or portion of the road aforesaid, or any other or connecting road or roads provided for in any act supplementary to said original act, in and over which they, that is to say, each set or division of such commissioners, may operate and exercise jurisdiction ; and to this end said justice is hereby authorized, in his discretion, to divide the whole territory or length of said road, as well as the other or connecting roads aforesaid, from one end to the other, into such number of sections or divisions not exceeding six in all, as he may deem proper ; and said commissioners and each set or division thereof, within their several jurisdictions as herein provided for, shall, upon qualifying and taking the requisite oath, have, possess and may exercise like power and perform like duty confided to and vested in the three commissioners mentioned in the act to which this is supplementary ; and the notices and proofs in said sixth section mentioned and required, and the proceedings and steps directed therein to be taken for the appointment of said three commissioners originally specified, and all other provisions of the act relating to such commissioners, shall apply to, have force and shall be followed, as near at least as may be, to the other and additional commissioners made necessary and required by this act ; any vacancy occurring therein by death, resignation or otherwise, may be filled by said supreme court justice, by his appointing to fill the vacancy, without any other proceedings or preliminaries than mere evidence satisfactory to him of the death or vacancy, a suitable person qualified as directed in the original act ; any resignation may be made effective by the commissioner tendering the same in writing, addressed to said justice of the supreme court and filing it in the office of the clerk thereof.

Provision concerning appointment of commissioners to condemn lands, &c.

Duties of commissioners.

367. SEC. 2. That where the said road or any other or connecting road, as above provided, or any line thereof shall take in whole, or shall bisect any building, the said commissioners may determine, as to them shall seem most just, to take the whole of said building or so much thereof as stands upon the lands required for the road, or to require the owner or owners thereof to move it back from and outside of the line of said road, in case the owner or owners have land enough left for that purpose, and the appraisalment of said commissioners, having due regard to all attendant

Buildings may be taken or required to be removed.

expense, shall be made accordingly ; said commissioners shall also, in all cases, in addition to the directions given to them in the original act, estimate and consider the amount likely to be realized from the sale of any buildings or parts of buildings to be taken or disposed of for or on account of said roads or any of them. (a)

Proceedings where it is deemed necessary to fix location of portion of road in advance of fixing the whole line thereof.

368. SEC. 3. That if the said board of chosen freeholders, in the laying out, location and construction of said road shall be confronted with a situation of affairs which to them shall seem to render it imperatively necessary, expedient and for the best interests of the county, that a portion or portions, section or sections of said road, not exceeding one thousand feet in length at any one point or place, shall be adopted and fixed in advance of the fixing of the whole road or whole line, course and location of said road, as provided in the original act, and they shall so declare by resolution, they shall immediately cause or procure a proper survey and map of said portion or portions, section or sections to be made, under the direction of the chief engineer of said road, and thereupon shall file or cause to be filed said survey and map in the office of the clerk of said board ; and said board shall cause public notice to be given for one week, in at least one newspaper circulating in said county, of the filing of said survey and map for public inspection, inviting such objections thereto and to the adoption in advance as aforesaid, of the said portion or portions as may be deemed proper to be offered by any person or party claiming to be interested therein, all which said objections shall be made in writing, signed by the persons or party making the same, and shall be filed with the clerk of said board ; at the expiration of the week last mentioned, or as soon thereafter as the board shall assemble, it shall take up and consider the said objections, if any shall have been presented, and upon the consideration thereof, if said board shall be of opinion that said portion or portions in said survey and map shown or otherwise designated should be adhered to and fixed in advance as aforesaid, as a part of said road, notwithstanding said objection, the same shall be regarded and taken as so fixed, upon said board by a majority vote thereof voting to that effect, but if the objections shall be regarded by said board as well founded, then the adoption or fixing of said portion or portions in advance as aforesaid shall be considered as abandoned ; if no objection as aforesaid is offered within the time above limited therefor, the said portion or portions so as aforesaid shown and designated shall be taken and regarded as fixed as a part of the road, and the proceedings and notices herein provided for shall, to the extent of the portion or portions adopted in advance as aforesaid, be taken and regarded as in lieu of and as if all the requirements of the original act respecting the fixing of the whole line of the road had been fully complied with, but the said action in advance shall not be regarded as in anywise a bar to or in lieu of any method of procedure, course, action, or proceedings whatever deemed necessary to be taken by said board, at, in, or respecting the final fixing, location or disposition of the line, course, distances or location of the road, as directed in and by said original act, when the time therefor shall have arrived ; the proceedings herein authorized to be taken for the adoption of a portion or portions of the road mentioned in the original act in advance of the whole, shall be applicable to the said other or connecting roads, which may be provided for by said supplementary act ; and said roads when constructed and open for travel thereon shall from one end to the other thereof be deemed and taken to be public roads and shall always be and remain open as such, but the same and the travel thereon shall be subject to such rules and regulations in relation thereto, and to limit and prevent the driving or travel thereon of loaded or heavy trucks, wagons or carts, as the said board may have adopted or shall adopt from time to time, and for the violation of which such board may make or prescribe reasonable penalties, not exceeding ten dollars in any case ; such penalties shall be enforced by and through such process and method of procedure as shall be prescribed by the board as aforesaid by and before any police justice, police magistrate or recorder of any city, town or township in such county, upon proper complaint on oath being

Notice of filing map to be given.

Board to consider objections.

Penalties.

(a) See *Mangles v. Chosen Freeholders*, 26 Vr. 95.

made before him, and on the conviction of the offender, in default of the payment of the penalty imposed such magistrate may commit such offender to the county jail for any term not exceeding five days.

Supplement.

Approved April 14, 1891.

P. L. 1891, p. 363.

369. SEC. 1. [Amended by Sec. 385, *post.*]

370. SEC. 2. That the board of chosen freeholders shall have power to acquire lands, or interests, or rights in lands for the purposes of the public roads provided for by the act to which this is a supplement, and by this supplement, by gift, grant, or for a nominal consideration therefor, and without the proceedings to condemn, provided for in the act to which this is a supplement.

Board may acquire lands by gift, &c. in certain cases.

371. SEC. 3. That in acquiring the right of way for the public road provided for in the act to which this is a supplement, and the roads provided for by this supplement, in case it shall be necessary to cross over any property either upon, above or below the surface thereof, and the said board of chosen freeholders shall deem it desirable so to do, it shall be lawful for said board to make such crossings under a contract to be entered into between said board and the owner or owners of said lands upon such terms as shall be agreed upon between the said board and the owner or owners of said lands; *provided*, that no such contract shall be entered into which shall require the payment by the said board of chosen freeholders of any money to said landowner or landowners.

Provision for crossing private property above or below the surface thereof.

Proviso.

Supplement.

Approved March 11, 1892.

P. L. 1892, p. 104.

372. SEC. 1. That whenever a public road shall have been laid out or opened in any county in this state under the provisions of the act to which this is a supplement, and said public road shall in the course and location thereof, in whole or in part, extend into, along or through any city, town, township or other like or similar municipality or part thereof in such county, which municipality may have or shall hereafter acquire authority or power to construct sewers therein, the chief or other engineer or officer having charge in the opening, laying out or construction of said public road shall, when it may be practicable, report to the board of chosen freeholders of said county, a plan whereby any premises or buildings fronting upon such new public road may be provided by such municipality with sewer connection or connections beneath the surface of any part of said public road with the sewerage system of such municipality; *provided*, that the said engineer or officer aforesaid, in preparing and perfecting said plan, shall adhere therein as near as may be to any plan of or for sewerage or sewer connections which may have been or may hereafter be adopted by such municipality, in the territory in which the said public road may be located; upon such plan being reported as aforesaid, to said board of chosen freeholders of the said county, it shall be lawful for such board to consider the same, and either approve or disapprove thereof, or such board may change or order such changes to be made in the plans as may seem to the board to be proper and necessary, which changes shall be submitted to said engineer or officer for incorporation in the said plans; upon such plans or any of them being finally adopted by said board, the same shall be filed in the office of the clerk of the board of chosen freeholders of the said county, and a copy of said plan, duly attested by said clerk, shall be filed in the office of the body having control of the construction of sewers in such municipality; and all sewers and sewer connections intended for houses or house-drainage or sewerage connection, which it may be necessary to build beneath the surface of said public road, shall be constructed in conformity with said plan and not otherwise.

Board of freeholders shall provide rules whereby sewer connections shall be made in a public road.

Proviso.

373. SEC. 2. That whenever any owner or owners of any premises or property fronting on said public road shall deem it necessary and require that such sewer or sewer connection or branch sewer beneath the surface of

Proceedings for obtaining sewer connections.

said public road shall be constructed or made, in order that such premises may obtain and have house-drainage or sewerage as aforesaid, such owner or owners shall, in writing, petition the proper municipal body for the construction of said sewer or sewer connection, which shall be done in the same manner, or as near thereto as practicable, as any property-owner having property fronting on any other street in such municipality may lawfully petition for and obtain the construction of a sewer or sewers therein, and all the proceedings and steps as to petition, contract for the making or construction of such last-mentioned sewer or sewer connection, and other things necessary, as well as the assessment for or cost of and collection of the same, shall be done and provided for in the same way, or as near thereto as may be, to that provided, by law, in and for said municipality, for the petition and other things requisite to be done or followed relative to and necessary for the making, construction and defraying of the expense of the sewers or sewer system or connections last referred to ; and the body having control by law of the making or construction of sewers in such municipality shall notify the board of chosen freeholders of the said county in writing ten days previous to the time designated for the breaking or the opening of the surface of said new public road for the construction of such sewer or sewer connections, and said sewer or sewer connection shall be constructed to the satisfaction of the said board of chosen freeholders, and in accordance with the said plans for said sewers in or connected with said public road, and the work in and about the construction or making of such sewer or sewer connections shall not be deemed finally accepted by such municipality until the said engineer or officer in charge of the public road as aforesaid shall have examined the same and reported to said board that the work is satisfactorily executed, and said report shall have been approved by such board of freeholders and notice thereof shall be filed in the office of the clerk of such municipality or the governing body of such municipality ; the word sewer as mentioned in this act shall be taken to include all necessary receiving basins, connections and manholes such as are usually made appurtenant to a properly-constructed sewer and sewer outlet.

Sewers to be constructed to the satisfaction of board of freeholders.

The word "sewer" construed.

Provisions concerning extension of water-supply system beneath surface of road.

374. SEC. 3. That whenever any municipality into which, or through which all or any part of public road is laid out and opened under the provisions of an act to which this is a supplement, having or which may hereafter have a public water-supply or system by means of pipes laid in the streets and public places of said municipality, and it shall be necessary for the accommodation or use of the residents on lands fronting on said public road to extend such pipes or pipe system beneath the surface of the said public road, it shall be first indispensably necessary for the body or persons in any such municipality charged by law with the control of the water-supply therefor, to notify the board of chosen freeholders in writing of its intention to extend such water-pipe system beneath the surface of said public road ten days before breaking ground therefor, and all work made necessary in such extension shall be performed in accordance with regulations to be prescribed by and to the satisfaction of the board of chosen freeholders, and such work shall not be accepted or regarded in anywise completed for use and shall not be used as a part of such system until examined by the engineer or officer in charge of said road as aforesaid, and he shall certify to the board of chosen freeholders of the satisfactory completion of the said work and the same shall be approved by said board.

375. SEC. 4. That whenever any person or corporation having or which may hereafter obtain any franchise to supply illuminating gas to the inhabitants of any municipality into which or through which all or any part of a public road is laid out or opened, under the provisions of an act to which this is a supplement, shall desire to extend the pipe or gas system thereof beneath the surface of the said public road for the purpose of furnishing gas to any premises fronting on said public road, said person or corporation shall, before breaking or opening the surface of said road, in order to make such extension, deposit with the clerk of the board of chosen freeholders of said county such good and sufficient bond as such

Provisions concerning extension of gas-pipe system beneath surface of road.

board shall demand, in such sum or amount as it shall name, to be approved as to form by the counsel of said board, conditioned for and made to insure and guarantee that the surface of said public road shall, in such time as said board may allow therefor, be restored in good condition and to the satisfaction of said board of chosen freeholders, and the said pipes shall be laid in such places and to such depth and subject to such other regulations as the board of chosen freeholders shall determine.

376. SEC. 5. That all openings of the surface of the public road for the purpose of making house connections, sewer connections and service connections for water and gas and all connections before referred to, shall in every instance be made only after permission obtained therefor from the board of chosen freeholders of said county, and shall be made subject to such regulations and conditions as such board shall prescribe, and not otherwise, and in making all such regulations and connections, provision is hereby authorized to be made for the making and keeping in proper and safe condition and repair for any time not exceeding one year after the same shall have been made and restored, all such openings as aforesaid of the surface of said public road, and said board is authorized hereby to require a deposit by certified check or in cash to be made with the county collector or treasurer of said county for or in such sum as the said board of chosen freeholders shall by resolution designate or order, to insure or guarantee that the surface of the said public road will be restored to and kept in good condition as aforesaid, and if said surface is not restored to such good condition, after ten days' notice in writing to that effect shall have been given by or on behalf of such board, or by the said engineer or officer in charge of said road to the person or party doing or permitted to do the work, the said board of chosen freeholders may do or cause the work necessary to be done to restore said surface to such good condition, and may devote or apply as much of the said deposit as may be necessary to pay for the same, to that object, and upon the completion of said work the whole or the remainder of said deposit, if any, shall be returned to the party who may have made the same as aforesaid.

Permission to be obtained from board of freeholders before sewer, water or gas-pipe systems are extended.

377. SEC. 6. That the foregoing provisions shall apply whenever any municipality shall find it necessary in the development of their sewerage or water-supply system to cross the public road, also when any person or corporation having, or which may hereafter acquire, any franchise to supply illuminating gas shall find it necessary in the exercise of said franchise to extend its supply pipes or system across said public road; it also shall apply in cases where it shall be necessary to open the surface of said public road to repair any sewer, water pipes, gas pipes, or connections to the same; nothing in this act contained, however, shall be construed as prohibiting such board of freeholders from dispensing with or modifying any of the requirements of or under the same in any case where the exigencies thereof shall appear to require such dispensation or modification; but in all such instances the reasons therefor must be assigned in writing by the party asking therefor, and it shall be requisite to have the approval thereof by resolution of such board of freeholders.

Foregoing provisions to apply when pipes, &c., are laid across the road.

378. SEC. 7. That any person violating any of the foregoing provisions or any rule or regulation prescribed thereunder, shall be subject to a penalty, for each violation, to be imposed upon conviction by the court or magistrate hearing the same, of not exceeding twenty dollars, and in default of payment thereof the offender may be committed to the county jail for any term not exceeding ten days; the penalties herein provided may be enforced by or before any justice of the peace, police justice or judge, or recorder, of any municipality within such county; and process in the nature of a warrant may be issued, or complaint made on oath, for the apprehending of the offender, or such offender may be arrested on view without warrant by any police officer, sheriff or constable in such county.

Penalty for violation of rules of board.

379. SEC. 8. That any act, direction, order or thing whatever authorized or directed to be done, made or executed by any justice of the supreme court particularly mentioned, specified or referred to in the sixth section of the act to which this is a supplement [see Sec. 349, *ante*], or in any

Authority of justices of the supreme court.

other section of said act, or in any act supplementary thereto or amendatory thereof, may be and hereby is authorized and directed to be done, made or executed by any other justice of said supreme court.

Repealer.

380. SEC. 9. That all acts and parts of acts, general, special, local or otherwise, inconsistent with this act, be and the same are hereby repealed, and this act shall take effect immediately.

Supplement.

Approved March 27, 1898.

P. L. 1898, p. 454.

Provision for further improvement of roads.

381. SEC. 1. That whenever the board of chosen freeholders of any of the several counties of this state acting under the authority of the above-mentioned act to which this is a supplement, and the supplements thereto, and acts amendatory thereof, or either of them have laid out and opened, or shall lay out and open wholly or partially, and have improved, or proceeded to put in process of improvement, or shall improve or proceed to put in process of improvement in accordance with the provisions of said acts and supplements, the whole or any part of any such part of any such public road as is authorized and provided for in and by the provisions of said acts, including any branch or connecting roads, and whether such connecting roads or any of the same be now laid out and opened or shall be laid out and opened in the future; it shall be lawful for said board of chosen freeholders of such county from time to time, when they shall deem it expedient, in order to provide for and secure to the people of such county desirable and serviceable roads of the character before mentioned, with the further improvement thereof as hereinafter provided, by resolution or resolutions, to be passed by at least a majority vote of said board at a regular or stated meeting, to further provide for the improvement and the further improvement of such roads, and to improve and further improve the same as follows: by paving or covering the whole or such portion of the roadway of such roads as they may by said resolution or resolutions designate, with suitable road material, but no stone block pavement shall be used, excepting in paving gutters or water-ways; or at the intersection of streets devoted to heavy traffic; by setting curbstone and paving the gutters and water-ways along and within said roads or any part thereof; by planting trees along said roads or any parts thereof; by providing a proper plant or plants for the lighting of said road or roads, as directed by the act to which this is a supplement or any of said acts supplementary thereto, and to do all other work necessary to make and provide good, well-regulated public road or roads of the character before described, serviceable in all weather and seasons.

Resolution to be adopted.

Planting trees and lighting said road.

Work to be done by contract.

382. SEC. 2. That all work herein authorized shall be performed and carried out as provided in said original act to which this is supplementary, or as near thereto as practicable, including the methods and officers already provided for supervision of the work and the proceedings necessary to enable the same to be done, together with the awarding and making of contracts therefor, upon advertisements for bids duly made; in all other things requisite and necessary to be done to carry out and meet the purposes and objects of this act, the same shall conform to the provisions of the said original act and the acts supplementary thereto and amendatory thereof, except in so far as changes, alterations in, or deviations therefrom may be rendered necessary by this act; *provided*, that the entire cost and expenses, together with and including all the original and other cost and expense whatsoever of the laying out, opening, constructing and improvement of such public road, in any county as aforesaid, shall not exceed, on an average of the whole length of such roads, the sum of one hundred and forty thousand dollars (including awards for all lands, real estate and property taken, and damages thereto) for each mile thereof, and a proportionate cost for each fraction of a mile of such roads actually laid out, opened, constructed and fully improved as before provided.

Limitation of expense.

383. SEC. 3. That said board of chosen freeholders is hereby authorized, in order to secure sufficient moneys to meet the requirements and purposes of this act, to provide for and make a new or additional issue or issues of bonds, over and above those provided for and authorized to be issued by the said act to which this is a supplement, and the supplements thereto and amendments thereof, to an amount or sum requisite and necessary to meet such requirements; *provided, however*, that the bonds, or additional issue of bonds, authorized to be issued under and by virtue of this supplementary act, shall not exceed the sum of one million dollars; and the bonds to be issued hereunder shall be of like tenor and effect to those authorized to be issued under the original act to which this is a supplement; no part of the moneys to be realized from the sale of such bonds shall be used for any purpose than as authorized and mentioned in said acts, or either of them.

Authorized to issue additional bonds.

Proviso.

384. SEC. 4. That all acts or parts of acts, general, special, local or otherwise, inconsistent with the provisions of this act, be and the same are hereby repealed, and this act shall take effect immediately.

Repealer.

An act to amend an act entitled "A supplement to an act entitled 'An act to authorize the board of chosen freeholders of any of the several counties of this state to lay out, open, construct, improve and maintain a public road therein,' approved April seventh, one thousand eight hundred and eighty-eight," which supplement was approved April fourteenth, one thousand eight hundred and ninety-one.

Approved March 27, 1893.

P. L. 1893, p. 457.

385. SEC. 1. That section one of the aforesaid supplementary act [see Sec. 369, *ante*] be and the same is hereby amended to be and read as follows:

[That the board of chosen freeholders of any county in this state, wherein the result of an election held or to be held upon the question whether a public road shall be laid out, opened, constructed, improved and maintained as provided for in the act to which this is a supplement, shall have been or shall be in favor of such public road, is hereby authorized and empowered, without any other or further election, to lay out, open, construct, improve and maintain, in accordance with the provisions of the act to which this is a supplement, one or more roads or branches which shall run to and from, and connect or intersect at any convenient point, line or place thereof, any city, town or township of said county, not already connected with the road, or intersected by the lines, or any of them, as already laid out and fixed, of the road provided for in the act to which this is a supplement; *provided, however*, that no such city, town or township shall be connected by any such road or branch, as provided for in and by this supplementary act, where the same, or the nearest point, points or boundary lines thereof shall be more than one-half mile distant or away from the main road or original road provided for in the said act to which this is a supplement, measured on the shortest and most direct line between the side line of said road and any such boundary line of any city, town or township as aforesaid; *and provided*, that all said connecting or other road, roads or branches provided for in this supplement shall not, in the aggregate length, distance or like extent exceed one-third the length of the aforesaid main or original road provided for in the said act to which this is a supplement; such connecting or branch road or roads may be laid out, opened, constructed and improved either upon a direct line from said main or original road and the line of any street, road or avenue already laid out or in existence, or partly upon both, or otherwise, or by means of a road connection or branch road, which shall leave or branch off from said main public road at any point or place to be determined by said board of chosen freeholders by resolution thereof, and after running to or through any such city, town or township, or any part, portion or territory thereof, shall be extended along such line as said board of chosen freeholders

Provision concerning construction of roads, and branches to connect with convenient points in cities, &c.

Proviso.

Proviso.

Proviso. may and hereby are authorized to determine by resolution as aforesaid ; *provided further*, that not less than two-thirds of the total or aggregate length, between commencement and ending points of any and all such connecting road or roads, and for the full width thereof, shall be, if laid out, opened and built or made at all, through and over lands acquired or to be acquired by the said board of chosen freeholders for the purposes of such road, by gift, grant, or for a mere nominal consideration, and through and over streets, roads or avenues already laid out and dedicated to public use ; it being hereby expressly provided and understood that not more than one-third of the total length of said connecting roads shall be through and over lands the title to which, for the purposes of said connecting road or roads, shall be requisite to be acquired, or shall be acquired by proceedings in condemnation, or by the payment of any but a mere nominal sum or consideration therefor, as aforesaid ; *and it is further provided*, that such connecting road or roads shall be laid out, opened, constructed, improved and maintained in all other respects (including the supervision thereof, which is to be by the engineer-in-chief heretofore appointed under said original act), and the money necessary therefor, as mentioned in this act, shall be raised and had in the manner and by the methods provided for the raising of moneys and the like, contained in said act to which this is a supplement ; *and provided, further*, that the entire cost of laying out, opening, constructing and improving all of such connecting road in any county of this state shall not exceed (including awards for lands, real estate and property taken and damage thereto) the sum of two hundred and fifty thousand dollars, and that the issue of bonds to raise money to pay the costs, charges and expenses in laying out, opening, constructing and improving such connecting roads shall not exceed the sum of two hundred and fifty thousand dollars ; and in order to provide for the proper acquirement by said board of chosen freeholders of the land, real estate and other property necessary to be acquired by condemnation, or the like, to meet and carry out the purposes of this act, three commissioners, and not more than three, of the character and with the powers provided for in and by the sixth section of said original act [see Sec. 349, *ante*], to which this is a supplement, shall be appointed therefor in the manner provided for the selection and appointment of such like commissioners in the said original act and the acts supplementary thereto ; any vacancy occurring in this commission of three, by the declination of any commissioner named to serve, or by death, resignation or otherwise, to be filled in the manner provided for filling vacancies in the office of commissioners in and by said supplemental acts.]

Proviso.

Proviso.

**An act to enable boards of chosen freeholders to acquire, improve
and maintain public roads.**

P. L. 1889, p. 58.

Approved March 19, 1889.

386. SEC. 1. [Amended by Secs. 393 and 398, *post*.]

Boards authorized to grade, pave and improve county roads.

387. SEC. 2. That it shall be lawful for the board of chosen freeholders to cause the said county roads, or any part thereof, to be graded, paved with Telford, macadamized, or otherwise improved by means of stone or gravel, for a width of at least twelve feet in the center thereof, wherever such improvement may be required to keep the same constantly in good condition ; all such pavements or other improvements (except repairs costing not more than one hundred dollars) shall be done under contract with said board ; but no contract for any such work shall be awarded, or be valid for any purpose if awarded, unless a notice specifying the work and materials, and inviting bids or propositions to do or furnish the same, shall have been published for at least three weeks, at least once in each week, in two newspapers published and circulating in the county, and representing different political parties ; every contract made for improving any county road, or part thereof, shall be based upon carefully-prepared specifications of the work and materials required, to which refer-

Improvements to be done under contract.

ence shall be expressly made in the contract, and no money shall be paid for any work done or materials furnished unless the same shall have been done or furnished in strict conformity to the terms of the contract and specifications; and no contract shall be awarded, or be valid for any purpose if awarded, unless the person or party whose bid or proposition is accepted, shall, at the time of signing the contract, execute a bond to the board, with sufficient surety, to be approved by the county collector, conditioned for the faithful performance of the contract; the penal sum of such bond shall be at least one-half the amount of the contract price for the work and materials; all such contracts and bonds shall be held by the county collector; the said board may give the notice aforesaid and award contracts for parts or sections of the improvements intended to be made. (a)

388. SEC. 3. [Amended by Secs. 394 and 396, *post.*]

389. SEC. 4. That one-third of the expense of paving or otherwise improving any county road, or any part thereof, in the manner aforesaid, shall be paid by the cities, towns, townships or boroughs in or through which any such pavement or improvement shall be made, in amounts in proportion to the cost of any such pavement or improvement in each city, town, township or borough; but nothing herein shall be construed to exempt any such city, town, township or borough from liability to pay its share of the remaining two-thirds of such cost and interest; and it is hereby made the duty of the officers, boards or bodies authorized to levy taxes for county purposes, to assess and levy upon the taxable property in the respective taxing districts of the county, such sum or sums of money as may be required, and not otherwise provided, to pay the amount of the cost of making any such pavement or other improvement, or the interest thereon, that may be due, or coming due during the current fiscal year of the county, and to assess and levy upon the taxable property of any city, town, township or borough in the county wherein any county road shall have been improved under this act, such sum or sums of money as may be required from time to time to pay the respective proportions of any such city, town, township or borough, of the amount of such cost, or to reimburse the county, to the extent of one-third of the cost of any such improvement made therein, with interest; said sum or sums of money shall be assessed, levied and collected at the same time, in the same manner and by the same officers that other taxes for county purposes are or may be assessed, levied and collected; and when collected the same shall be paid over to the collector of the county, to be applied exclusively to the objects or purposes for which the same were levied.

Expense of improvement, by whom paid.

390. SEC. 5. [Amended by Sec. 404, *post.*]

391. SEC. 6. That all roads marked out or indicated as county roads on the map or maps mentioned in the first section of this act shall be kept in repair by the local authorities of the cities, towns, townships or boroughs in and through which they extend, until such roads shall have been actually improved by the board of chosen freeholders of the county, as provided in this act; but in cases where part of said roads shall have been improved under this act, only the unimproved part shall be kept in repair by such local authorities.

County roads extending through municipalities to be kept in repair by local authorities.

392. SEC. 7. That nothing in this act shall be construed to repeal or in anywise affect the act constituting "the Essex public road board," approved March thirty-first, one thousand eight hundred and sixty-nine, or any supplement thereto, or any act amendatory thereof, or relating or applicable thereto.

Act not construed to repeal certain acts

Amendatory act.

Approved March 18, 1890.

P. L. 1890, p. 89.

393. SEC. 1. [This section, amending Sec. 386, *ante*, is amended by Sec. 398, *post.*]

394. SEC. 2. [This section, amending Sec. 388, *ante*, is amended by Sec. 396, *post.*]

(a) This act is constitutional. *Miles v. Freeholders of Bergen*, 23 Vr. 302.

Repealer.

395. SEC. 3. That all acts and parts of acts inconsistent with this act be and the same are hereby repealed, and this act shall take effect immediately.

An amendment to an act entitled "An amendment to an act entitled 'An act to enable boards of chosen freeholders to acquire, improve and maintain public roads,' approved March nineteenth, one thousand eight hundred and eighty-nine," which amendment was approved March eighteenth, one thousand eight hundred and ninety.

P. L. 1890, p. 292.

Passed May 6, 1890.

396. SEC. 1. That the second section of an act entitled "An amendment to an act entitled 'An act to enable boards of chosen freeholders to acquire, improve and maintain public roads,' approved March nineteenth, one thousand eight hundred and eighty-nine," which amendment was approved March eighteenth, one thousand eight hundred and ninety [see Sec. 394, *ante*], be and the same is hereby amended so as to read as follows :

[That the third section of the said act entitled "An act to enable boards of chosen freeholders to acquire, improve and maintain public roads," approved March nineteenth, one thousand eight hundred and eighty-nine [see Sec. 388, *ante*], be and the same is hereby amended so as to read as follows, viz. :

Provision concerning issue of bonds by board of freeholders for grading, paving or improving roads.

[That it shall be lawful for the board of chosen freeholders to cause a special tax to be levied, which shall not, in any one year, exceed the sum of twenty-five thousand dollars, and to issue bonds of the county, bearing interest at not more than five per centum per annum, to be known as county road bonds, for the purpose of raising money to pay the cost, or any part of the cost, of paving, macadamizing or otherwise improving the said county roads, or any part thereof, in the manner aforesaid, but prior to the issuing of any such bonds the said board shall make an application to the circuit court of the county, in writing, setting forth the assessed value of the real estate therein for the purpose of taxation in the year next preceding, together with a statement of the entire debt of the county for all purposes, and of the amount of county road bonds which they propose at that time to issue ; whereupon the said court shall fix a time to hear such application, whereof such notice by publication shall be given as the court shall direct, and at the time and place so fixed the said court shall proceed in a summary manner to investigate the accuracy of the statements contained in the said application, and shall make a certificate setting forth the assessed value of the real estate in the county for the purpose aforesaid in the year next preceding, and the total amount of the debt of the county for all purposes as found by such investigation, which certificate shall be entered at length on the minutes of the court and filed in the office of the clerk of the county ; and no county road bonds shall be issued to such an amount as, in addition to existing debt, shall raise the debt of the county for all purposes above three per centum of the assessed value of the real estate therein, as such debt and assessed value of real estate are shown by such certificate ; and in case any such bonds shall be issued in excess of the limit aforesaid, all such bonds so issued in excess shall be void in the hands of any person or party, notwithstanding any recitals therein or any representations that may be made concerning the same ; such application must be repeated in case of every other proposed issue of such bonds, but in no case shall any such board issue bonds under this act so that the amount of such bonds outstanding at any one time shall exceed the sum of three hundred thousand dollars.]

Application to be made to circuit court.

When issue of bonds to be void.

Repealer.

397. SEC. 2. That all acts and parts of acts inconsistent with this act, be and the same are hereby repealed, and that this act shall take effect immediately,

An amendment to an act entitled "An amendment to an act entitled 'An act to enable boards of chosen freeholders to acquire, improve and maintain public roads,' approved March nineteenth, one thousand eight hundred and eighty-nine," which said amendatory act was approved March eighteenth, one thousand eight hundred and ninety.

Approved April 6, 1891.

P. L. 1891, p. 333.

398. SEC. 1. That section one of the act entitled "An amendment to an act entitled 'An act to enable boards of chosen freeholders to acquire, improve and maintain public roads,' approved March nineteenth, one thousand eight hundred and eighty-nine," which said amendatory act was approved March eighteenth, one thousand eight hundred and ninety [see Secs. 386 and 393, *ante*], be and the same is hereby amended so as to read as follows, viz.:

[That it shall be lawful for the board of chosen freeholders of any county in this state, by the votes of a majority of all the members thereof, to acquire, improve, maintain and assume full and exclusive control of any public road or roads, or parts thereof, in their county, so far as may be necessary for the purpose of improving and maintaining the same as a road or roads for carriages or other vehicles, but for no other purpose, except such roads or avenues as are now under the control of any county road board; that in order to acquire and assume control in any county, with power to improve and maintain the same, the said board shall cause a map to be made, or adopt a map already made, on which the principal public roads or highways of the county shall be or are laid down, and shall cause the roads, or parts of roads, which the said board intend to acquire and assume such control of to be plainly indicated thereon, and shall file the said map, when so marked, in the office of the clerk of the county whereupon the roads, or parts of roads, so marked or indicated on the said map shall become and be known as county roads, and shall thereafter be improved, maintained and kept in a safe and convenient condition for public use as aforesaid exclusively in the manner provided in this act; and it shall be lawful for the said boards to relinquish control of any road or part of any road so acquired and marked, and to acquire and assume control of other roads or parts of roads in the county from time to time, with the same power to improve and maintain the same; in either of which cases the said map shall be changed accordingly; in acquiring or assuming control of any public road or relinquishing the same the said board shall accurately describe such road in a written resolution, and file a copy thereof, certified by the clerk of the board, in the office of the county clerk, who shall record the same in a book to be provided and kept for that purpose; the term road, as used in this act, shall be construed to include street, avenue or other public highway; *provided*, that any and all roads heretofore acquired by any board of chosen freeholders in this state, by the passage of a resolution and filing of a map or maps, as provided in the act to which this is an amendment, may be improved and the money for that purpose raised as if this section of this amendment had not been passed.]

Boards of chosen freeholders empowered to acquire, improve and maintain public roads.

Proviso.

Repealer.

399. SEC. 2. That all acts and parts of acts inconsistent with this act be and the same are hereby repealed, and this act shall take effect May first, one thousand eight hundred and ninety-one.

Supplement.

Approved April 7, 1892.

P. L. 1892, p. 406.

400. SEC. 1. That if the inhabitants of any township shall vote in accordance with the provisions of any general public law of this state, to issue the bonds of such township to an amount not less than five per centum of the assessed valuation of such township, for the purpose of improving the public roads of such township, by grading and paving with Telford or macadamizing the same, or otherwise paving the same by means of stone or gravel, and building culverts and drains, and the township committee of said township shall proceed in good faith to issue such bonds and make

If any township issue bonds for road improvements, it shall not in certain cases be liable for any part of cost if improvement made by board of freeholders.

such improvements, then and in such case the said township shall not thereafter be liable to pay any part of the cost of any pavement or improvement made by the board of chosen freeholders under the provisions of the act to which this is a supplement, upon roads thereafter acquired by the said board of chosen freeholders under the said act, or the cost of keeping the same in repair; *provided, however*, that if any pavement or improvement shall be thereafter made by any such board of chosen freeholders, through the limits of the said township on roads acquired before or subsequently, then the said township shall be liable to pay its share of the cost of such pavement or improvement through the limits of the said township, and keeping the same in repair as provided in the said act.

Supplement.

Approved April 9, 1892.

P. L. 1892, p. 471.

Limit of bonds that may be issued in second-class counties.

401. SEC. 1. That in counties of the second class no more than three hundred and fifty thousand dollars of road bonds shall be issued by the board of chosen freeholders of any such county under the act of which this is a supplement or any supplement or amendment thereof; *provided, however*, that if work under said act and supplements or amendments has already been done to an amount exceeding said sum, bonds under said act and supplements may be issued to an amount sufficient to raise and pay for such work, upon proof of that fact to the court when application is made for the issue of such bonds.

Roads in second-class counties to be improved with money obtained from sale of bonds.

402. SEC. 2. That in any county of the second class wherein the board of chosen freeholders thereof have heretofore or may hereafter issue bonds under said act and supplements, that such board of such county shall not grade, macadamize or improve any road in such county except with money obtained from the sale of bonds issued under said act and supplements; *provided*, that nothing herein shall prohibit the doing of the necessary repair of any road heretofore graded, macadamized or improved by any such board, or hereafter graded, macadamized or improved under said act and supplements.

Repealer.

403. SEC. 3. That all acts and parts inconsistent herewith, be and the same are, so far as they conflict herewith, repealed, and that this act shall take effect immediately.

Amendatory act.

Approved March 23, 1893.

P. L. 1893, p. 490.

404. SEC. 1. That section five of the above act [see Sec. 390, *ante*] be and the same is hereby amended so as to read as follows:

Board may employ engineer to survey county roads, &c.; may also appoint inspector.

[That the board of chosen freeholders shall employ a competent engineer, at a reasonable compensation, to survey the county roads or any part thereof, when necessary; to prepare specifications for pavements or other improvements intended to be made in pursuance of this act, and to supervise the work and materials used; after such improvements or any part thereof shall have been completed, the same shall be kept in repair at the expense of the county, and some competent person shall be employed by said board annually, at a fixed compensation, to inspect the condition of the county roads, from time to time, so far as the same may have been improved, and such inspector shall have the power to cause necessary repairs to be made to the pavements or other improvements made under this act; *provided*, the costs of any such repairs shall not exceed fifty dollars in any city, town, township or borough in any year; repairs costing more than fifty dollars and not more than one hundred dollars shall be made only by authority of a committee of the said board, and repairs costing more than one hundred dollars shall only be made by direct authority of said board; all bills or claims for making repairs or furnishing materials therefor, after being approved by the inspector, shall be rendered to the said board by the parties who performed the work or furnished the materials used or to be used; and no bills or claims for repairs shall be paid unless the same shall have been made strictly according to the provisions and directions of this act; no tax shall be levied for the purpose of repairs

Power of inspector.

Proviso.

under this act in any one year, in excess of five per centum of the costs of the improvements made; and no repairs shall be made with moneys raised except as aforesaid; the inspector, immediately after his appointment, shall give a bond to the said board in the penal sum of two thousand dollars, to be approved and held by the county collector, conditioned for the faithful performance of his duties.]

Inspector shall give bond in \$2,000.

405. SEC. 2. That all acts inconsistent herewith be repealed and that this act shall take effect immediately.

Repealer.

Supplement.

Approved March 21, 1895.

P. L. 1895, p. 418.

406. SEC. 1. That it shall be lawful for the boards of chosen freeholders in the several counties of this state that heretofore have acquired or hereafter may acquire, improve and maintain roads under the provisions of the act and its supplements and amendments, to which this is a further supplement, to enter into contract for the supplying and furnishing of the whole or any part of the materials necessary in constructing, improving and maintaining the roads adopted or to be adopted as county roads under the provisions of said act; that whenever in the opinion of said board it is desirable to furnish or supply material for the whole or any portion of the work, said material shall be furnished under contract with said board, and a notice, specifying the kind and as near as may be the quantity of materials required and the points or places where the same is to be delivered, and inviting bids or propositions to furnish the same, shall be published for at least three weeks once in each week in two or more of the newspapers circulated in the county where said materials are to be used; said materials shall in all cases be subject to the inspection and approval of the county engineer, and shall conform in all respects to the specifications and other requirements of the contract; the person or corporation whose bid is accepted shall enter into bond to the county in such sum and with such sureties as the board may require, conditioned for the due and faithful performance of the contract, and said bond and contract shall be held by the county collector.

Chosen freeholders may contract for material for improving roads.

Proposals shall be advertised for.

Contractor shall furnish bond.

407. SEC. 2. That all acts or parts of acts inconsistent herewith be and the same are hereby repealed, and that this act shall take effect immediately.

Repealer.

An act to provide for the issuing of additional county road bonds for the purpose of improving county roads.

Approved March 17, 1898.

P. L. 1898, p. 896.

408. SEC. 1. That in any county in this state in which the board of chosen freeholders have acquired and improved public roads or may hereafter acquire and improve public roads under the authority of an act entitled "An act to enable boards of chosen freeholders to acquire, improve and maintain public roads," approved March nineteenth, one thousand eight hundred and eighty-nine, and the supplements and amendments thereto, and have issued county road bonds by virtue or under authority of the said act and the supplements and amendments thereto, and by reason of authority granted in a certificate issued by the circuit court of that county in accordance with the provisions of the said act and the supplements and amendments thereto, it shall not be necessary to repeat the application to the said court provided for in section three of the said act, in order to issue an additional amount of county road bonds for the purpose of improving additional sections of the county road that may be acquired by such board of chosen freeholders subsequent to the making of the original application for the issuing of such county road bonds, but in no case shall any such board issue bonds under the said act and the supplements and amendments thereto, exceeding the sum of three hundred and fifty thousand dollars; *provided*, that no additional county road bonds shall be issued where the amount of such proposed issue in addition to existing debt shall raise the debt of the county for all purposes above three

Certain counties authorized to issue bonds to a sum not exceeding \$350,000.

per centum of the assessed value of the real estate therein at the time of the issue of such bonds.

Repealer.

409. SEC. 2. That all acts and parts of act inconsistent with the provisions of this act be and the same are hereby repealed in so far as their operation may affect the operation of this act.

An act to provide for the appointment of a state commissioner of public roads, and to define his duties.

P. L. 1894, p. 409.

Approved May 17, 1894.

Governor, with consent of senate, shall appoint state commissioner of public roads.

410. SEC. 1. That there is hereby created and established in and for the state of New Jersey the office of a state commissioner of public roads, which office shall be filled by some suitable person nominated by the governor and confirmed by the senate, who shall have his office at the state-house, and who shall hold his office for the term of three years from the date of his appointment and until his successor is appointed and confirmed.

Term of office.

Duties of commissioner.

411. SEC. 2. That it shall be the duty of the said state commissioner of public roads to perform all the duties with respect to the public roads of this state which are now by law imposed upon the president of the state-board of agriculture, and to collect such data with respect to the construction of permanently-improved roads as he may think will subserve the interests of the public, and to report to each legislature what roads were constructed with state aid for the year ending on the next preceding thirty-first day of December, and the amount of their cost, and, in general, the operations of his office for such year.

Compensation when on duty.

412. SEC. 3. That the said state commissioner of public roads shall be entitled to receive five dollars per day and actual expenses when engaged in the duties imposed by this bill, payable monthly by the treasurer of this state out of any moneys in the treasury not otherwise appropriated, upon the receipt of the vouchers of the said state commissioner of public roads, when approved by the governor.

An act to provide for the permanent improvement of public roads in this state.

P. L. 1895, p. 424.

Approved March 22, 1895.

Board of chosen freeholders shall cause specifications and surveys to be made.

413. SEC. 1. That whenever the board of chosen freeholders of any county in this state shall, by resolution, have declared their intention to cause any particular road, or section thereof, within such county to be improved under the provisions of this act, such board shall cause all necessary surveys to be made and specifications to be prepared; the specifications shall require the construction of a macadamized road, or a Telford or other stone road, or a road constructed of gravel, oyster shells, or other good materials, in such manner that the same, of whatever materials constructed, will, with reasonable repairs thereto, at all seasons of the year, be firm, smooth and convenient for travel; shall be so prepared as to call for bids from which an approximate estimate of the cost can be ascertained, and shall state the amount of security that will be required of the bidder; after said specifications shall have been prepared they shall be submitted to the board of chosen freeholders for their approval or rejection; and, if such board shall approve them, they shall then be submitted to the state commissioner of public roads for his approval or rejection; it shall be the duty of the commissioner of public roads, before approving the specifications for any road so submitted to him, to ascertain, by personal examination or otherwise, the natural character of the soil upon which such road is proposed to be constructed, and all other facts that he may deem important, and if, after examination, of the specifications and facts so ascertained, he shall be of the opinion that the specifications provide for the construction of a road that will, with reasonable repairs thereto, be firm, smooth, and convenient for travel at all seasons of the year, and if he shall also be of the opinion that one-third of the cost of constructing the

Materials that shall be used.

Specifications shall be submitted to state commissioner.

Commissioner shall ascertain character of soil, &c.

road or section of road to which such specifications relate, together with one-third of the cost of constructing all other roads and sections of roads in this state under specifications previously approved by him, will not in any one year exceed the sum of one hundred thousand dollars, then he shall approve the specifications, but otherwise he shall reject them; *provided, however*, that he shall, in his discretion, have the power to withhold his approval of any specifications, to the end that the estimated aggregate amount of contracts made in any one year shall not exceed the sum of three hundred thousand dollars, and also to the end that the amounts paid out of the state treasury under the provisions of this act shall in each year be distributed amongst the several counties of the state in such manner as to the said state commissioner of public roads shall seem fair and equitable, and any specifications, the approval of which is withheld as aforesaid, may, if otherwise satisfactory to the said state commissioner of public roads, be approved by him in any year subsequent to the one in which the same may be presented for approval as aforesaid; if the board of chosen freeholders and the state commissioner of public roads shall both approve such specifications, it shall then be the duty of the director of the board of chosen freeholders to advertise in at least two daily newspapers, printed and circulating in the county, for the period of two weeks, or in at least two weekly newspapers, printed and circulating therein, for at least four weeks, for bids to do the work according to the specifications prepared; such advertisements shall state where bidders may find the specifications and shall name a time and place where the board of chosen freeholders, or a committee of five members thereof, of whom the director shall be one, will meet to receive bids; every such bid shall be accompanied with the bidder's bond in the sum of one thousand dollars, with security satisfactory to the board, conditioned that if the contract shall be awarded to him he will, when required by the board, execute an agreement in writing to perform the work according to the specifications; no bids shall be received by the board or any member thereof, except at a meeting of said board or a committee, of which notice shall be given as aforesaid, and all bids then received shall be immediately publicly read; if the bids shall be received by a committee of the board they shall be reported to the board at the next meeting thereof, with the recommendations of the committee; the board may reject all bids if, in their opinion, good cause exist therefor, but otherwise they shall award the contract to the lowest bidder who shall give satisfactory evidence of his ability to perform the contract; *provided, however*, that the estimated amount of contracts awarded in any one year by any board of chosen freeholders, together with the estimated cost of repairs of roads already constructed, shall not exceed one-fourth of one per centum of the ratables of the county as reported to the state comptroller for the last preceding year; *and provided further*, that in every contract made as aforesaid it shall be specified that at least five per centum of the contract price shall not be paid to the contractor within the period of one year after the work specified to be done by such contract shall have been fully performed and accepted; the bidder to whom the contract may be awarded shall, in addition to executing the agreement to perform the work according to the specifications, also execute to the board of chosen freeholders a bond conditioned for the faithful performance of the contract, in the sum specified in the advertisement for bids, and with such sureties as the board may approve; the contract shall, on behalf of the board of chosen freeholders, be executed by the director thereof, and, when executed by the bidder and said director, a copy of the contract and specifications, with the estimated cost of the work, shall be forthwith filed with the state commissioner of public roads.

414. SEC. 2. That after a copy of the contracts and specifications shall have been filed with the state commissioner of public roads as aforesaid, the said state commissioner of public roads shall, as soon as practicable, appoint a supervisor of the construction of the work under such contract who shall receive for his services under this act three dollars per day, to be paid out of the county treasury; if the work for which such contract

Proviso.

Director of board shall advertise for bids.

Bids shall be accompanied with bonds and security.

Bids shall be publicly read.

Contract shall be awarded to lowest bidder.

Proviso.

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Contractor shall furnish bond.

Contract shall be filed.

State commissioner shall appoint a supervisor.

shall be made shall have been petitioned for, pursuant to the provisions of the eighth section of this act, then, if the petitioners therefor or any of them shall in writing nominate to the said state commissioner of public roads one or more persons for the position of such supervisor, it shall be the duty of said state commissioner of public roads if only one nomination be made, to appoint as such supervisor the person so nominated, and, if more than one nomination be made, to appoint as such supervisor one of the persons so nominated, and if no such nomination be made, the said state commissioner of public roads shall then appoint as such supervisor any person whom he may consider competent for such position ; the said state commissioner may, however, at any time summarily discharge any supervisor who, in the judgment of the state commissioner, is incompetent or who neglects his duty, and, in such case, shall appoint a new supervisor to take the place of the one so discharged ; the supervisor shall supervise all work done under the contract, shall give his whole time thereto, shall require the provisions of the contract to be strictly adhered to by the contractor, and, in any case where the contract provides for partial payments during the progress of the work, he shall also, as each payment becomes due and before payment shall be made, present to the board his certificate, and also the certificate of the surveyor or engineer, if any there be, stating as near as may be the total amount of work done, and that such work has been done in all respects as required by the contract ; and the board shall thereupon direct payment to be made by the county collector ; *provided*, that no partial payment made during the progress of the work shall exceed eighty per centum of the estimated value of the work done ; the board shall have power to borrow on temporary loans on the credit of the county such sums of money for the purpose of carrying on such work as may from time to time become necessary ; and when the work shall have been fully completed, and the terms and conditions of the contract shall have been fully complied with, and such facts shall have been certified to the board to their satisfaction by the supervisor and the surveyor or engineer, if any there be, payment in full shall be made, less the amount required to be withheld for the period of at least one year, as in the next preceding section specified.

Supervisor may be discharged and new one appointed.
Duties of supervisor.

Proviso.

Board may borrow money.

Supervisor shall make itemized statements of cost.

415. SEC. 3. That when the work under any contract shall have been duly completed, it shall be the duty of the supervisor to prepare a detailed and itemized statement in duplicate of the cost of the improvement, one copy whereof shall be filed with the board of chosen freeholders and one with the state commissioner of public roads.

One-third of cost to be paid out of state treasury.

416. SEC. 4. That one-third of the cost of all roads constructed in this state under this act shall be paid for out of the state treasury ; *provided*, that the amount so paid shall not in any one year exceed the sum of one hundred thousand dollars ; if one-third of such cost shall appear by the statements filed in any one year with the state commissioner of public roads to exceed the said sum of one hundred thousand dollars, then, and in such event, the said sum of one hundred thousand dollars shall be apportioned by the governor and the state commissioner of public roads amongst the counties of the state in proportion to the cost of roads constructed therein for such year, as shown by the statements of costs filed in the office of the state commissioner of public roads ; the governor and said state commissioner of public roads shall, between December fifteenth and thirty-first in each year, certify to the state comptroller the amount to be paid to each county for such year, and the state comptroller shall thereupon draw his warrants in favor of the respective county collectors for the sums certified as aforesaid upon the state treasurer, who shall pay the same out of any moneys in the state treasury not otherwise appropriated.

Governor and commissioner shall apportion state money.

Board of freeholders to certify amount to be raised by county to county board of assessors.

417. SEC. 5. That on or before September first in each and every year it shall be the duty of the board of chosen freeholders to certify to the county board of assessors, either in the annual tax budget or separately, two-thirds of the estimated cost of all work for which contracts shall have been awarded under this act during such year ; and the county board of assessors shall include the sum so certified in the county taxes assessed for such year,

and the same shall be assessed, collected and paid over to the county in the same manner and within the same time that other county taxes are assessed, collected and paid over ; if a deficiency shall exist in consequence of the cost exceeding the estimate, or in consequence of the receipt of less than one-third the cost from the state treasury, the board of chosen freeholders shall have authority to borrow on temporary loans to the amount of such deficiency until the next annual taxes shall be assessed, collected and paid over to the county ; and if there be a surplus, in consequence of the cost being less than the estimate, such surplus shall be retained and used in the construction of other roads under this act, or in repairs to roads constructed under this act.

Board may borrow to pay deficiency.

418. SEC. 6. That instead of certifying to the county board of assessors two-thirds of the estimated cost of all work for which contracts shall have been awarded under this act in any one year as required by the fifth section of this act, or two-thirds of said estimated cost less one-tenth of said estimated cost as required by the eighth section of this act, the said board of chosen freeholders may, if a resolution to such effect shall be adopted by a vote of at least two-thirds of all its members, borrow such sum or sums of money as may be necessary for the payment of such proportion of said estimated cost by the sale of the bonds of such county, issued in the name of the board of chosen freeholders thereof, and in such sums as the said board may deem proper ; said bonds shall bear interest at a rate not exceeding five per centum per annum, shall be sold at not less than their par value, shall not exceed in the aggregate the proportion of the estimated cost of such road as hereinabove mentioned, shall be so divided that one-tenth of the amount of the proportion of said estimated cost shall fall due in one year from their date, and one-tenth of the proportion of said estimated cost in each successive year thereafter for the period of ten years after their date, and shall be either coupon or registered bonds, as the board of chosen freeholders may determine ; the principal and interest thereof shall be made payable at the office of the county collector of such county ; said bonds shall be signed by the director of said board and the county collector, and shall be sealed with the seal of the county, and the county collector shall keep a record thereof ; it shall be the duty of the board of chosen freeholders each year to place in the tax levy for such county in each year, so long as said bonds shall run, a sufficient sum to pay the interest accruing thereon for said year and the principal of the bonds that shall mature in said year.

When board may issue bonds.

Conditions of bonds and the sale thereof.

County collector shall keep record of bonds.

419. SEC. 7. That any road constructed under the provisions of this act, except within the limits of any city, shall forever thereafter be a county road, and the duty of keeping the same in repair, except within the limits of any city, shall devolve upon the board of chosen freeholders and the county supervisor hereinafter mentioned, and all other powers and duties respecting such roads, except within the limits of any city, shall be imposed upon and vested in the said board of chosen freeholders to the exclusion of all township, borough or other municipal officers excepting city officers ; and after the first road shall have been constructed under this act in any county, it shall be the duty of the board of chosen freeholders thereof to appoint a county supervisor of roads who shall hold his office for three years and until his successor is appointed, shall give bond to the board of chosen freeholders in the sum of one thousand dollars conditioned for the faithful performance of the duties of his office with such sureties as the board may approve, and shall receive such salary or allowance as the board may fix ; the board of chosen freeholders shall provide all moneys necessary to keep in a proper state of repair the roads constructed under this act, except within the limits of any city, and may, if there be no moneys on hand that can be lawfully used for such repairs, borrow therefor on temporary loans until the next annual taxes shall have been assessed, collected and paid over to the county ; it shall be the duty of the supervisor to report to the board of chosen freeholders, or to the road committee thereof, all repairs he may think necessary or proper to be made to such county roads, and, under the

Road shall be a county road.

Board shall appoint a county supervisor.

And provide for keeping road in repair.

Supervisor shall report repairs necessary.

County collector shall pay on order of the board.

In case of neglect any citizen may apply for mandamus.

Board may borrow money to make appropriation required.

City shall keep its portion of road in repair.

Board shall improve roads on petition of property-owners.

Proviso.

Proviso.

direction and control of said board of chosen freeholders or its road committee, to expend the moneys raised for such repairs in such manner and upon such portions of the roads as will tend to keep them in the best possible state of repair; no part of said moneys shall be paid into the hands of the supervisor, but all expenses of repairs shall be paid by the county collector on the orders of the board of chosen freeholders, granted only on the presentation of bills verified by affidavit, as now required by law in the case of other claims against the county; if the board of chosen freeholders shall neglect or refuse to make appropriations sufficient to keep any such road as aforesaid in good repair, any citizen of the county may apply to the supreme court for a writ of mandamus to compel said board to make an appropriation as aforesaid; and when any such application is made, the court, upon a rule to show cause or otherwise, in such manner as the court shall prescribe, shall ascertain and determine whether such road as aforesaid is in a proper state of repair, and may also, in its discretion, allow to the attorney of the applicant a reasonable counsel fee to be paid by the county; in case the board of chosen freeholders shall not have on hand sufficient moneys out of which to make the appropriation commanded to be made by any writ of mandamus granted as aforesaid, they shall borrow such sum or sums as may be necessary therefor on temporary loans on the credit of the county, and shall require the amount so borrowed to be raised by taxation with the next assessment of county taxes; it shall be the duty of the authorities of any city within which any portion of road may be constructed under the provisions of this act to keep the portion thereof within such city in repair forever after such construction, and such city shall have the same power, authority and jurisdiction over such portion of such road, and shall have imposed upon it the same duties as were imposed upon and vested in it with respect to such portion of such road before its improvement under the provisions of this act.

420. SEC. 8. That whenever there shall be presented to the board of chosen freeholders of any county a petition signed by the owners of at least two-thirds, either in lineal feet or in area, of the lands and real estate fronting or bordering on any public road or section of road in such county, taking in said estimate of area all the lands of every such owner which are assessed for taxes in said county and which lie together in any farm tract or lot of which a part has a frontage on said road or section of road, praying the board to cause such road or section to be improved under this act, and setting forth that they are willing that the peculiar benefits conferred on the lands fronting or bordering on said road or section shall be assessed thereon in proportion to the benefits conferred to an amount not exceeding ten per centum of the entire cost of the improvement, it shall be the duty of the board to cause such improvement to be made; *provided*, that the road or section desired to be so improved shall be at least one mile in length, or if it be less than one mile in length shall be an extension of or connection with some other permanently-improved or paved road or street; *and provided further*, that the estimated cost of all improvements made under this act, together with the estimated cost of repairs of roads already constructed in any county in any one year shall not exceed one-fourth of one per centum of the ratables of such county for the last preceding year; *and provided further*, that where more roads are applied for than can be constructed under this act in any one year, the said boards of chosen freeholders shall have the power and authority to select from the roads petitioned for the ones first to be constructed, having regard to the most important roads and the distribution of the benefits of this act to all parts of their counties; it shall not be necessary for the board in any such case to declare by resolution their intention to cause such improvement to be made, but they shall forthwith cause all necessary surveys of such road or section to be made, and specifications to be prepared for a macadamized road, or a Telford or other stone road, or a road constructed of gravel, oyster shells or other good material, in such manner that the same, of whatever materials constructed, will, with reasonable repairs thereto, at all seasons of the year, be firm, smooth and convenient for travel; the

proceedings shall thereafter be the same as is hereinbefore required in cases where such intention has been declared ; if the specifications shall not be approved by the board or by the state commissioner of public roads, or if all the bids for the work shall be rejected, it shall be the duty of the board to cause other specifications to be prepared, or re-advertisements for bids to be made, as often as may be necessary and until a contract shall be awarded, to the end that the improvement prayed for may be completed with reasonable speed ; *provided, however,* that no re-advertisement need be made where the lowest bid submitted shows that the improvement prayed for cannot be made within the limit of expenditure in this section above mentioned ; in every case where a contract shall be awarded after the presentation of such petition as aforesaid, the board of chosen freeholders, instead of certifying to the county board of assessors two-thirds of the estimated cost of the work as prescribed by the fifth section of this act, shall, unless they determine to issue bonds in the manner prescribed by the sixth section of this act, which they are hereby authorized to do, certify two-thirds of said estimated cost less one-tenth of said estimated cost, which sum the county board of assessors shall include in their assessments of county taxes.

421. SEC. 9. That when the improvement prayed for as aforesaid shall have been completed and the statement of the cost thereof filed with the board of chosen freeholders, as prescribed by the third section of this act, said board shall apply to the circuit court of the county for the appointment of commissioners to estimate and assess the peculiar benefits conferred by such improvement upon the lands and real estate fronting or bordering on the road or section thereof improved, of the time and place of which application notice shall be given by ten days' publication in two daily newspapers printed and circulating in the county, or by two weeks' publication in two weekly newspapers printed and circulating therein, at which time and place or at such other time and place as the court shall designate ; said court shall, without unnecessary delay, appoint three commissioners who shall be disinterested freeholders and residents of the county in which the application is made, to estimate and assess the benefits aforesaid ; the said court shall have power to remove any commissioner and appoint another in his place and also to fill any vacancy that may occur in the office of any commissioner from any cause ; said commissioners shall each receive three dollars per day, to be paid by the county collector.

422. SEC. 10. That said commissioners, before entering upon the duties required of them by this act, shall take and prescribe before some person duly authorized to administer the same an oath or affirmation that they will make all assessments and estimates required of them fairly, legally and equitably according to the best of their skill and understanding, which oath or affirmation shall be attached to the report that they are hereinafter required to make.

423. SEC. 11. That the said commissioners, having thus qualified, shall give such notice as the court may direct of the time and place when and where they will hear any persons in interest who may present themselves to be heard, and at such time and place and at such other times and places to which they may adjourn for that purpose, the said commissioners shall attend, and shall give a public hearing to those persons in interest who may desire to be heard ; the said commissioners shall have power to examine witnesses under oath or affirmation, to be administered by any one of them, and to enter upon and view the lands and real estate fronting or bordering on the road or section thereof improved, and to adjourn from time to time in their discretion, or as directed by said court ; they shall use diligent efforts to ascertain the names of the owners of the lands fronting or bordering on the road or section thereof improved, and shall state the same in the report hereinafter mentioned ; but the failure to ascertain the name of any owner, or to state the same correctly, or the omission of any such name from the report, shall not invalidate said assessment nor be a bar to the collection of the same.

Commissioners shall be appointed to estimate and assess benefits.

Notice shall be advertised.

Court may remove commissioners and fill vacancies.

Compensation of commissioners.

Oath of commissioners.

Proceedings before commissioners.

May examine witnesses and administer oath.

Shall ascertain names of owners and state them in report.

Commissioners to make report of assessments.

What the report shall set forth.

Assessments shall not exceed amount of benefits.

Court shall appoint a hearing of objections on coming in of report.

Commissioners shall correct and revise report or make a new one.

Report, when confirmed, shall be final, and shall be filed.

Certified copies shall be delivered to certain officers.

Collector shall pay over amount collected.

424. SEC. 12. That after having given opportunity as aforesaid for a public hearing of the persons in interest, and having viewed the lands fronting or bordering on the road or section thereof improved as aforesaid, the said commissioners shall make a report in writing of their estimates and assessments to the said court, accompanied by a map prepared by the engineer in charge of the construction of the road showing the several tracts or parcels of lands and real estate fronting or bordering on said road or section thereof; the said report shall state the cost of the whole work, which shall be furnished to the commissioners by the board of chosen freeholders from the report of the supervisor of construction filed with said board under the requirements of the third section of this act, and shall give the names, so far as ascertained, of the owners of the tracts or parcels of lands and real estate fronting or bordering on said road or section thereof, the city, township, borough or other municipality in which each tract or parcel of land is situate, and the amount of the assessment upon the owner or owners of each of said tracts or parcels of land and real estate for the said benefits; which several assessments shall be in proportion, as near as may be, to the peculiar benefits deemed to have been conferred by said improvement upon the respective tracts of lands and real estate aforesaid; if any tract of land shall be located in more than one city, township, borough or other municipality, it shall be stated in said report as being in the city, township, borough or other municipality in which there is the greatest frontage by lineal feet on the road or section thereof improved; in no case shall any tract or parcel of land and real estate, or any owner thereof, be assessed beyond the amount of benefit actually derived from said improvement, nor shall the aggregate amount of assessments imposed upon the tracts or parcels of land fronting or bordering on such road or section thereof exceed ten per centum of the total cost of the improvement.

425. SEC. 13. That upon the coming in of any such report signed by the said commissioners, or any two of them, said court shall cause such notice to be given as it shall deem proper of the time and place of hearing any objections that may be made to such assessment, and after hearing any matter that may be alleged against the same the said court, either by rule or order, shall confirm the said report, or shall refer the same to the same commissioners for revision and correction, or to new commissioners to be appointed by said court forthwith to reconsider the subject-matter thereof, and the said commissioners to whom such report shall be so referred by the court shall return the same corrected and revised, or a new report to be made by them in the premises, to the said court without unnecessary delay, and the same, being so returned shall be confirmed, or again referred by the said court in the manner aforesaid, as right and justice shall require, and so, from time to time, until a report shall be made or returned in the premises which said court shall confirm; such report, when so confirmed, shall be final and conclusive, as well upon the said board of chosen freeholders and the cities, townships, boroughs or other municipalities in which said lands may be situate, as upon the owners of any lands and real estate affected thereby, and the court shall require the same to be forthwith filed with the county clerk, and certified copies thereof and of the accompanying map, and of the rule or order confirming the report, to be promptly delivered to the county collector, one for said county collector and for each city, township, borough or other municipality in which the assessed lands may lie; the county collector shall retain one of the said copies for his own use and shall forthwith give one to the collector or receiver of taxes in each of the cities, townships, boroughs and other municipalities in which the assessed lands may lie; each city, township, borough or other municipality whose collector or receiver of taxes shall receive such certified copy shall, by its proper disbursing officer, within six months after the date of the said order of confirmation, pay the amount of assessments appearing by said report to have been assessed upon the lands situate in such city, township, borough

or other municipality, who shall receive for his services three per centum of the money so collected to be paid by the county.

426. SEC. 14. That no certiorari shall be allowed by any court to review any of the proceedings in relation to such improvement, nor in any way to affect any assessment made by such commissioners, after the lapse of thirty days from the making of the order of the court confirming such assessment; the court shall designate what notice, if any, shall be given by publication or otherwise of the confirmation of the report of said commissioners.

Time for allowing writ of certiorari limited.

427. SEC. 15. That the assessments made by said commissioners shall be and remain a lien upon the lands assessed, from the date of the confirmation or the report of assessments in the same manner and to the same extent that taxes are liens upon lots or tracts of lands situate in the city, township, borough or other municipality in which the assessed lands may be.

Assessments shall be a lien on lands.

428. SEC. 16. That the receiver or collector of said city, township, borough or other municipality shall, as soon as the said report is delivered to him, give to the owners of lots and tracts of lands appearing by said report to be assessed, such notice of the assessments and of the time within which the same are required to be paid as the court in its order of confirmation, hereinabove mentioned, shall prescribe; all such assessments shall become due and payable to such receiver or collector within six months from the date of the order of confirmation hereinabove mentioned.

Property-owners to be notified of amounts of assessments.

429. SEC. 17. That if any assessment upon any lot or tract of land made under the provisions of this act shall not be paid within the time appointed in said notice, the township committee, common council or other governing body in the city, township, borough or other municipality within which such lot or tract of land shall be situate, or a majority of them may, as they shall deem proper, either bring an action on contract in any court of competent jurisdiction, in the corporate name of such city, township, borough or other municipality, against the owner or owners of such lot or tract of land for so much money laid out and expended by them for the use of such owner or owners and declare generally, and give the special matter in evidence, and either party from any judgment rendered therein may have the same remedy by appeal or otherwise as if said parties were private individuals, or they may proceed to collect the said assessment by sale of the lot or tract of land whereon such assessment has been imposed, or may be a lien, in the same manner and to the same extent as lands are now sold for unpaid taxes in such city, township, borough or other municipality, and the purchaser or purchasers at any such sale or sales, and his legal representatives, shall hold and enjoy such lot or tract of land, with the rents, issues and profits thereof, in the same manner and by the same title and tenure as purchasers at the sales of lots or tracts of land for unpaid taxes can now hold and enjoy the same in such city, township, borough or other municipality.

Proceedings for enforcing collection of assessments.

Title of purchaser.

430. SEC. 18. That if any property-owners or owner along any road in any county of this state which has not been improved, or is not undergoing improvement, under the previous sections of this act, shall desire any section of any road in such county to be improved, and are or is willing to contribute the whole expense of such improvement, the supervisor of roads of such county shall, upon the written request of such owners or owner, make a plan of such section of road so to be improved, in which shall be given the levels and distances, and also specifications, which shall state the materials that may be used, and the manner of using them; and a copy of such plan, specifications and of any bids to do such work shall then be submitted by such owners or owner to the board of chosen freeholders, and if such board shall approve them, it shall then be lawful for such owners or owner to accept any bid or bids so approved from among the bidders, and proceed to build such section of road according to such plan and specifications, and such owners or owner shall have control of the expenditure of the moneys used to make such improvement, subject to the approval and supervision of the supervisor of such county;

Proceedings where property-owners are willing to contribute the whole expense of improving any section of a road.

Road when improved shall be a county road.

and, upon the completion of the improvement to the satisfaction of the said supervisor and said board of chosen freeholders, and upon the submission to said board of receipts, showing full payment for materials furnished and work done under the plan and specifications, such section of road so improved shall thereafter be a county road; and the said supervisor shall be paid by the aforesaid owners or owner the sum of ten dollars for making the plan, the sum of five dollars for drawing the specifications, and the sum of five dollars for the supervision of the work, and, in case such supervisor is not a civil engineer and an actual survey is necessary, then such owners or owner, at their or his expense, shall procure a survey, which shall be subject to the approval of such supervisor, which survey shall take the place of the plan before mentioned.

Act repealed.

431. SEC. 19. That the act entitled "An act to provide for the more permanent improvement of the public roads of this state," approved the fourteenth day of April, one thousand eight hundred and ninety-one, and all acts supplementary thereto and amendatory thereof, be and the same are hereby repealed; *provided, however,* that this section shall not cause any proceedings for the improvement of any public road or section thereof under the provisions of the act hereby repealed to abate, but such proceedings may be continued under the provisions of this act in the same manner as if they had been commenced hereunder.

Proviso.

An act respecting the maintenance of roads or highways under the charge or control of county boards of chosen freeholders in this state.

P. L. 1895, p. 749.

Approved March 23, 1895.

Board of freeholders to maintain improved roads that have moved from their original position, &c.

432. SEC. 1. That it shall be the duty of boards of chosen freeholders in counties of this state having charge and control of any county road or highway which has heretofore been macadamized or paved with Telford pavement, or which shall hereafter be so macadamized or paved at the expense of the county, to maintain and keep in repair the macadam or pavement upon such roadway, notwithstanding that the same may have been moved from its original position or new pavement substituted therefor in a portion of the road different from that in which the pavement was originally placed, in order to provide for the construction of a street railway in the location of the road or highway in which said pavement was so originally placed; *provided, however,* that nothing in this act shall be held to relieve any street railway company from any contract or agreement to maintain such pavement.

Proviso.

V. Township roads and streets.

An act in relation to assessments in townships.

P. L. 1881, p. 274.

Approved March 25, 1881.

Township committee to ascertain amount of costs and expenses of certain street improvements,

433. SEC. 1. That wherever the costs and expenses of grading, flagging or paving any street, or section of a street, in any township or polling district therein, in this state, shall not have been assessed under and pursuant to the act or acts of the legislature of this state authorizing such grading, flagging or paving to be done, and an assessment of the costs and expenses thereof cannot now be lawfully made thereunder, or if any such assessment shall have been made and the law or laws in virtue of which they were made shall have been declared by the courts of this state to be unconstitutional or void, it shall be the duty of the township committee of any such township in which such polling district may be or shall have been, or a majority of such committee, immediately after the passage of this act, to ascertain the whole amount of the costs and expenses of any such improvements, including discounts and interest on money borrowed or expended in making such improvements; so soon as conveniently may be thereafter, such committee shall apply to the presiding judge of the circuit court in the county in which such improvement was made, for the appointment of commissioners to make an assessment of the same; upon making this

circuit court to appoint commissioners of assessment.

application said judge shall appoint three judicious and disinterested freeholders residing in the county in which such improvement was made, none of whom shall be taxpayers in the township where made, to make said assessment, and he may in his discretion, and in such mode as he may direct, cause notice to be given to property-owners whose lands lie adjacent to the street in which the improvement was made, of such application; when such appointment is made said commissioners in making the assessment shall assess upon all the lots or tracts of land and real estate benefited by such improvement such proportion of such costs and expenses, including discounts and interest aforesaid, as will be equal to the amount of the benefits actually acquired by said lands and real estate from such improvement, proportioned equitably to the benefit each of such lots or tracts of land and real estate shall be deemed to acquire, and the balance of such costs, expenses, discounts and interest, if any remain unassessed, shall be a debt upon and paid by such township, and the township committee of said township is hereby authorized to raise in one sum, or by installments from time to time, by tax, in the same manner, and at the same time that other taxes in said township are raised, money sufficient to pay any such balance, and the interest accrued thereon. (a)

Assessments, how made.

434. SEC. 2. That all assessments made under the provisions of this act shall be payable, if the owner or owners of the land and real estate upon which said assessment shall be made shall so desire, in five equal annual installments with interest thereon, at the rate of six per centum per annum upon all deferred payments from the day the report hereinafter referred to shall be delivered to the collector of the township hereinafter mentioned to the day of such payment respectively, the first payment thereof to be made within one year from the time said report shall be delivered to the collector of the township as hereinafter mentioned, the second payment within two years thereof, and the third payment within three years thereof, and so on annually until the whole is paid; *provided*, that such owner may increase the amount of his installments in making such payments on the same terms.

Assessments may be payable in annual installments.

435. SEC. 3. That the said commissioners, before they commence to make any assessment contemplated by this act, shall take and subscribe an oath or affirmation before the said judge to make the said assessment fairly and impartially according to the best of their skill and judgment.

Proviso.

Commissioners to take oath.

436. SEC. 4. That the said commissioners shall make a report by a certificate in writing, of the assessments so made, and before proceeding to sign the same shall give an opportunity to the parties interested to examine the same, and shall give notice to the parties interested by posting the same in five of the most public places near said improvement, one of which shall be placed along the line thereof, and also a copy left at each occupied dwelling along the same, at what time and place in said township the said report may be examined by them; and also of the time and place when and where the parties interested can be heard by the said commissioners; and after hearing the said parties, the said commissioners shall proceed to complete said report, making such alterations as they deem proper and necessary, and shall then sign the same and deliver said report to the collector of said township.

Commissioners to make report and give notice to parties interested.

437. SEC. 5. That the assessment authorized and directed by this act shall be and remain a lien upon the lands and real estate assessed, from the time said report shall have been delivered to the collector of said township, in the same manner and to the same extent that taxes are now liens upon lots or tracts of land and real estate in said township.

Assessments to remain a lien upon lands.

438. SEC. 6. That if the owner or owners of any lot or tract of land and real estate, which shall be assessed for any improvement aforesaid, shall desire to pay the whole assessment which shall be made and levied under the provisions of this act upon his or their lands and real estate, notwithstanding the provisions of the second section of this act, the said township

Township committee authorized to deduct from assessments fifteen per centum in certain cases.

(a) See *Sandford v. Township of Kearny*, 19 Vr. 125, '2 Vr. 473.

committee, or a majority of them, are hereby authorized and empowered, after the report and certificate in writing shall have been delivered to the collector of the township as aforesaid, to remit or deduct from any and all assessments which shall be so paid, a sum not exceeding fifteen per centum of any such assessment; *provided*, such payment is made within three months after said report and certificate shall have been in said collector's hands, and any such deductions shall be considered as a portion of the balance to be raised as aforesaid by said township.

Proviso.

Collector to collect assessments and to give notice thereof.

439. SEC. 7. That the collector of said township shall, as soon as the said report shall have been delivered to him, proceed to collect the assessments named in said report, and shall give notice, in like manner as is required of said commissioners in section four, successively, at least once in each week, stating in general terms the street or section of street comprised in such assessment, and requiring the owners of the lots or tracts of land and real estate assessed in and by said report to pay the amounts of said assessment to him.

On failure to pay assessments, lands to be sold.

440. SEC. 8. That if any assessment, or installment or installments thereof, upon any lot or tract of land and real estate made under the provisions of this act shall remain unpaid after the expiration of the time limited in the second section mentioned, the said township committee may proceed to collect the said assessments by sale of the lots or tracts of land and real estate whereon said assessments have been imposed, and remain unpaid, in the same manner and to the same extent as lands and real estate are now sold for unpaid taxes in said township, and the purchaser or purchasers at any such sale or sales, and his legal representatives, shall hold and enjoy such lots or tracts of land and real estate, with the rents, issues and profits thereof, in the same manner as if he had purchased the same at a sale for the non-payment of taxes due thereon.

Owners aggrieved by report of commissioners, may appeal to circuit court.

441. SEC. 9. That any owner deeming himself dissatisfied or aggrieved by the report of said commissioners, in respect to the assessment made by them as aforesaid, may appeal therefrom to the judge of the circuit court of the county in which his or her lands so assessed lie, at any time within thirty days from the date of the delivery of such report to the collector, giving written notice of such intended appeal, to said collector; upon making the application therefor to said judge, he shall thereupon order a trial by jury, to re-assess the benefits of the party so appealing, on an issue to be framed for that purpose, the trial whereof shall be conducted as in other cases of trial by jury; the assessment of said jury shall be entered by the clerk of the court in the court minutes, and a certified copy thereof given by him to said collector, who shall attach the same to said commissioners' certificate and report; and such assessment shall take the place of that made by said commissioners, and shall, in all respects, have the same force and effect as if originally made by them; if such re-assessment is less than the original one, judgment may be entered up for the costs of the appellant against said township, and if greater, judgment may be entered up for the costs of said township against the appellant.

Township committee authorized to issue bonds.

442. SEC. 10. That for the purpose of meeting the costs and expenses of such improvements, it shall be lawful for the township committee to issue bonds under the seal of said township, and by the signature of the chairman thereof, with that of the township clerk, to an amount equal to said cost, expenses and accrued interest; said bonds shall bear interest at the rate of six per centum per annum, payable semi-annually, and be made payable at any time not exceeding ten years from their date, and shall not be negotiable at a rate less than par; and all assessments for said improvements, and all taxes raised to meet the portion of the costs and expenses assessed to said township, when paid, shall be kept apart and used solely to pay said bonds with the interest thereon; said bonds shall also be receivable in payment of said assessments, for their full or face value, with the interest thereon.

Bonds, how to be paid.

An act authorizing the township committees in any township in this state, not containing an incorporated city or borough wholly or in part within its limits, to pave or macadamize any street or streets, road or roads, or part or parts thereof, within said township, in pursuance of a resolution or resolutions of a town meeting ordering the same, and likewise empowering them to assess the expenses of such paving or macadamizing, or a proportion thereof, upon the owner or owners of the premises adjacent to said street or streets, road or roads, or part or parts thereof, in accordance with the benefits conferred upon said premises respectively; and, also, making the amount which shall be assessed against the owner or owners of each of said premises, respectively, a lien upon the same.

Passed March 27, 1882.

P. L. 1882, p. 179.

443. SEC. 1. That whenever fifteen or more freeholders, residents of any township in this state, shall give notice in writing, signed by them, and published in at least one newspaper published in said township, for two weeks before the holding of any annual or special town meeting to be held in said township, at least once in each week (the date of which meeting shall be named in said notice), that they intend to have a resolution or resolutions offered at such annual or special town meeting, providing for the paving or macadamizing of the streets or roads of said township, or some part or parts thereof; and whenever such annual or any special town meeting of any township in this state shall, after the publication of said notice in manner aforesaid, by a two-thirds vote of the citizens of said township present at said meeting, pass a resolution or resolutions ordering the paving or macadamizing of any street or streets, road or roads, or part or parts thereof, within the bounds of said township (such street or streets, road or roads, or part or parts thereof, to be clearly designated and limited by such resolution or resolutions), and shall specifically appropriate money for that purpose, the township committee of such township shall be authorized, and it shall be their duty to proceed as follows, viz.: the said township committee, immediately after the passing of such resolution or resolutions, shall make or cause to be made a survey and map or maps of the street or streets, road or roads, or part or parts thereof, to be so paved or macadamized in accordance with said resolution or resolutions; which map or maps shall show the frontage of each of the premises adjoining said street or streets, road or roads, or part or parts thereof, and likewise the position of the outside line of the curbing laid along the same, or to be laid in accordance with the terms of this act; the township committee shall pay for said survey and map or maps out of the money specifically appropriated for paving as aforesaid. (a)

Township committee, when authorized by resolution adopted at any annual or special town meeting, may proceed to pave and macadamize streets or roads.

Map and survey of streets or roads ordered paved to be made.

444. SEC. 2. That said township committee, after the passing of said resolution or resolutions and the making of said survey and map or maps, shall be authorized and empowered to fix the grade of said street or streets, road or roads, or part or parts thereof, from curb to curb; and also to fix the position of the curbing along and crossing over the same.

Committee empowered to fix grade of streets or roads.

445. SEC. 3. That said committee shall be authorized and empowered to decide, in all instances, what kind and quality of pavement or macadamized roadbed shall be laid in pursuance of the resolution or resolutions adopted by the town meeting aforesaid, unless said town meeting in said resolution or resolutions shall itself decide upon the kind and quality of said pavement or macadamized roadbed; *provided, always,* that the township committee, either in following the directions of the town meeting or otherwise, shall in no instance expend an amount for the materials and labor of laying said pavement or roadbed in excess of the amount specifically appropriated for that purpose as aforesaid.

Kind and quality of pavement, how determined.

Proviso.

(a) This act has been held to be unconstitutional by the supreme court. *Dobbins v. Northampton*, 21 Vr. 496.

Kind, quality and dimensions of curbing, how determined.

446. SEC. 4. That the said township committee shall in all instances be authorized and empowered to fix upon the kind, quality and dimensions of the curbing to be laid along said street or streets, road or roads, or part or parts thereof, and to decide whether any or all curbing which may already be laid shall remain; unless the said town meeting, in said resolution or resolutions, shall itself decide upon the kind, quality and dimensions of said curbing, or decide to retain any or all of the curbing which may be already laid.

Committee empowered to pave or macadamize and to make contracts.

447. SEC. 5. That the said township committee shall have power to cause the said street or streets, road or roads, or part or parts thereof, to be paved or macadamized in accordance with the provisions of this act, and to make all contracts which shall seem advisable to them to that end; and further, that all contracts made by them for said purpose, in accordance with the provisions of this act, and none others, shall be binding upon the townships of which the members of said committee are officers, notwithstanding anything to the contrary, expressed or implied, which may be embodied in said resolution or resolutions, or any other act of said township.

Committee to decide what share of expense shall be borne by owner of property.

448. SEC. 6. That the said township committee shall decide what share or shares of the expense of paving or macadamizing said street or streets, road or roads, or part or parts thereof, shall be borne by the owner of the property adjacent to said street or streets, road or roads, or part or parts thereof, or by each of the owners of said property, if there be more than one; and they shall assess said share upon said owner, if there be but one, in accordance with the benefit accruing to his property by reason of said paving or macadamizing; or they shall assess said shares upon each of said owners, if there be more than one, in accordance with the benefit conferred upon the respective property of each of said owners by reason of said paving or macadamizing; they shall give two weeks' notice in at least one newspaper published in said township, at least once in each week, of the time of making said assessment; at said time they shall hear whatever any person interested may have to say in regard to the amount of any assessment; they shall have power to adjourn their proceedings from time to time until their work shall be completed.

Benefits to property, how assessed.

Notice to be given of time of making assessment.

Assessments, how made.

449. SEC. 7. That in making each of said assessments, they shall set down, in writing, the name of the person or persons to be assessed; also, such a description of the property on account of which said assessment shall be made as will be sufficient to identify it; they shall likewise set down the amount of the benefit, in their judgment, done such property, being the amount for which the owner or owners thereof shall be assessed; *provided*, that the said town meeting of said township, or any subsequent town meeting, may resolve that no property-owner on the street or streets, road or roads, or part or parts thereof, to be paved or macadamized, shall pay more, in any event, than a certain proportion of the actual cost of the paving or macadamizing of said street or streets, road or roads, or part or parts thereof, before the property of said owner, in which case the action of the township committee, in making said assessment, shall be controlled by said resolution in all cases where the amount of actual benefit conferred would, in their judgment, exceed the proportion established by said resolution; *and provided further*, that in no case shall an assessment for benefits accruing to any property-owner on said street or streets, road or roads, or part or parts thereof, exceed one-half of the net expenses of paving or macadamizing said street or streets, road or roads, or part or parts thereof, before the property on account of which said assessment shall be made.

Proviso.

Proviso.

Committee empowered to curb and relay curb and to make contracts.

450. SEC. 8. That said township committee shall have power to cause the said street or streets, road or roads, or part or parts thereof, to be curbed, or to cause the curb which may already be laid, to be relaid, in accordance with the provisions of this act, and to make all contracts which shall be advisable in the discretion of said committee for said purpose; and all such contracts made in accordance with said provisions, and none others, shall be binding on the township of which the members of said committee shall be officers.

451. SEC. 9. That the said committee shall assess the amount of the expenses of laying or relaying the said curbing against the same persons and in the same manner as is hereinbefore provided in the case of paving; *provided always*, that the whole of the amount of the expenses of laying or relaying said curbing in front of the property of said adjacent property-owner, or the respective properties of said adjacent property-owners, shall be assessed against said owner or owners, without any reference to the amount of benefit which shall accrue to said owner or owners by reason thereof.

Assessment for curbing, how made.

Proviso.

452. SEC. 10. That at the expiration of two weeks after completing said assessments for curbing and paving as aforesaid, and declaring the same completed, by notice to that effect, inserted in at least one newspaper published in said township, the said township committee shall make copies of such assessments as shall then remain unpaid, under their hands and the seal of said township, and shall file the same, fastened together, in the office of the clerk of the county in which said township shall be situated.

Copies of assessments to be filed in county clerk's office.

453. SEC. 11. That the amounts assessed in accordance with this act against the owner or owners of the premises described in said copies, shall be and remain a full, complete and paramount lien on said premises, except as hereinafter provided.

Assessments to remain a lien.

454. SEC. 12. That the clerk of the said county shall file said copies in his office, to be and remain a matter of public record; and further, that said clerk shall indorse thereon, and on the outside copy when the same shall be folded face in, the date of the filing of said copies, and that the same are copies of unpaid assessments for improvements made in the township from which said copies shall be sent, and that said clerk shall receive the sum of twenty-five cents for his services under this section.

Duties of county clerk.

455. SEC. 13. That in case any assessment, made in accordance with the provisions of this act, or the costs of making a copy of the same, or of filing or indorsing said copy, shall remain unpaid for the space of forty-five days after said copy shall be filed as aforesaid, then and in such case it shall be lawful for the township committee, or a majority of them, to advertise the property on account of which said assessment shall have been made, for sale, at public vendue, by advertisements signed by them and published in a newspaper published in said township, for the space of four weeks next preceding the time appointed for such sale, at least once in every week, and likewise posted in at least five public places in said township, one of which shall be at or near the premises mentioned in said advertisements, and at a time and place in said advertisements to be mentioned, for the shortest term for which any person will agree to take the same and to pay the amount of said assessment and the legal fees, charges and expenses; *provided*, that such sale may be adjourned on application of the owner of the premises to be sold or other persons interested therein, or in case no bidder shall attend it, from time to time, for a period not exceeding sixty days in all, in which case a short notice of said adjournment shall be published in said newspaper.

On failure to pay assessment, committee to advertise property for sale.

Notice of sale to be posted.

Proviso.

456. SEC. 14. That at the time and place mentioned in said advertisement, it shall be lawful for the said township committee, or a majority of them, to sell the said lot or premises on account of which any such unpaid assessment shall have been made, to such person or persons as will agree to take the same for the shortest period of time and to pay the said assessment and the legal fees, charges and expenses which shall have been incurred by reason of said assessment up to the time of said sale, and which are not otherwise provided for by this act, such payment to be made at and before the conclusion of such sale, and if not so made, the said committee, or a majority thereof, shall resell the premises.

For what term to be sold.

457. SEC. 15. That no property shall in any instance be sold under the provisions of this act for a longer period than fifty years.

Limitation of term.

458. SEC. 16. That within ten days after such sale the chairman of said committee shall deliver to the purchaser or purchasers a certificate of such sale, under his hand and the seal of said township, if any there be, attested by the township clerk, which certificate shall contain a description of the

Chairman of committee to deliver to purchasers certificates of sale.

property, the term for which sold, the amount of the assessment and legal fees in detail, together with the date of the sale and the time when the right to redeem, as hereinafter provided, shall expire.

Certificate to be recorded in county clerk's office.

459. SEC. 17. That the purchaser shall cause such certificate to be recorded in the office of the clerk of the county in which said township shall be situated, within twenty days from the receipt thereof, and that thereupon he shall be entitled to the immediate possession of the property described in said certificate, and to all the rents, issues and profits thereof, from the date of said certificate; and in case the premises are occupied by the owner or owners thereof, the purchaser or purchasers shall give notice to such owner or owners in writing, by leaving the same with some member of his or their family or families, over the age of fourteen years, and informing him of the contents thereof, of such sale, and demanding possession of said premises within thirty days from the service thereof, as aforesaid, and at the same time shall exhibit to the person so served as aforesaid, the aforesaid certificates; and if, at the expiration of said thirty days, the said owner or owners shall not deliver up possession thereof, then and in that case the purchaser may take the same proceedings to gain possession of such premises as may be taken by purchasers under decree and sale of mortgaged premises.

Purchasers to give notice to owners.

Redemption of lands sold.

460. SEC. 18. That any person having a legal or equitable interest in such premises sold as aforesaid, may redeem the same at any time within a period of two years from such sale, by paying to the purchaser or purchasers, or his or their legal representatives, the amount of the purchase-money, with legal interest thereon, together with such costs and expenses as may have been incurred by the purchaser or purchasers subsequently to said sale under the provisions of this act; and the purchaser or purchasers, or his or their legal representatives, upon receiving such payment, if made by the owner or owners of such premises, shall restore said premises to such owner or owners; and in case the owner or holder of any estate in lien upon or right of possession of such premises so sold, shall pay to the purchaser or purchasers, or his or their legal representative, within the said two years, the aforesaid purchase-money, interest, costs and expenses, then the sale shall be of no further effect, and the mortgagee or other person so redeeming shall have a lien on said premises for the amount paid, with interest thereon, in like manner as if the same had been included in his mortgage or other lien.

On failure to redeem, deed to be delivered.

461. SEC. 19. That in case such lands and premises so sold shall not be redeemed within the time provided for by this act, then, and in such case, the township committee, upon due proof being made by affidavit that such redemption has not been made, and the surrender of such certificate, shall execute and deliver to the purchaser or purchasers, or his or their legal representatives or assigns, at his or their expense, a deed for the same under the common seal of the township, if any there be, signed by the chairman of said township committee and attested by the township clerk, and acknowledged according to law; which deed shall contain a description of the property, the amount of the assessment, the fact of advertisement and sale, the date of said sale and the period for which said premises were sold, and that said deed shall be recorded in the office of the county clerk aforesaid, within ten days after the delivery thereof; and that, unless so recorded, the same shall be of no effect against a prior or subsequent mortgagee or purchaser in good faith; and, also, that the right of redemption shall continue until such recording, notwithstanding the lapse of the aforesaid two years; and that said purchaser or purchasers, upon complying with the provisions of this act, shall, by virtue thereof, hold and enjoy said premises for and during the term for which he or they shall have purchased the same, for his or their own proper use, benefit and advantage, against the owner or owners thereof, and against all and every other person or persons claiming under him or them, or under any other person or persons, whether as mortgagee, alienee, heir-at-law or incumbrancer, as fully and completely as though there were no other estates or mortgages, alienations, devises, descents, liens or incumbrances of, in, upon or against

Deed to be recorded in county clerk's office.

said property, or any part thereof, until said term shall be full, completed and ended; and the purchaser or purchasers shall be at liberty, at or before the expiration of said term, to remove any building and materials erected and placed by him or them on said premises, and when said term shall have ended shall peaceably and quietly yield up the same to the lawful owner or owners thereof in as good condition as when he or they took possession of the same, damage resulting from ordinary use and the elements excepted.

462. SEC. 20. That no sale of premises, made in pursuance of the provisions of this act, shall destroy or in any manner affect the lien of any mortgage duly recorded or registered at the time of such sale, unless the purchaser or purchasers shall give to the mortgagee or mortgagees holding the same, within three months after the date of said sale, notice, in writing, setting forth the date of such sale, the amount of the purchase-money, the description of the property as contained in the certificate of sale, the date when the time of redemption shall expire and a reference to this act; which notice shall be served personally, or by leaving the same with a member of the family or families of such mortgagee or each of such mortgagees, over the age of fourteen years; or if neither the said mortgagee or mortgagees, nor a member of his or their family, or of each of their families, can be found, then by mailing the same inclosed in an envelope or envelopes, plainly directed to him or each of them at his or their last-known post-office address or addresses, with full postage prepaid thereon; and the purchaser shall, within twenty days after the service of such notice, transmit a true copy of such notice, with due proof of its service, to the clerk of the county in which said lands are situate, and such notice shall be recorded and indexed in the same book in which mortgages are recorded, and a marginal note shall be made thereof in the book in which the mortgage or mortgages of such mortgagee or mortgagees are recorded or registered, and opposite the record thereof; for which service the county clerk shall be entitled to be paid the sum of eight cents per folio, to be paid by such purchaser or purchasers.

Sale not to destroy or affect lien of mortgage recorded unless notice shall be given to mortgagee.

463. SEC. 21. That the township committee shall be entitled to receive the following fees, and no other, for their services under this act, to be equally divided among those who shall perform such services, viz.: for each separate assessment on account of paving or macadamizing, the sum of twenty-five cents, to be paid out of the money specifically appropriated by the town meeting for paving or macadamizing as aforesaid; for each separate assessment on account of curbing, the sum of ten cents, to be paid out of the money specifically appropriated as aforesaid; for each separate copy of an assessment, whether for curbing, or paving, or macadamizing, filed with the county clerk, the sum of six cents; for each separate parcel of real estate sold in accordance with the terms of this act, the sum of twenty-five cents; likewise the sum of ten cents on account of each separate parcel of real estate, the sale of which may be adjourned; also, for making and executing each certificate of sale, the sum of fifty cents; beside all necessary disbursements made by them not herein specially provided for.

Fees of township committee.

464. SEC. 22. That the township committee, at any sale held by them under the provisions of this act, shall have power to cause any premises offered by them for sale, upon which no bid shall be received, to be bought in for the benefit of the inhabitants of the township; and that the said inhabitants so purchasing, shall have lawful right and authority to use, occupy and enjoy said premises, and, through their township committee, to take such proceedings as may be necessary to obtain possession thereof, and to sell and transfer the same and any part thereof, to any person paying the purchase price thereof, together with taxes and lawful interest and expenses; *provided*, that in case any real estate, purchased as aforesaid, for the benefit of the inhabitants of any township, shall not be redeemed, it shall not be necessary for said township committee to execute a deed to the inhabitants of said township for the same; but the said township shall hold, enjoy and dispose of the premises so purchased, under the certificate

Premises may be bought for benefit of inhabitants of township.

Proviso.

Acts and proceedings to be performed by township committee, notwithstanding expiration of term.

Amount of assessments collected to be accounted for.

When assessment may be marked satisfied by county clerk.

Fee of county clerk.

Expenses of advertising, &c., to be paid by township.

In what newspapers notices to be published.

Committee not to have control of roads within limits of towns, boroughs or cities.

P. L. 1882, p. 241.

Inhabitants may vote by ballot for establishment of grade for public roads, &c.

Township committee to establish grades by ordinance.

or certificates of sale of the same, as fully to all intents as if a deed or deeds for the same had been executed and delivered to them.

465. SEC. 23. That all acts or proceedings to be had or done by virtue of this act, by any township committee, in paving or macadamizing, or assessing or collecting the expenses thereof in pursuance of a resolution ordering such paving or macadamizing as aforesaid, shall be performed by the township committee, or the survivor of the members thereof, which shall be in office at the time of, or shall be elected to office at the meeting when such resolution shall be adopted; notwithstanding that the term of office of said committee may have expired before the having or doing of said act or proceeding.

466. SEC. 24. That the amount of all assessments collected under this act shall be held by the township committee, and shall be accounted for by them to the next annual town meeting after the same shall have been received; and said town meeting shall be authorized to dispose of the same for such legal purpose or purposes as shall meet their approval.

467. SEC. 25. That any person or persons, against whose property any assessment may have become a lien in accordance with the terms of this act, shall be entitled to have the same marked satisfied by the clerk of said county, on producing to said clerk a receipt of the treasurer of the township committee for the amount of said assessment, together with the costs of said copy, and such other costs and charges as may have accrued under the provisions of this act by reason of such assessment; and the said clerk shall be entitled to receive the sum of ten cents for each and every such service, to be paid him by the person at whose request the same shall be performed.

468. SEC. 26. That the expenses of advertising under this act, except expenses of advertising property for sale, and of making said assessments and copies thereof, and filing and indorsing said copies, shall be paid by the township out of the money specifically appropriated for paving as aforesaid.

469. SEC. 27. That in the case of any township in which no newspaper shall be published, all the notices provided for by the terms of this act may be inserted in a newspaper published in the county seat of the county in which said township shall be situated; and, in such case, all notices so printed shall have the same effect as if inserted in a newspaper published in such township.

470. SEC. 28. That nothing in this act contained shall give to the township committee of any township any control of, or supervision over any road or roads, or part of the same, lying and being within the limits or boundaries of any incorporated town, borough or city, being within the bounds of any township, and which road or roads are now by law under the control and supervision of the municipal authorities of any such town, borough, or city.

An act authorizing townships to establish the grade of public roads within their limits.

Approved March 31, 1882.

471. SEC. 1. That it shall be lawful for the inhabitants of any township in this state to vote by ballot for the establishment of a grade for their public roads, and if a majority of the voters voting at said election shall vote to establish a grade, said grading, and the expense of establishing the same, shall be paid for out of any money raised for the repairs of highways, and the amount so to be expended, and the road or roads to be graded, shall be determined by the township committee of such township.

471 a. SEC. 2. That when the inhabitants of any township shall have, at any annual town meeting, voted to provide for the establishment of a grade for their public roads, it shall be the duty of the township committee, as soon as convenient, to establish, by ordinance, the grades of the several public roads in their township, which ordinance shall be entered in full in the township-book to be kept for that purpose by the township clerk; and it shall not be lawful, after the same shall have been so estab-

lished, to alter the grade of any public road so established, except by ordinance, nor shall any such ordinance be passed until the township committee shall have caused notice to be served upon the owners of lots or lands fronting or bordering upon that part of said public road the grade of which is proposed to be altered, stating the time and place when the township committee will proceed to consider the matter, which shall not be less than two weeks from the time of serving such notice; at the time said matter shall come up for the consideration of the township committee, all persons interested may appear and be heard by themselves, or their counsel, for or against the alteration proposed. (a)

An act concerning township officers.

Approved February 20, 1883.

P. L. 1883, p. 39.

472. SEC. 1. That no township committee shall have authority to supervise the expenditure, within the corporate limits of any borough situate within the township, of taxes raised for road purposes, if said borough has control of its streets by its act of incorporation, and has officers lawfully charged with the making and repairing of streets in said borough; and the proportion of taxes for road purposes required by law to be expended within the borough limits shall be paid over to the proper officers, to be expended under the control of the municipal authorities.

Township committee not to supervise expenditure of taxes raised for road purposes in any borough.

473. SEC. 2. That all acts, general or special, inconsistent herewith be and the same are hereby repealed, and this act shall take effect immediately.

Repealer.

An act authorizing township committees to discharge the duties of overseers of roads.

Approved March 10, 1884.

P. L. 1884, p. 71.

474. SEC. 1. That the legal voters of any township within this state, may, at any town meeting, by a majority of the votes cast, pass a resolution or resolutions directing that all the roads in such township and the repairing the same, and the making of new roads laid out or that may hereafter be laid out, and the general management and care of the same, shall be under the control and direction of the township committee of such township. [See Sec. 482, *post.*]

Legal voters of township may pass resolution that all roads shall be under the control of township committee.

475. SEC. 2. That upon the passage of such a resolution or resolutions all the duties now imposed by law on the overseer or overseers of the roads of such township shall devolve upon the township committee thereof, who shall have full power and authority to discharge the same, until the legal voters of such township shall, at any subsequent annual meeting, by a majority of the votes cast, order and direct that the care and management of the roads of said township, and the improvements and repairs thereon, shall be restored to any overseer or overseers of the roads that may be chosen by said legal voters at such annual meeting, or by the legal voters of the several road districts in such township, at the annual election for that purpose.

Duties of township committee in such cases.

476. SEC. 3. That the township committee shall not enter upon the discharge of the duties mentioned in the two preceding sections until the second Tuesday of March next following the meeting at which said resolution or resolutions shall have been passed, unless no overseer or overseers of the roads should be chosen at the annual meeting at which said resolution or resolutions were passed as aforesaid, or being then chosen said overseer or overseers should resign or in any way become unable to discharge the duties of said office; *provided*, that the township committee of any township in this state which includes within its limits any incorporated village, shall enter upon the discharge of the duties mentioned in the first two sections of this act within ten days after the adoption by a majority of the votes cast at any annual meeting of a resolution transferring such duties to the township committee.

When township committee to enter upon discharge of duties.

Proviso.

(a) The township committee must put in writing, in the form of an ordinance, the grade intended to be established. *Vanderbeck v. Ridgewood*, 21 *Vr.* 514.

After passage of resolution, not lawful to elect overseers of roads for three years.

477. SEC. 4. That after the passage of such resolution or resolutions by the legal voters of any township, as hereinbefore provided, it shall not be lawful for such township to elect any overseer or overseers of roads until the third annual town meeting or road district election next after the annual meeting at which the legal voters of such township shall by a resolution passed in due form determine so to do.

An act concerning townships.

P. L. 1885, p. 141.

Payment of surplus of road tax assessed in certain townships, to whom made.

Repealer.

Passed March 25, 1885.

478. SEC. 1. That in any township in this state where the public roads are worked by commissioners elected by virtue of any special law, it shall be hereafter lawful for the township collector and he is hereby directed to pay any surplus which may be derived from road tax assessed in such township or any district thereof to the same person or persons to whom he is now directed by law to pay the amount of said road tax.

479. SEC. 2. That all acts and parts of acts inconsistent with this act are hereby repealed, and that this act take effect immediately.

An act concerning roads in townships having a public road board.

P. L. 1888, p. 147.

Proceedings where any road district having public road board has omitted to elect road commissioner.

Act repealed.

Approved March 7, 1888.

480. SEC. 1. That whenever any road district in any township of this state having a public road board shall omit, for one year, to elect a road commissioner, and fail to vote and raise a sufficient sum of money to maintain, work and keep in repair the public highways within such district, it shall be lawful for the township committee of such township to call a special meeting of the inhabitants of such district to vote and raise by tax on the said district, to be assessed and collected as other taxes, such sum as they shall deem necessary for maintaining, working, repairing and keeping in order the highways in the district; a majority of the legal voters so assembled shall determine the amount of moneys to be raised, assessed and collected, which moneys shall be expended under the direction of the said township committee in necessary repairs, maintaining and working the highways in the said district.

481. SEC. 2. That the act entitled "Supplement to 'An act concerning roads in the township of Palisades, in the county of Bergen,' approved March twenty-second, eighteen hundred and seventy-five," which supplement was approved April eighth, eighteen hundred and seventy-five, be and the same is hereby repealed.

An act relating to roads and streets in townships and authorizing the inhabitants of townships to place all roads and streets within the township under the management of the township committee, and to raise money by bonds for grading, macadamizing and improving the same.

P. L. 1888, p. 240.

Legal voters of township may direct all roads to be placed under control of township committee.

Approved March 23, 1888.

482. SEC. 1. That whenever it shall be deemed expedient to abolish the election of overseers of the highways in townships and road districts, and to transfer the control of the roads and streets of any township to the township committee, the legal voters of such township at any annual township meeting or special township meeting to be called by the township committee for that purpose in the manner hereinafter provided, may, by a majority of the votes cast, pass a resolution or resolutions directing that all the roads in such township and the repairing the same, and the making of new roads, laid out or that may be thereafter laid out, and the general management and care of the same, shall be under the control and direction of the township committee of such township, which resolution or resolutions shall be printed or written, or partly printed and partly written, on ballots, underneath which shall be written or printed the words "for the above resolution," or "against the above resolution." [See Sec. 474, *ante*.]

483. SEC. 2. That upon the passage of such a resolution or resolutions, the election of road overseers in said township or road district shall be abolished, and the control of the roads and streets of said township shall be transferred to the township committee, and all the duties now imposed and powers conferred by law on the overseer or overseers of the roads heretofore elected in said township or road district shall devolve upon the township committee thereof.

When resolution passed, election of road overseer abolished, &c.

484. SEC. 3. That in case it is desired to vote upon such a resolution at a special township meeting, it shall be the duty of the township committee, upon request to them in writing, signed by a majority of the legal voters of said township, which majority shall be determined by reference to the poll list of the last preceding township election of said township, to call such a special township meeting; and the said committee shall give at least five days' notice of such special township meeting, specifying the time and place where the same shall be held, and the purpose and object thereof, by notices printed or written, posted in five or more of the most public places in said township; and the result of said township meeting as to the said resolution, shall in either case be certified to the said committee by the judge of election presiding at such township meeting, and the township clerk, under their respective hands.

Proceedings when it is desired to vote upon such resolution at a special township meeting.

485. SEC. 4. That the inhabitants of any township shall have power at their annual or other meeting duly called for that purpose, to direct the issuing of bonds for the purpose of raising money for the purpose of improving the streets and roads of said township, by grading and macadamizing the same and building culverts and drains, and in case it is deemed expedient to issue township bonds for the grading and macadamizing of the streets and roads of such township or otherwise improving the same, such bonds shall be issued by said township committee, and shall be signed by the chairman thereof, and countersigned by the treasurer, and numbered and registered by him in a book to be kept for that purpose; *provided, however,* that before any such bonds shall be made or issued the following conditions shall have been complied with and observed: a petition requesting the said committee to issue such bonds, specifying the amount to be issued and the purpose for which they are to be used, shall be presented to said committee, signed by taxpayers of the said township (not including such persons as pay a poll tax only), representing not less than one-third in number of the taxpayers of the said township; *provided, however,* that said one-third in number of said taxpayers shall represent two-thirds in amount of taxable property of said township, which petition shall be verified by the oath of the assessor of said township that it is so signed, and before the issuing of the bonds as hereinafter provided, such petition and affidavit shall be recorded by the township clerk and filed in the office of the county clerk, and such petition and affidavits or a certified copy thereof, shall be competent evidence of the facts therein set forth, in any court of this state; the said committee shall, on receiving such petition, cause a resolution to issue such bonds to be submitted to the legal voters of said township by causing such resolution to be printed or written on ballots, underneath which shall be written the words "for the above resolution" or "against the above resolution," which vote may be taken either at the annual township meeting, or at a special township meeting to be called by the said committee for that purpose; *and provided, also,* that bonds shall not be issued for the above purposes to an amount which shall cause the entire indebtedness of any township, for all purposes, to exceed ten per centum of the assessed valuation of property, as shown on the duplicate of assessment for the preceding year.

Inhabitants of township may direct the issue of bonds for raising money for improvement of roads.

Proviso.

Proviso.

Proviso.

486. SEC. 5. That in case such vote is taken at the regular township meeting, the said resolution may be printed or written or partly printed and partly written on ballots used at such township meeting; and in case a special township meeting is called for that purpose, the ballots to be used shall contain only the said resolution and the words thereunder as mentioned in the preceding section, and the said committee shall give at least five days' notice of such special township meeting, specifying the time and

What ballots to contain.

Notice of special meeting.

Result of election to be certified.

If resolution passed, bonds to issue, &c.

Special election, how conducted.

Abolition of election of road overseer not to interfere with road districts, &c.

P. L. 1889, p. 226.

Provision for condemning lands, &c., in certain townships.

Repealer.

P. L. 1890, p. 53.

Townships having street commissions may vote money for road improvements.

Work to be done by contract.

Repealer.

the place where such township meeting shall be held and the purpose and object thereof, by notices printed or written, posted in five or more of the most public places in said township; and the result of said township meeting as to the said resolution shall in either case be certified to the said committee by the judge of election presiding at such township meeting, and the said township clerk, under their respective hands; and in case a majority of the votes cast as shall appear by such certificate shall have been cast for such resolution, then such committee shall proceed to issue such bonds forthwith and to use the same for the purposes expressed in such resolution; and the said committee are hereby empowered to grade and macadamize such streets, and to build drains and culverts and to make all contracts pertaining to the same; and all proceedings in relation to said petition, said resolution and the vote thereon, and the issue of bonds, shall be recorded at length in the township books by the township clerk, and such bonds shall not be sold for less than ninety-five per centum of their par value.

487. SEC. 6. That any special township meeting held under the provisions of this act shall be held and conducted in the same manner in which the annual township meeting is held and conducted and that the expense thereof shall be paid in the same way.

488. SEC. 7. That the abolition of the election of overseers of roads in townships or road districts shall not interfere with or affect the division of the township into road districts, nor shall the power above conferred on the townships to direct the raising of money for the improvement of roads by the issuing of bonds of the township therefor interfere with or affect the right of the legal voters of any road district to appropriate money to be raised by taxation for either the macadamizing or repair of the roads within the road district.

An act relating to the opening of streets and avenues in townships.

Approved April 9, 1889.

489. SEC. 1. That where any township in this state has power by special charter to open, grade, curb, flag and macadamize streets and avenues in such township, and to take land therefor, it shall be lawful for the corporate authorities of such township to make or cause to be made the proper award for damages for the necessary lands taken and appropriated for the opening of any such streets or avenues, and to make or cause to be made the proper assessments for the costs and expenses of such opening upon the lands and real estate benefited thereby, and to collect or cause to be collected the amount or amounts so assessed, before proceeding to carry out the other improvements that the said township authorities may have determined to carry out on such street or avenue.

490. SEC. 2. That all acts or parts of acts, whether general or public, local or special, inconsistent with the provisions of this act, be and they are hereby repealed.

An act to provide for building, graveling and macadamizing of roads by contract, under the supervision and direction of the township committee, in townships having street commissioners.

Passed March 10, 1890.

491. SEC. 1. That it shall be lawful for any township having a street commission within its limits, at the annual town meeting, by a majority of the votes cast by the legal voters of any road district, to pass resolutions authorizing the expenditure of part or all moneys voted for the making, building, graveling or macadamizing of roads, to be done under the supervision and direction of the township committee.

492. SEC. 2. That the making, building, graveling or macadamizing of roads done under the foregoing section shall be let out by contract to the lowest responsible bidder, in the manner and under the rules and regulations that the township committee may adopt.

493. SEC. 3. That all acts or parts of acts inconsistent with the provisions of this act be and the same are hereby repealed, and that this act shall take effect immediately.

**An act to authorize the alteration of the grades of streets and
highways in townships.**

Approved April 23, 1890.

P. L. 1890, p. 274.

494. SEC. 1. That in any township of this state in which the township committee or other governing body has power, by ordinance, to open, grade, pave, gutter, fill up, refill, macadamize or otherwise improve any street, road or avenue in said township on application therefor in writing to said township committee or other governing body in such township, it shall be lawful for the said township committee or other governing body, in carrying out any improvement or improvements that may be petitioned for as aforesaid, to change or alter, by ordinance, without any written application therefor, the grade of any street, road or avenue if, in the opinion of said township committee or other governing body of such township, it shall be necessary in order to properly execute and carry out the improvement or improvements petitioned for as aforesaid, and such change or alteration of the grade of any such street, road or avenue shall not invalidate or otherwise affect the legality of any assessment for benefits that may or would be otherwise assessable by law for any such improvement or improvements petitioned for as aforesaid in such township; *provided, however*, that this act shall not be construed to deprive any person of any right of action which he may have at law for damages sustained by reason of altering any such grade.

Proceedings for
altering grades of
streets, &c., in
townships.

495. SEC. 2. That all acts or parts of acts, whether public, general, special or local, inconsistent with the provisions of this act be, and the same are hereby repealed.

Repealer.

**An act to authorize the improvement of public roads and streets
in townships.**

Approved June 20, 1890.

P. L. 1890, p. 497.

496. SEC. 1. That it shall be lawful for the township committee of any township of this state, on the application in writing to the said township committee by some of the owners of the lands fronting on any public road or street in said township, the grade of which has been theretofore established by ordinance of such township, or any section of such road or street, to proceed to improve such road or street or section thereof not exceeding the limits applied for, by grading, paving, macadamizing, flagging, planking, curbing and guttering the same in such manner and with such materials as set forth in such petition and under the supervision of the surveyor therein named; that on the receipt of such petition the said township committee shall immediately thereafter, by resolution, direct the township clerk to advertise the said application or petition for two weeks, once in each week, successively, in one or more newspapers published in such county and circulating in said township, and to post copies of the said petition in five of the most public places in said township, designated by the township committee, for ten days; the clerk shall also publish and post, as above, a notice, stating that objections in writing to the said proposed improvement may be filed with him, and of the time and place when and where the township committee will meet to consider such objections, which time shall not be less than ten days after the date of the first publication in said newspaper; said clerk shall also serve, or cause to be served, a like notice on the owners of property residing along the route of said proposed improvement by leaving such notice at such residence with any person thereon, at least five days previous to the meeting of said township committee; *provided*, no assessment shall be set aside or affected by reason of the failure of the township clerk to serve said notice; at the expiration of said time designated for publishing and posting, the township clerk shall file in his office a copy of said petition and notice, with an affidavit annexed showing that the same has been published and posted as required by law; at any time after the expiration of the time named in said notice the township committee may forthwith proceed to pass an ordi-

Proceedings for
improving streets
in townships
where owners
have presented
petition therefor.

Notice to be
given for
objections.

Notice to be
served on
owners.

Proviso.

nance for said improvement, unless the owners of a majority of the property along the route of the proposed improvement object thereto, in which case all costs and expenses incurred by the township committee in such proceeding shall be repaid to the township by the petitioners for such improvements; and the township committee may make such regulations touching the receiving any petition and the proceedings thereon, and security for the expenses thereof, as they may deem proper; the ordinance may be introduced and passed at the same meeting, and it shall be valid if it describes in general language the improvements authorized by the township committee, and it shall not be necessary to state therein any other matter or thing connected with said improvement; the township clerk shall publish and post a printed copy of said ordinance in the same manner and for the same time he is required to publish and post the petition for the improvement described therein, and in like manner at the expiration of the time designated for publishing and posting said ordinance, shall file in his office a copy of said ordinance, with an affidavit annexed thereto showing that the same has been duly published and posted.

Township committee may advertise for bids and award contract.

497. SEC. 2. That at any time after the passage of said ordinance, the township committee may direct the township clerk to advertise for proposals for said improvements in one or more newspapers to be designated by the township committee, and the township committee may, at any time after the expiration of the time for publishing and posting said ordinance, enter into a contract with any person or persons to furnish the work and materials for said improvement, with such other agreements and covenants therein as shall be approved by the township committee; but the township committee shall be under no obligations to accept the lowest bid, and may reject all bids if they deem it best for the interest of the township; and in case of rejecting all proposals received, these shall again advertise for proposals, and proceed in all things as if no proposals had been offered; the township committee shall require the party or parties who enter into the contract to give a bond, with ample freehold security, for the due performance thereof.

May appoint an inspector over work and material.

498. SEC. 3. That the township committee, upon the written application of the owners of a majority of the lands to be assessed therefor, may appoint an inspector over the work to be done and the materials to be furnished in the making of such improvement, and include in the assessment therefor the amount paid to such inspector for his services as such not exceeding four dollars per day.

Committee to notify property-owners before accepting the work.

Objections to be submitted to two members.

499. SEC. 4. That before the township committee accept any work on any street improvement or the clerk issue any final certificate, they shall notify the property-owners to bring in writing any objections they may have; the clerk to publish notices at least ten days before the meeting, in the manner hereinbefore provided for; if the objections are found worthy of consideration, then the township committee shall appoint a committee of two of their board to examine such work, and report thereon to said township committee before the acceptance of the said work by them, and the decision thereof by the town committee shall be final and binding on the owners and contractor.

Appointment and proceedings of commissioners to assess benefits.

500. SEC. 5. That three commissioners shall be appointed by resolution or ordinance of said township committee, as soon as possible after the letting of contract for said work; they shall, before they enter upon the performance of their duty, file with the township clerk an affidavit which they may take before said clerk, he being hereby given the same power to administer oaths and affirmations to said commissioners as is now possessed by justices of the peace; in said affidavit they shall swear that they are not interested in said improvement, and do not own any property along the line thereof, that they are freeholders resident in said township, and that they will execute faithfully the duties of their office; after taking said oath the said commissioners may proceed immediately to execute the duties of their office, and they shall examine into the whole matter and shall determine and report in writing to the township committee what real estate fronting upon and adjacent to said improvement ought to be assessed, and

what proportion of the expense thereof shall be assessed to each separate parcel or lot of land; and they shall accompany such report with a map containing each lot assessed and the names of owners thereof as far as the same are known to the said commissioners, but no assessment shall be deemed defective by reason of any mistake in the names of said owners or omitting said names or any of them; this report and map shall be filed in the office of the township clerk, and thereafter said clerk shall publish and post a notice in the same way and manner and for the same time as he published and posted the petition for said improvement stating that the map and report of the commissioners have been filed in his office, and that the township committee will consider any objections to said assessment presented in writing, on or before a day named in said notice, to be fixed by said township committee, which day shall be at least ten days after the first publication, on which day the township committee will meet to consider such objections; in case the objections to the assessment are not sustained by them the township committee may confirm such assessment, or if they refuse to confirm the same, they may return it to the said commissioners for such amendment as may to the commissioners seem necessary, and the township committee may thereafter without any notice to any person confirm said assessment, and upon said confirmation said assessment shall constitute a first paramount lien on the property assessed for the amount of such assessment, and shall be collected under and by virtue of an ordinance or ordinances made by said township committee for that purpose; and if the persons assessed neglect to pay the township treasurer the amount of their respective assessment within thirty days from the passage of the ordinance to collect the same, then it shall be the duty of the township committee and the collector of taxes in said township to proceed immediately in the collection thereof by enforcing said lien by the sale and conveyance of said land and real estate in the manner and to like effect as prescribed in a certain act entitled "A further act concerning taxes, making the same a first lien on real estate, and to authorize sales for the payment of the same," approved March fourteenth, eighteen hundred and seventy-nine, and any supplement or supplements thereto. (a)

Confirmation of assessment by township committee.

Proceedings to enforce collection of assessments.

501. SEC. 6. That whenever, within the said township, any assessment on any lot or parcel of land shall remain unpaid for thirty days after the confirmation thereof by the township committee, it shall be lawful for the township committee to charge, receive and collect, in addition to the amount of said assessment, interest thereon, to be computed at the rate of twelve per centum per annum from and after the expiration of thirty days from the time of confirmation of such assessment until the same is paid; no other notice than required by this act need be given to any person interested in any improvement or assessment thereof; the minutes of the township committee and all papers filed in the clerk's office, or certified copies thereof, shall be evidence in all courts and places that the statements therein set forth are true, and that everything therein [declared] to have been done has been done and performed as therein stated; *provided*, that if any person or persons whose property shall be liable to any such assessment shall pay the same, or any part thereof, to the township treasurer at any time before the expiration of thirty days from the confirmation thereof, it shall be lawful for the said treasurer to allow and deduct from the amount of assessment so paid, interest thereon, to be computed at the rate of seven per centum per annum from the time of such payment until the expiration of the said thirty days.

Rate of interest on over-due assessments.

Minutes of township committee, &c., evidence of statements therein contained.

502. SEC. 7. That the township committee shall have power to issue improvement certificates, payable within one year or less, with interest, to the amount of seventy per centum of the work done on any street improvement, when certified as correct by the surveyor; and when the contract is fully completed and the work accepted by the township committee, they may issue a certificate for an additional twenty per centum of said work done; and in ninety days after the date of that certificate they may issue a

Township committee to issue improvement certificates.

(a) This section, in so far as it provides a principle for the assessment of the cost and expense of any improvement pro-

vided for by the act, is unconstitutional. *N. Y. & G. L. Railway Co. v. Kearney*, 26 *W.* 463.

final certificate for the balance due, unless some errors or defects in the work shall have appeared, in which case the certificate shall be withheld until the defects or errors are rectified to the satisfaction of the township committee.

Bonds may be issued for redemption of certificates.

503. SEC. 8. That in case any certificate heretofore or hereafter given for work on any street shall become due before the assessment for said street improvement is collected, the township committee shall have power to issue coupon bonds, payable in not exceeding five years, for the redemption of said certificate, and also for the paying of interest and redemption of said certificate, and also for the paying of interest and redemption of said bonds, which may at any time be unprovided for; said bonds to be redeemable, at the pleasure of the township committee, by publishing sixty days' notice when and where such bonds shall be redeemed, and all interest thereon shall cease after the date named in said notice.

Compensation of commissioners.

504. SEC. 9. That commissioners appointed by the township committee for making assessments for all street improvements and for all other assessment purposes shall receive for their services a sum fixed by the township committee, but not to exceed five dollars per day.

Costs to be allowed on writ of certiorari.

505. SEC. 10. That in cases in which persons shall bring writs of certiorari to remove the proceedings of the township committee, it shall be lawful for the township clerk to charge and receive from the parties bringing certiorari, at the rate of ten cents per folio for the necessary return thereto, and said parties bringing such certiorari shall pay said sum to said clerk before the return day of such certiorari, and in default thereof, the court shall dismiss said certiorari; no costs shall be allowed the prosecution in certiorari on setting aside any ordinance, assessment or proceeding of said township committee; that no ordinance, or assessment, or proceeding of the township committee of said township shall be set aside on certiorari by reason of the return of said certiorari failing to show that the requirements of this act have been complied with, but after the filing by the prosecutor of the reasons in certiorari, the clerk of said township may make a further return to said writ of certiorari, stating such additional facts as he may be advised are proper and necessary to state in answer to any of said reasons; and the township committee may take proof with reference to said facts, and if the same are established to the satisfaction of the court, then the court shall affirm the ordinance, assessment or proceeding in question the same as if such facts had properly appeared in the minutes, records and proceedings of said township committee.

Practice on defective return to writ of certiorari.

506. SEC. 11. That whenever any assessment is set aside the said township committee may appoint new commissioners to make a new assessment, and if it shall appear by the judgment of the court that the assessment heretofore made, or any part thereof, was illegal and uncollectible from the property-owners, and that a portion should be assessed on the township at large, then and in that case there shall be five commissioners chosen, two by the township committee and two by property-owners interested; the property-owners shall be notified by the township clerk to meet for that purpose at such time and place as may be designated by the township committee, which notice shall be published in the official paper of said township, and on the township bulletin, for at least two weeks previous to said meeting, and in default of said choice the township committee to have power to appoint said two commissioners, and the four commissioners to choose the fifth, who shall examine into all details of the matter and proceed and make an assessment which shall be equitable to the property-owners and the township, and report thereon to the township committee, which, if the township committee approve, they may confirm, or if they disapprove they may return to the commissioners for their reconsideration; after such reconsideration the commissioners shall bring in their report and file with the township clerk; and the township committee shall confirm the same, and the amount assessed against the township shall be collected as otherwise provided for in this act; said commissioners shall, before they enter upon their duties, subscribe an oath to make an assessment that shall be just and equitable to the property-owners and the township at large, that no

Proceedings for new assessment when former assessment is set aside.

certiorari shall be allowed or granted to set aside any ordinance for any improvement in said township after the contract thereof shall have been awarded by the township committee of said township; and no certiorari shall be allowed or granted to set aside any assessment for any improvement in said township after thirty days shall have elapsed from the date of the confirmation of said assessment by the township committee of said township; that in case any assessment for any improvement is set aside on certiorari, after a portion of the said assessment has been collected by the corporate authorities of said township, that in that case all sums of money so collected shall be refunded and paid to the then owners of lots or parcels of land so assessed, and upon which said payments were so made; and the new assessment for said improvement shall be made without any reference to the fact that any sums of money have been heretofore paid under the said assessment so set aside on certiorari; the sums herein provided to be refunded shall be paid out of the first sums of money collected under the new assessment for said improvement.

Limit of time
for allowing
certiorari.

507. SEC. 12. That in case of any injunction, certiorari or other legal proceedings being served on the township committee during the progress of any improvement contemplated in this act, the township committee may proceed with all other portions of said improvement which are not included in the said injunction, certiorari or other legal proceedings, and on the completion thereof the commissioners of assessment may assess that portion of the property which may have been improved for its fair proportion of the costs and expenses of the said improvement and the township committee shall cause the assessment so made to be collected as though the improvement had been completed, and when the balance of the improvement so included in the injunction, certiorari or other legal proceedings shall be completed, the assessment therefor shall be made and collected by the usual proceedings under street improvements as a separate assessment.

Procedure where
injunction or
certiorari is
allowed.

VI. Miscellaneous acts.

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

Approved April 4, 1873.

P. L. 1873, p. 144.

508. 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 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.

Proceedings to
lay out road to
and from rail-
road depots.

Expense of
opening, how
collected.

509. 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.

510. 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

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

Costs to be assess-
ed on property of
the township.

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.

Penalty for failure of overseer of roads to open roads.

511. 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.

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

P. L. 1874, p. 35.
Preamble.

Approved March 17, 1874.

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,

Townships to erect guide-posts at road crossings.

512. SEC. 1. That each and every township in this state shall, in the manner hereinafter provided, erect and maintain guide-posts 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.

Overseers of highways to report where guide-posts are necessary.

513. 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 guide-posts 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.

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

514. 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 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.

How to be constructed.

Penalty for neglect.

515. SEC. 4. That each and every township which neglects or refuses to erect and maintain such guide-posts 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 guide-post which it so neglects or refuses to erect or maintain.

Penalty for injuring posts.

516. SEC. 5. That each and every person who shall maliciously or willfully disfigure, mutilate, break down or destroy any guide-post 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 offense, to be recovered by an action of debt before any justice of the peace of the said county.

An act to prevent injury to roads.

Approved April 9, 1875.

P. L. 1875, p. 577.

517. 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 willfully 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 but not drags on roads leading from Palisades.

Penalty for violation of this act.

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

Approved April 19, 1876.

P. L. 1876, p. 220.

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,

Preamble.

518. 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.

Commissioners to purchase turnpike roads, &c., may fill any vacancy in the board.

519. 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.

General powers.

520. 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.

Per diem allowance and expenses, how paid.

521. 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.

When lawful to buy one or more toll roads.

522. 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.

Purchase to be paid by direct tax.

Supplement.

Passed April 1, 1884.

P. L. 1884, p. 109.

Proceedings for appointment of new commissioners to purchase turnpike roads, &c.

Powers of commissioners.

523. 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 or macadamized road, and such commissioners have not exercised the full powers conferred upon them by the said acts or the act to which this is a supplement, it shall be lawful for any ten freeholders residing in any county or counties wherein such unpurchased road is located, with whom a majority of the directors of said road shall join, to apply in writing to the justice of the supreme court holding court in that circuit, for the appointment of new commissioners, and the said justice shall appoint three commissioners from the counties composing such circuit, not more than two being from the same county; and the said commissioners, having taken an oath or affirmation faithfully and fairly to perform their duties, shall thereupon be vested with the same powers as the commissioners appointed by the legislature, who have neglected to exercise their full powers hitherto, and shall proceed to take and appraise the value of the property of any existing toll road in said circuit, referred to in the acts appointing the previous commissioners, and report the same to the boards of chosen freeholders of the respective counties in that circuit, and shall have the same right of appeal as provided for in the acts aforesaid, which shall be tried in the manner therein provided for; and the costs and expenses shall be paid as is provided in the said acts, and in the act to which this is a supplement.

An act in relation to turnpike roads.

Approved April 21, 1876.

P. L. 1876, p. 382.

Proceedings for vacating turnpike road in certain cases.

Proviso.

524. 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.

An act in relation to macadamized road companies
in certain cases.

Approved March 27, 1878.

P. L. 1878, p. 180.

Penalty if macadamized road company fail to keep road in repair.

525. SEC. 1. That if any macadamized road company in this state, heretofore incorporated by act of the legislature, shall have been indicted and fined more than once within two years preceding the passage of this act for not keeping its road in proper repair, and shall be again indicted for the same offense, upon conviction upon such indictment, or upon pleading guilty or non vult contendere thereto, such company shall be fined not less than fifty nor more than three hundred dollars, at the discretion of the court; and it shall not be lawful for such company to collect any tolls upon its road, after such conviction or plea, until such fine and the costs of court shall have been paid.

526. SEC. 2. That all road taxes paid to any such company in pursuance of any provisions of the act incorporating the company, shall be exclusively applied to keeping the road of such company in proper repair, and for no other purpose whatever; if any five property-owners residing along the line of such macadamized road shall present a written statement, signed by them, to the inferior court of common pleas of the county in which they reside, setting forth that within twelve months they have paid road taxes to the company owning such road, and that such road is not in good condition, and they do not believe the said road taxes have been expended by the company in working or improving the road, the said court shall issue an order to such company, requiring a statement, verified by the oaths or affirmations of the president and secretary of such company, to be filed with the clerk of said court within ten days, showing in detail the receipts and disbursements of such company, from whom received and to whom paid and for what purpose; and it shall not be lawful for such company to collect any tolls on said road after ten days from the issue of such order, until the aforesaid statement shall have been filed.

Road taxes paid to such company, how applied.

Proceedings to discover if road taxes have been legally expended.

527. SEC. 3. That if the said statement shall be filed as aforesaid, and it shall appear therefrom, to the satisfaction of said court, that the moneys paid to such company as road taxes have not been exclusively applied to the keeping of the road of such company in proper repair, the said court shall thereupon issue an order that the company shall at once proceed to expend upon the working and improvement of such road a sum equal to the full amount received during the preceding twelve months from road taxes as aforesaid; and after the issue of such order it shall not be lawful for such company to collect any tolls upon its road until the said order shall have been complied with to the satisfaction of said court.

Proceedings when road taxes have not been exclusively applied to keeping of road in proper repair.

528. SEC. 4. That if any such macadamized road company, heretofore indicted as aforesaid for not keeping its road in proper repair, shall take or receive any tolls in excess of the rates authorized in the act incorporating such company, it shall forfeit twenty dollars for each offense, to be sued for and recovered in an action of debt in any court of competent jurisdiction by any person from whom such excessive tolls shall have been taken or received.

Penalty for receiving tolls in excess of rates authorized by charter.

529. SEC. 5. That all acts or parts of acts inconsistent with this act be and the same are hereby repealed, in so far as they are inconsistent herewith, and this act shall take effect immediately.

Repealer.

An act in relation to road taxes payable to macadamized road companies.

Approved April 4, 1878.

P. L. 1878, p. 295.

530. SEC. 1. That any macadamized road company in this state incorporated by special act of the legislature, and which, by such special act of incorporation, or by any supplement thereto, is authorized to receive the road taxes assessed upon the owners of property adjacent to the road of such company, may sue for such taxes in an action of debt, in any court of competent jurisdiction, if such taxes be not paid to such company within thirty days after the same are due and payable according to law; *provided*, that if any property adjacent to such road shall also adjoin a common highway, the road tax assessed upon such property shall be divided on his books, by the assessor of the township, into two sums, proportioned to the lineal feet of frontage of such property on each of such roads respectively, and said sums shall be credited accordingly to such township and to such company respectively, and shall be paid according to such assessment.

When road company may sue for road taxes assessed.

Proviso.

531. SEC. 2. That when road taxes are paid to such company, as is herein provided, such company shall give duplicate receipts therefor, one of which shall be filed with the township collector of the township, and such receipt or receipts shall be as valid as the receipt of the township collector for taxes assessed and collected in such township.

Duplicate receipts to be given for road taxes paid.

An act defining the power of public road boards in the macadamizing of public roads and avenues in this state.

P. L. 1879, p. 17.

Public road boards may macadamize on either side of railway tracks.

Approved February 4, 1879.

532. SEC. 1. That whenever any public road board of this state, now authorized by its charter, or the law under which it is organized, to macadamize the carriage-way of any public road or avenue under its control, to a width not exceeding twenty feet, shall deem it expedient and advisable, by reason of the location of a railway track or tracks on any such public road or avenue, to lay a portion of said pavement on either side of said railway track or tracks, so as to conform to the existing condition of said road or avenue, it shall be lawful for said public road board, and it is hereby authorized and empowered, to macadamize, to a width of not less than ten feet, on either side of said railway track or tracks, the carriage-way of any road or avenue so circumstanced as aforesaid, over which said road board now has control; *provided, however*, that no public road or avenue shall be macadamized to a width exceeding twenty feet in the whole; *and provided further*, that nothing herein contained shall in any way affect any existing law authorizing the assessment of the costs of macadamizing public roads or avenues under the control of any public road board of this state; but said costs and all expenses connected therewith shall be assessed upon all the property peculiarly benefited, in the same manner as now provided by law in respect to the laying out, opening and constructing of said avenues.

Proviso.

Proviso.

Supplement.

Approved March 14, 1879.

P. L. 1879, p. 247.

Costs of such macadamizing, how assessed and paid.

533. SEC. 1. That the costs and expenses of macadamizing public roads or avenues, under the control of any public road board of this state, shall be assessed and paid in the same manner as now provided by law in respect to the laying out, opening and constructing of avenues, under the laws constituting and regulating such public road board.

Repealer.

534. SEC. 2. That this act shall be a public act and shall take effect immediately, and all acts and parts of acts inconsistent herewith are hereby repealed.

An act concerning roads.

Approved March 13, 1879.

P. L. 1879, p. 178.

535. SEC. 1. [Amended and supplied by Sec. 538, *post.*]

536. SEC. 2. [Supplied by Sec. 538, *post.*]

Supplement.

Approved February 26, 1880.

P. L. 1880, p. 56.

537. SEC. 1. [This section, amending Sec. 535, *ante*, is amended by Sec. 538, *post.*]

An act to amend an act entitled "A supplement to an act entitled 'An act concerning roads,' approved March thirteenth, one thousand eight hundred and seventy-nine," which supplement was approved February twenty-sixth, one thousand eight hundred and eighty.

P. L. 1885, p. 300.

Approved April 28, 1885.

538. SEC. 1. That section one of the act mentioned in the title of this act, as amended by the supplement in said title mentioned, be further amended so as to read as follows:

District election of overseers in certain townships, when to be held.

[That in all townships in this state wherein the qualified voters of each road district for the time being are authorized to elect overseers of the highways for said districts respectively, such elections shall be held on the Thursday next succeeding the regular annual town meeting in each and every year, and the overseer in each road district shall set up two notices in writing in two public places in each road district of elections of overseers five days

Notice to be given.

before the day herein fixed for such elections ; and in case of the failure of any overseer to give such notice, or in case of the failure, for any cause, of the voters to elect an overseer, then the township committee shall appoint some suitable person to fill any vacancy.]

An act in relation to roads, highways and thoroughfares.

Approved March 10, 1860.

P. L. 1860, p. 156.

539. SEC. 1. That wherever authority has heretofore been conferred upon any public road board, township committee or railroad corporation, to lay out, excavate, construct or grade any road, highway or thoroughfare, and it shall appear to such board, committee or corporation that the public interest will be best subserved in any particular case by the construction of any section of such road, highway or thoroughfare through a tunnel, instead of through an open cut, in order to avoid interference with any established road, highway or thoroughfare, and to effect less injury to private property, then, and in that case, it shall be lawful for such board, committee or other corporation to construct a tunnel for any particular section of such road, highway or thoroughfare, under the same regulations as now exist in regard to the laying out and construction of roads, highways and thoroughfares by such corporations respectively, and under the same responsibility for any damage which may be done to the property of private individuals.

Public road board, township committee or railroad corporation may construct road through tunnel.

An act relative to railroad crossings and to prevent accidents.

Approved March 25, 1881.

P. L. 1881, p. 291.

540. SEC. 1. That where any public road crosses the roadbed and tracks of any railroad company in this state, it shall not be lawful for the surveyors of the highways or other body having the power to lay out or vacate public roads in this state, to lay out or locate a public road across such railroad and tracks within a distance of five hundred feet of such other public road or crossing ; *provided*, that this act shall not apply to incorporated cities. (a)

Public road not to be laid out across railroads within 500 feet of any other public road.

Proviso

An act concerning the compensation of commissioners of highways.

Approved March 25, 1881.

P. L. 1881, p. 294.

541. SEC. 1. That hereafter members of any board of commissioners of highways in any township in this state, elected under and by virtue of the provisions of any special act, at the time and in the manner that other township officers are elected, shall not be entitled to receive any compensation for their services as such commissioners.

Township commissioners of highways not entitled to compensation.

542. SEC. 2. That all acts and parts of acts, whether general or special, inconsistent with the provisions of this act, be and the same are hereby repealed, and that this act shall take effect immediately.

Repealer.

An act concerning public roads between townships having public road boards or road commissions.

Approved March 17, 1862.

P. L. 1862, p. 118.

543. SEC. 1. That whenever it shall be necessary or advisable to lay out, open, alter, widen, straighten, grade or vacate any public highway between two townships having public road boards or road commissions, it shall be lawful for said road boards or road commissions, jointly as a joint road board, upon the application in writing of ten freeholders in each road district in which said road shall be or be laid out, to lay out, open, alter, widen, straighten, grade or vacate such public highway ; such application shall be made to the road board or road commission in each township

Public road boards or commissions in adjoining townships may, as a joint board, lay out roads, &c.

(a) Under the above act, in order to determine whether a proposed new road is within 500 feet of an old one, the width of the highways where they cross the railroad bed and tracks, and not the width elsewhere, must be regarded. *N. Y. & L. B. R. E.*

Co. v. Drummond, 16 Vr. 511; affirmed, 17 Vr. 614. *N. Y. & L. B. R. E. Co. v. Capner*, 20 Vr. 556. *Chasmer v. Convery*, 24 Vr. 588. *N. Y. & L. B. R. E. Co. v. South Amboy*, 28 Vr. 261.

wherein said applicants are freeholders ; and upon the receipt of any such application it shall be the duty of the president of said road board or road commission immediately to notify the president of the road board or road commission of said adjoining township thereof, and upon his receiving a similar application, the presidents of said road boards or road commissions shall together forthwith appoint a time and place when and where their respective boards or commissions shall meet together to consider said application, and shall cause notice thereof to be given to each member of their respective road boards or road commissions ; and if said joint board shall deem it expedient to make such improvement, it shall cause a map thereof to be made and left at some convenient place, to be kept open for inspection at all reasonable times by any interested person desiring to inspect the same, and said joint board shall thereupon cause notice to be given by publication in a newspaper printed and published in the county wherein said improvement is proposed to be made, once a week for four weeks, and by printed handbills, or partly-written and partly-printed handbills, posted conspicuously in five or more public places in each of the road districts in which said improvement is to be made, stating that such map may be seen and is open for inspection, and requiring all persons interested therein to appear before said joint board at a convenient time and place, to be specified in said notice, when and where the said joint board shall hear and weigh all objections to the said improvements, and thereupon the said joint board shall decide and determine upon the necessity of such proposed improvement ; and if the said joint board shall decide and determine in favor of the same, they shall make their decision in writing, and shall award such damages as they may deem just to each and every person affected thereby, and assess such lands as they may deem benefited in proportion to the benefit, in their judgment, received by the owners thereof, the value of land benefited to be taken in consideration with the damages sustained ; that within ten days after making said assessment as aforesaid, a printed or written, or partly-printed or partly-written, notice shall be addressed to each individual or party assessed and deposited in the post-office in one of said townships, stating the amount of said assessment against said individual or party for said improvement, and that said assessment will remain open for examination and inspection by all persons interested therein during the fifteen days next succeeding the depositing of said notice in said post-office, and that said joint board shall appoint a place where said examination may be made, and they shall attend at such place on a day subsequent to the expiration of said fifteen days to hear and weigh all objections thereto ; that said joint board shall thereafter reconsider said assessment and make any alterations therein they may deem just ; and thereupon they shall confirm said assessment, and, within fifteen days after such confirmation, file a map of said improvement and the decision determined upon by them, in writing, or partly written, partly printed, with said assessment so confirmed and award so made, in the office of the clerk of the said county ; and the said joint board shall give notice of such filing by publication in a newspaper printed and published in said county, once a week for four weeks, and the determination of the said joint board shall be final and conclusive in the premises, unless an appeal is taken to the court of common pleas of the said county within the time and in the manner provided for in this act ; and that notwithstanding any mistake in the name or names of the owner or owners of any lands, tenements and real estate in the said townships in making awards or assessments, or in giving or addressing notice of the same, such awards and assessments shall be valid and effectual in law against such lands, tenements and real estate, and the same may be proceeded against and sold in the same manner as for other taxes.

Map to be made and kept open for inspection, and notice to be published.

Assessment and awarding of damages.

Notice to parties assessed to be given.

Assessment and award to be confirmed and filed in county clerk's office.

Notice of filing to be published.

Persons aggrieved may appeal to court of common pleas.

544. Sec. 2. That any person feeling himself or herself aggrieved by the action of the said joint board may, within thirty days from the first publication of the [last] notice required to be given by said board, appeal to the court of common pleas of the said county, by serving a notice in writing upon any member of the joint board, and the said court shall have full

power to hear, determine and review the proceedings of the joint board in the premises, and the same, or any award, assessment or other action to confirm, alter, modify, set aside or reverse, in whole or in part, for errors either of fact or in law ; and the said court shall have the power to hear and try the same in a summary way, and may summon a special jury to determine any question of fact, and the said court may proceed in due course according to the power of the court in other cases ; and the determination of the said court shall be final and conclusive in the premises and not subject to appeal or review, and the said court, or any judge thereof, may, until such determination, stay all proceedings in the matter in reference to which the appeal may be taken until such final determination ; and like fees and costs shall be paid to the judge, jury, officers of the court and parties as are allowed in other causes of which said court has or may have jurisdiction ; and the said court shall have power to make and prescribe all necessary forms, rules and regulations in the conduct of any proceedings to be taken under this act.

Determination of court to be final and conclusive.

545. SEC. 3. That if no appeal shall be taken within the time and in the manner prescribed herein, the action of the said joint board shall take effect, and the said joint board may proceed to carry out the same under this act ; and any assessment laid by virtue thereof shall be a lien on the lands on which it is laid, and the said joint board shall procure a certified copy of their award and the judgment of the said court of common pleas, if any appeal shall have been taken, to be placed in the hands of the collector of taxes for the time being of each of the said townships, and thereupon it shall be the duty of the collectors of the respective townships to collect the said assessment on the lands in each of their townships in sixty days from the time of placing such copy in their hands, and to pay the same over to such person as shall be designated by said joint board ; and the said collectors shall, in collection of the said assessment, be liable to the same pains and penalties and entitled to the same fees as in the collection of annual township taxes, the said fees being reserved by them out of the amount so collected.

On failure to appeal within a certain time, assessments to be a lien on lands.

Collector to collect assessments.

Fees of collector.

546. SEC. 4. That all property taken under any provision of this act shall be deemed taken for public use, and in estimating any awards or assessments hereunder, the said joint board shall estimate for benefits as well as for damages ; and the said joint board shall have power to appoint, employ, remove and discharge, from time to time, such superintendents, surveyors, engineers and laborers as they may deem necessary in order more effectually to carry out the intention of this act, and pay them such compensation or wages as they shall deem fair and reasonable.

Benefits as well as damages to be estimated.

Joint board empowered to employ surveyors, engineers, &c.

547. SEC. 5. That the proceedings for the collection of said assessments shall be in conformity to the provisions of the law governing said road boards or road commissions in the townships respectively where the lands assessed may lie, and that the powers of said joint board shall be conformable, as far as practicable, with the provisions of the said acts, and the members of said joint board shall each receive the same compensation as they would receive for similar services under said acts respectively.

Proceedings for collection of assessments.

Compensation of members of joint board.

548. SEC. 6. That the members of said road boards or road commissions shall elect some one of their members to be president of said joint board, and such other officers as they shall see fit, and that each member of said joint board shall have one vote on all questions, and that a majority of such joint board shall constitute a quorum for the transaction of business.

Organization of joint road board.

549. SEC. 7. That it shall be lawful for the road boards or road commissions of said townships (not as a joint board) to decide what portion of said roads shall be thereafter maintained and repaired by each road district, and in case said road boards or road commissions cannot agree upon such assignment or division, it shall be lawful for either of said road boards or road commissions to apply to the court of common pleas of said county, giving ten days' notice in writing to the president of such other road board or road commission ; and such proceedings shall thereupon be had as are provided by the sixty-second, sixty-third and sixty-fourth sections of the act concerning roads (Revision) in other cases of roads dividing townships.

Road boards to decide what portions of road shall be maintained and repaired by each road district.

Proceedings if they cannot agree.

An act to authorize the compromising or settling, by arbitration, of any tax or assessment laid by any public road board in this state.

P. L. 1882, p. 256.

Approved March 31, 1882.

Public road boards authorized to compound, adjust and compromise taxes or assessments.

550. SEC. 1. That it shall and may be lawful for any public road board established in this state, by majority vote of the members thereof, to compound, adjust and compromise any tax or taxes, assessment or assessments that may have been or may hereafter be laid or imposed by virtue of the powers conferred by any act or acts under which such public road board may have been organized or created or is now acting, or which may authorize the laying out, opening, widening or straightening of any public road, street or avenue by any public road board in this state, with the owner or owners, mortgagee or mortgagees of any lands and real estate which may have been or may hereafter be taxed or assessed for benefits for any such improvements, openings, widenings or straightenings, and to acquit and discharge the lands and real estate of any such owner or owners, mortgagee or mortgagees from the lien of any such tax or assessment, upon the payment of the sum or sums agreed upon, in such manner and at such time as may be mutually arranged and signified by writing. (a)

When owner or mortgagee may apply to justice of supreme court for appointment of arbitrators.

551. SEC. 2. That in case of an application by any owner or owners, mortgagee or mortgagees for a compromise and adjustment with any public road board in this state, under the provisions of the first section of this act, of any tax or taxes, assessment or assessments laid or imposed as in said section stated, or for the cause therein stated, and of the failure of agreement between such board and the applicant or applicants, or the neglect or refusal of such board to act upon any such application within a reasonable time after the reception thereof, then, and in that case, it shall and may be lawful, upon ten days' notice to such board, left with the president thereof, for such owner or owners, mortgagee or mortgagees so applying, to apply by petition, duly verified, to such justice of the supreme court of this state as shall hold the circuit court of the county in which the land and real estate, or any part of it, may lay, reciting, in such petition, the fact of application to such board and their failure to agree with the petitioner, or their neglect or refusal to act within a reasonable time, for the appointment of three disinterested freeholders as arbitrators, to settle and adjust the matter in difference between the petitioner or petitioners and such board, relative to such tax or taxes, assessment or assessments.

Justice of supreme court may appoint arbitrators.

Arbitrators to take oath.

Duties of.

552. SEC. 3. That in case it shall appear to such supreme court justice that the facts recited in the petition are true, then, and in that case, he may, in his discretion, if he shall deem it a proper case for arbitration, appoint such arbitrators as aforesaid, who, when appointed, shall, before entering upon their duties, subscribe, before the clerk of the county or a judge of the court of common pleas, an oath for the faithful performance of their duties and the trust reposed in them as arbitrators in the matter in difference between the petitioner and such board, as is recited in the petitioner's petition, and shall, within ten days after their appointment and subscribing of the oath, view the land and real estate upon which the tax or taxes, assessment or assessments is laid or imposed, and, after such view, shall notify all parties in interest of the time and place when they will sit and hear all parties or their witnesses in relation to the matters referred to them, and shall, after hearing all parties and witnesses and taking into consideration all taxes, assessments and impositions, of every nature whatsoever, and of the value of the land and real estate, in proportion to the taxes and assessments against the same, proceed to fix and adjust a specific sum or amount to be paid by the owner or owners, mortgagee and mortgagees so petitioning, in full settlement and discharge of the tax or taxes, assessment or assessments levied or imposed by any such public road board, under any laws of the nature, or for the purpose in the first section

(a) This act is constitutional. *Skinkle v. Essex Road Board*, 18 Vr. 93. See, also, *Essex Public Road Board v. Skinkle*, 20 Vr. 65, 641.

hereof referred to, against or upon the land and real estate particularly mentioned and described in the petition under which said arbitrators were appointed; *provided, however*, that the provisions of this act shall not apply to cases where land and real estate has been sold for taxes or assessments, and bought therefor by a bona fide purchaser other than such public road board or its representative.

Proviso.

553. SEC. 4. That said arbitrators shall proceed to the performance of their duties with all reasonable dispatch, and shall make up and present their final report in writing, to the justice of the supreme court appointing them, within sixty days after the date of their appointment, which shall be signed by at least a majority of them, and which, when presented, shall be ordered filed with the clerk of the county, there to remain of record; and upon the service of a certified copy of such finding and report of the arbitrators upon and tender of the amount named therein to such public road board, together with interest at legal rate from the date of filing the arbitrators' report, the president, treasurer or collector thereof shall receipt said tax or taxes, assessment or assessments against such land and real estate in full, and give a release and acquittance of the same from the lien of any such tax or taxes, assessment or assessments, and all past-due interest, costs or penalties thereon, and said land and real estate shall, by operation thereof, be freed, released and discharged from the lien and incumbrance thereof; the arbitrators shall be paid by either or both parties, as the court directs, but not to exceed five dollars each for each sitting, beside the view, and for not more than five sittings in all.

Arbitrators to make report to justice of supreme court.

Report to be filed and payment made.

Compensation of arbitrators, how paid.

554. SEC. 5. That all acts inconsistent with this act shall be and the same are hereby repealed, and that this act shall take effect immediately.

Repealer.

An act to provide for the election of road overseers in their respective districts.

Approved April 23, 1884.

P. L. 1884, p. 271.

555. SEC. 1. [Amended by Secs. 559, 562, 563 and 564, *post.*]

556. SEC. 2. That each overseer shall receive such salary as the voters in said road district shall vote him for every day he shall be employed in executing the duties of his office.

Salaries of overseers.

557. SEC. 3. That the said overseers shall perform all the duties required of them under the general statute; they shall see that all appropriations made by the town committee are faithfully worked out, and all bills of said overseers, duly verified before a justice of the peace (or any person duly authorized to administer an oath), shall be presented to the town committee for examination and allowance; and any person interfering with the work of the overseers shall be liable to a penalty of twenty dollars with costs, for each offense, to be sued for and recovered by such overseers in an action of debt; such penalty shall be applied in working the road of which he is overseer.

Duties of overseers.

558. SEC. 4. That all acts and parts of acts inconsistent with this act be and the same are hereby repealed, and that this act shall take effect immediately.

Repealer.

Amendatory act.

Approved April 17, 1885.

P. L. 1885, p. 246.

559. SEC. 1. [This section, amending Sec. 555, *ante*, is amended by Secs. 562, 563 and 564, *post.*]

Amendatory act.

Approved April 20, 1886.

P. L. 1886, p. 251.

560. SEC. 1. That at the election provided for in the act of which this is amendatory, the legal voters then and there assembled may, in their discretion, determine by vote of three-quarters of the voters voting at said election what particular road or roads, or part of the same, within such district, shall be macadamized or faced with stone, and also fix the sum of money to be expended within such district for such purpose and the purpose of keeping the roads in such district in repair during the ensuing

Voters of road district may vote money for macadamizing roads.

year, and the sum of money so fixed shall be in lieu of all other road taxes in such district; and within five days after such election the overseer shall give notice to the assessor of the township of the sum so fixed, who shall assess the same upon the taxable property within such district, and the same shall be collected as other road taxes are collected, and paid over to the overseer of such road district for the purposes provided for in this act; and for the assessing and collecting of such tax the assessor and collector shall each be entitled to receive out of the moneys so assessed and collected the sum of five cents for each and every name appearing on the assessor's duplicate of said assessment. (a)

561. SEC. 2. That all acts and parts of acts inconsistent with this act be and the same are hereby repealed, and that this act shall take effect immediately.

Sum fixed to be assessed and collected.

Fee of assessor and collector,

Repealer.

Amendatory act.

Approved February 29, 1888.

P. L. 1888, p. 110.

562. SEC. 1. [This section, amending Secs. 555 and 559, *ante*, is amended by Secs. 563 and 564, *post*.]

An act amending "An act to provide for the election of road overseers in their respective districts," approved April twenty-eighth, one thousand eight hundred and eighty-four, as amended by the act approved February twenty-ninth, one thousand eight hundred and eighty-eight.

P. L. 1890, p. 509.

Approved June 20, 1890.

563. SEC. 1. That section one of the act and amendatory act mentioned in the title hereto [see Sec. 562, *ante*] shall be amended so that henceforth the same shall read as follows :

Election of road overseers in certain townships.

[That hereafter in all townships of this state where the overseers of roads are not now elected at the annual town meeting therein the overseers of the roads shall be elected in their respective districts by the legal voters residing therein on Thursday following the regular annual town meeting in each and every year, and the overseers in each and every district in the township shall set up at least two written or printed notices in two or more public places in their respective road districts of the election of overseers, stating the time and place of such election (which shall be between the hours of two and seven o'clock post meridian), five days before the date herein fixed for such election; and in case of failure of any overseer to give such notice, then the town committee shall appoint some suitable person to fill any vacancy that may occur by failure of the legal voters to elect, but in no event shall the overseer failing in any year to give such notice of such election be eligible for re-appointment in that year to the office of road overseer by the town committee; said election may be by ballot or otherwise, as the said legal voters, when assembled, may determine.] [See Sec. 564, *post*.]

Failure to give notice of election.

An act to amend an act entitled "An act to provide for the election of road overseers in their respective districts," approved April twenty-eighth, one thousand eight hundred and eighty-four.

P. L. 1891, p. 120.

Approved March 9, 1891.

564. SEC. 1. That section one of said act [see Secs. 555, 559, 562 and 563, *ante*] be amended to read as follows :

Overseers of roads to be elected by legal voters in their respective districts.

[That in all townships in counties of the second class in this state the overseers of roads shall be elected in their respective districts by the legal voters residing therein, on Thursday following the regular town meeting in each and every year, and the clerk of the township shall give notice of the election in each road district, naming the time and place of holding such election, which shall be between the hours of two and eight o'clock in the afternoon, which notice shall be published at the time and with the notice of the regular town meeting; and in case of failure, for any cause, of the

(a) See *Penworden v. Dumellen*, 21 Fr. 565.

voters of any district to elect an overseer, then the township committee shall appoint, within ten days after the annual town meeting, some suitable person to fill the vacancy ; said election may be by ballot or otherwise, as the voters of each district may determine.]

565. SEC. 2. That all acts and parts of acts inconsistent with this act be and the same are hereby repealed. Repealer.

An act to prohibit owners of lands along public roads, where bridges are constructed over streams, from closing up access to such streams against the traveling public.

Approved March 1, 1886. P. L. 1886, p. 58.

566. SEC. 1. That whenever a stream of water crosses a public road and is there bridged, and such bridge does not extend to within five feet of the outside line of said road, it shall not be lawful for the adjoining landowners to construct a fence or put up any obstruction between the outside line of said road and the bridge, unless, in the judgment of the township committee of the township wherein the bridge is situate, or of the committees of both townships where the bridge is on a division line between two townships, such fence or obstruction is necessary for purposes of public safety ; and in all cases where it is practicable so to do, the overseer of the road shall clear out and make passable a road, path or access to such stream of water on at least one side of such bridge, in order that horses, cattle, sheep or other domestic animals may drink from such stream of water.

567. SEC. 2. That wherever such a fence or obstruction now exists, or may be hereafter constructed, it shall be the duty of the township committee of the township wherein the bridge is located, or partly located, to notify the owner of the land adjoining, who maintains or erects such obstruction, to remove the same within ten days after service of such notice, on failure to do which such committee shall order the overseer of the road to remove such obstruction, and for such failure the landowner aforesaid shall forfeit and pay to the use of the township, whose committee shall thus act, the sum of ten dollars. Such fences or obstructions to be removed. Penalty.

A supplement to the act for the laying out, altering or vacating of roads.

Approved March 30, 1887. P. L. 1887, p. 73.

568. SEC. 1. That hereafter when proceedings are taken for the laying out, altering or vacating of any public or private road in this state, and such road shall consist of several parts or pieces which, although not directly connecting one with another, shall yet have the same general direction, or a general bearing, or relation to each other, or where such road shall consist of several parts or branches which do connect, it shall be lawful to lay out, alter or vacate such several parts or pieces or branches in one and the same set of papers or proceedings. Laying out, vacating or altering several pieces of any road may be by one proceeding.

An act to provide for vacating dedicated streets, roads and alleys.

Approved March 21, 1885. P. L. 1885, p. 178.

WHEREAS, Many roads, streets or alleys have been dedicated by the owner or owners of the land over which the same are laid, and have not been accepted by the public ; *and whereas*, no sufficient law applicable to all municipalities is provided for relieving the land included in said roads, streets or alleys, from the burden of such dedication ; therefore,

569. SEC. 1. That any road, street or alley which has been, or which may hereafter be dedicated by the owner or owners of the land over which the same is laid, may, before or after it is accepted by the public, be vacated in the same manner as any public road, street or alley ; that this act shall apply to all cities, towns, townships and other municipalities in this state. Road, street or alley that has been dedicated may be vacated before acceptance thereof.

An act in relation to the use of bicycles and tricycles.

P. L. 1888, p. 201.

Approved March 22, 1888.

Bicycles and tricycles declared to be carriages.

Rights of persons using.

Municipal authorities not to prohibit their use.

Their use may be regulated.

Repealer.

570. SEC. 1. That bicycles and tricycles, and all other vehicles propelled by pedo-motive or manu-[motive] power, are hereby declared to be carriages within the meaning of that term as used in section ninety-one of the act entitled "An act concerning roads" [Revision], approved March twenty-seventh, one thousand eight hundred and seventy-four, and that all persons by whom bicycles, tricycles and said other vehicles are or may hereafter be used, ridden or propelled upon the turnpikes or public roads in this state shall be entitled to the same rights and privileges and subject to the same restrictions in the use thereof as are prescribed in said section ninety-one in the case of drivers of carriages, sleighs and sleds.

571. SEC. 2. That the mayor and common council, commissioners, overseers or other authorities having charge or control of any public street, public road or turnpike, public parkway, driveway or other public place in this state, shall have no power to pass, enforce or maintain any ordinance, rule or regulation by which any person using a bicycle or tricycle shall be excluded or prohibited from the free use of any public street, avenue, road, turnpike, driveway, parkway or other public place at any time when the same is or may hereafter be open to the free use of persons having or using other pleasure carriages.

572. SEC. 3. That nothing in this act shall be so construed as to prevent the passage, enforcement or maintenance of any regulation, ordinance or rule regulating the use of bicycles or tricycles in public streets, avenues, roads, turnpikes, driveways, parkways and other public places in such manner as to limit and determine the proper rate of speed with which such vehicles may be propelled, nor in such manner as to require, direct or prohibit the use of bells, lamps and other such appurtenances, nor to prohibit the use of any vehicle upon that part of the street, road or parkway commonly known as the footpath or sidewalk.

573. SEC. 4. That all acts and parts of acts inconsistent with the provisions of this act be and the same are hereby repealed, and that this act shall take effect immediately.

An act concerning roads.

P. L. 1888, p. 361.

Approved April 2, 1888.

Overseers or other authorities to remove snow from roads.

When snow prevents use of road, fences may be removed.

574. SEC. 1. That in case the public roads of this state become blocked with snow so as to become impassable for horses and wagons, or sleighs, it shall be the duty of the overseers of roads, or other authorities who may have charge of the care of the public roads, to remove the snow as soon as practicable, so as to make them passable; but in case the drifts or banks of snow are so great in the roads as to make it impracticable to remove them in all places, on account of time and the expense it would incur, the overseers, or other authorities who may have charge of the care of the public roads, shall have full power to enter on private property and to remove such fences as may be necessary to make a passage-way for the public; and no person shall close up such passage-ways until the public roads become passable; *provided*, in all cases that the owner of the property so used by the public may be entitled to pay for the actual damage done to his property by reason of the passage-way, the amount of damage to be determined by appraisers, one of which shall be chosen by the owner and the other by the overseer, or other authority, as the case may be, and the two persons thus chosen shall have power to choose a third person, in case they cannot agree, and all bills for such damages shall be sworn to by the appraisers and paid by the town or township wherein such property is situated.

An act to authorize the improvement of roads, streets and highways in boroughs and incorporated towns of the second class in this state, and to provide for the payment thereof.

Approved April 8, 1889.

P. L. 1889, p. 221.

575. SEC. 1. That it shall be lawful for the common council or other governing body of any borough or incorporated town of the second class within this state to issue bonds to an amount not exceeding fifteen thousand dollars in any one year, in their corporate name, of such denominations as to them may seem fit, bearing interest not exceeding the legal rate, payable semi-annually, and redeemable in twenty years from the date thereof, for the purpose of paying the costs and expenses of improving the roads, streets and highways in such borough or incorporated town, either in whole or in part, and in such manner as they may deem most advisable, under the supervision of such person or persons as they shall designate for that purpose, not being a contractor or contractors for the said work; *provided, however*, that no common council or other governing body of any such borough or incorporated town shall issue any such bonds unless the question of the issue of such bonds shall have been submitted to the voters of such borough or incorporated town at the last annual town, borough or charter election held in such borough or incorporated town, and a majority of the votes cast in relation thereto at such election shall declare in favor of the issuing of such bonds.

Boroughs and towns of second class may issue bonds for improving roads, &c.

Proviso.

An act to authorize the improvement of roads or streets which constitute the boundary line between two municipalities in the same county.

Approved April 10, 1889.

P. L. 1889, p. 233.

576. SEC. 1. That any road or street, or section of road or street, which constitutes the boundary line between two municipalities in the same county, may be vacated, altered, straightened, widened, regulated, graded, curbed, guttered, paved, macadamized, flagged, drained or sewerred in the manner provided in and by this act.

Manner of vacating, altering, &c., roads between two municipalities.

577. SEC. 2. That the term "municipality," as used in this act, shall be construed to include all cities, boroughs, towns and townships of this state, and that the term "governing body," as used herein, shall be construed to include the board of aldermen or common council of any city, the council of any town or borough and the township committee of any township, and that the term "road," as used in this act, shall be construed to include any road, street, avenue or highway, and that the term "joint board," as used herein, shall be construed to mean and include the governing bodies of any two municipalities acting under the provisions of this act.

Construction of words "municipality," "road," &c.

578. SEC. 3. That it shall be lawful for the governing bodies of any two municipalities which are divided by any road to jointly meet, at such time and in such place, in either municipality, as they may agree upon, to consider and determine in what way such road can or may be improved in any or all of the particulars mentioned in the first section of this act, to the best advantage of the public and the owners of property adjacent thereto; and to that end the said joint board are hereby authorized to prepare a map, and also a plan and specifications of the changes and improvements in such road which they shall deem necessary and proper, showing particularly all such parts of such road as they shall deem it advisable to vacate, and also all the land required to be taken for the straightening or widening of such road in case such straightening or widening shall be deemed by them to be advisable, and also the proposed width of the roadway and sidewalks, and the proposed grade or grades thereof, and the points at and the extent to which excavating and filling in will be required; and for said purposes such joint board shall have power to employ a competent engineer or surveyor, and such other assistants as they may deem necessary.

Governing bodies to meet jointly and prepare plans, &c.

Plans to be filed
in county clerk's
office.

Notice of filing
to be published.

579. SEC. 4. That upon the completion of such map, plan and specifications, duplicate copies thereof shall be filed in the office of the clerk of each of the municipalities affected thereby, where the same shall remain open to public inspection and examination for such time and during such hours as the said joint board may prescribe; and the said joint board shall thereupon cause notice of such filing to be published in at least two newspapers, printed and published in the county in which such municipalities are situate, for four weeks successively, at least once in each week, which notice shall specify and set forth the place or places where, in each municipality, and the time during which, and the hours in each day (excepting Sundays and holidays) when such plan, map and specifications can be seen and examined; such notice shall also designate the time within which objections, in writing, to the proposed improvements in such road may be filed with the clerk of each municipality, which time shall be at least forty days after the first publication of such notice; the said joint board shall likewise cause at least fifty printed copies of such notice to be posted in conspicuous places in each municipality, of which at least one-half shall be along the line of the road affected by such proceedings, at least thirty days prior to the expiration of the time specified in the notice for the filing of objections.

Owners of lands
may file
objections.

580. SEC. 5. That any owner or owners of land fronting on the road proposed to be improved as aforesaid may, at any time before the expiration of the time limited in such notice, file with the clerk of the municipality in which his land is situated, his written objection to the map, plan and specifications filed as aforesaid, in which objection he shall set forth the number of lineal feet of frontage of his lands on such road; and within ten days after the expiration of the time for filing objections as aforesaid, the governing body of each municipality shall convene in joint meeting, and the clerk of each municipality shall lay before it all of the written objections which shall have been filed with him, and the said joint board shall then proceed to examine the same, and shall ascertain and determine whether or not the owners of a majority of the lineal feet of land fronting upon said proposed improvement as aforesaid, in either of said municipalities, have objected thereto; and if they find that the owners of a majority of the lineal feet in either municipality as aforesaid have objected thereto, then said joint board shall declare that said proposed improvement has been rejected; but if it shall appear that the owners of a majority of the lineal feet fronting on such road in each and both of said municipalities have not objected to such map, plan and specifications, then and in that event the same shall be deemed and taken to be the map, plan and specifications governing and regulating said improvement of said road, and may be so declared by said joint board.

If owners of
majority of feet
object, the
improvement
rejected.

Costs and
expenses, by
whom paid.

581. SEC. 6. That all costs and expenses incurred in the proceedings hereinbefore authorized, shall be borne and paid by each municipality in equal proportions.

Owners fronting
on road may
petition for
improvements.

582. SEC. 7. That at any time after the declaration aforesaid, the owners of not less than one-sixth of the land fronting on such road in each municipality may present a petition in writing to the governing body of either municipality, praying for the improvement of such road in the manner set forth in said map, plan and specifications, which petition shall be accompanied by a deposit of one hundred dollars, to be applied, as hereinafter provided, to the payment of expenses incurred under such petition; the governing body of each municipality shall, as soon as practicable thereafter, convene in joint meeting, and shall appoint three disinterested commissioners, one of whom shall be a freeholder and resident in one of said municipalities, another of whom shall be a freeholder and resident in the other of said municipalities, and the third shall be a freeholder and resident in the county in which such municipalities are situate, but shall not reside in or own, or be interested in anywise in land in either of said municipalities.

Deposit to be
made.

Commissioners
to be appointed.

583. SEC. 8. That each of said commissioners, before entering upon the duties imposed upon him by this act, shall make and subscribe an oath or affirmation that he is not interested in the proposed improvement, and that he will perform and discharge all the duties imposed upon him by this act, to the best of his ability and understanding; in case the place of any commissioner shall become vacant by reason of death, resignation, disability, refusal or neglect to serve, or otherwise, another commissioner, with like qualifications, shall be appointed by said joint board in his place, and such new commissioner shall also make and subscribe the oath or affirmation hereinbefore provided.

Commissioners
to take oath.

Vacancies, how
filled.

584. SEC. 9. That the said commissioners, as soon as practicable after their appointment, shall proceed to estimate and determine the probable cost of the improvement mentioned and set forth in the petition, including all costs and expenses likely, in their judgment to attend the completion of such improvement; in case the taking of land shall be necessary the commissioners shall ascertain, as far as practicable, the names and estates of the owners of the land so required to be taken, and the interest of each of such owners therein; and when such names or estates are not known, they shall so report; they shall also appraise the value of the interest of each owner of real estate required to be taken, and the damage to be done to such owner by taking the same; and where the estates in any piece or parcel of land are unknown, they shall appraise the value of, or the damage done to, the fee-simple; said commissioners shall also estimate the amount likely to be realized from the sale of any buildings or parts of buildings which may be required to be taken on account of such improvement, and shall deduct such amount from the gross amount of awards and damages; said awards and appraisements shall be made upon notice to the landowners whose lands it is proposed to take for said improvement; which notice shall be given by leaving the same in writing at the residence of such landowner, if known, and resident in the county in which the municipalities are situated; if not known, or if non-resident, by inclosing the same directed to such landowner by mail at the post-office nearest to the residence of said landowner; *provided*, such post-office address can be ascertained, and if not, to his last-known post-office address, if the same can be ascertained; and such notice shall also be published in a newspaper published in the county in which such municipalities are situated, for at least two weeks before the day of the meeting of said commissioners to consider said matter, the time and place of which shall be stated in such notice, and at the day and hour named in such notice, said commissioners shall proceed to view the lands so proposed to be taken, and shall hear the parties interested and shall publicly adjourn from time to time as may be necessary, and after considering the whole matter, shall make said award or awards in the manner hereinbefore provided; after finally completing their duties in said matter the said commissioners shall make report in writing, of the facts ascertained and of the estimates, awards, appraisements and determinations so made by them concerning such improvements, and shall file the same with said joint board within three months after the reference to them, or within such further time as the said joint board may by resolution allow them; upon the filing of the aforesaid reports, the said joint board shall cause duplicates of the same to be filed in the office of the clerk of each municipality, where the same shall remain open to public inspection for such times and during such hours as said joint board may prescribe; and the said joint board shall thereupon cause notices of the filing of such report, signed by the chairman and clerk of the governing bodies of each of such municipalities, to be published in at least two newspapers printed and published in the county in which such municipalities are situated, for four weeks successively, at least once in each week, which notice shall specify and set forth the place or places where, in each municipality, and the time during which such report can be seen and examined, and shall specify the time within which objections to such proposed improvements may be made, and file with the clerk of each municipality, by the owners of lands fronting thereon, which time

Commissioners
to estimate and
determine costs
of improvement.

To appraise
value of real
estate required
to be taken.

Proviso.

shall be at least forty days after the first publication of such notice ; and the said joint board shall likewise cause at least fifty printed copies of such notice to be posted in conspicuous places in each of such municipalities, of which at least one-half shall be along the line of the proposed improvement, at least thirty days prior to the expiration of the time specified in said notice for the filing of objections.

Owners may object to proposed improvement.

585. SEC. 10. That the owner of any lands fronting on the proposed improvement may, within the time limited in such notice therefor, file with the clerk of the municipality in which his land is situated, his written objection to the proposed improvement ; within ten days after the expiration of the aforesaid time for filing objections, the said joint board shall convene, and the clerk of each municipality shall lay before it all the written objections to such proposed improvement that have been filed with him, and the said joint board shall thereupon proceed to examine the same, and shall ascertain and determine whether or not the owners of a majority of the lands fronting on the proposed improvement have objected thereto, and if it shall appear that such majority have objected to the proposed improvement, then no further proceedings shall be had in the matter, and the petition shall be rejected, and the costs and expenses of the proceedings aforesaid shall be paid out of the moneys deposited by the petitioners, and if such moneys shall prove to be insufficient, the deficiency shall be borne and paid by each of said municipalities in equal proportions, and if the cost of the proceedings shall be less than the amount deposited, then the excess shall be returned to the depositors ; and no other or further petition for the improvement of such road shall be made or received until after the expiration of one year from the time of the rejection of such petition.

No further proceedings to be had if majority of owners object.

Joint board may confirm report of commissioners and awards for lands and damages.

586. SEC. 11. That in case it shall appear that the owners of a majority of the land fronting on the proposed improvement have not objected thereto, then the joint board may pass and adopt a resolution confirming the report of the commissioners and the awards for lands and damages made by them and set forth in their report, and may direct the several sums awarded to be paid to the persons to whom or in whose favor the awards are made ; the moneys to pay such awards shall be contributed and advanced by each municipality in equal proportions ; and in order to raise the money so required to be paid, each of such municipalities is hereby authorized to issue its corporate bonds in an amount not exceeding the sum required to be paid by it, bearing interest not exceeding the rate of six per centum per annum, and payable in not exceeding five years ; and upon the payment, tender of payment, or deposit as hereinafter provided, of the amount of the several awards, and not otherwise, the fee-simple of the land required to be taken for such improvement shall be deemed to be vested in such joint board as trustees for such municipalities, and the said joint board may thereupon enter into and upon and take possession of such lands and the improvements thereon.

Authorized to issue bonds.

If owners are unknown, award to be deposited in bank.

587. SEC. 12. That in case the said commissioners shall have reported the names or the estates of the owners of any piece or parcel of land required to be taken as aforesaid, as unknown, the resolution directing payment of the award shall also direct the sum of the awards, on account of such piece or parcel of land, to be paid to the owners thereof, when and as their interests may appear, and the sum shall be deposited in some bank, as hereinafter provided ; and any such owner or person interested in said lands, may, by bill in chancery, according to the practice of that court, have the said sum distributed, or in whole or in part paid over to him, as law and justice may require ; and in case any known owner, in whose favor an award shall have been made, is an infant, or person of unsound mind, or under any other legal disability, the amount of such award shall be paid into the court of chancery to the credit of such person or his estate, and shall be there disposed of in such way as to the chancellor shall seem just and proper.

When owner an infant, award paid into court.

588. SEC. 13. That in all other cases the awards shall be paid or tendered to the person or persons in whose favor they are made, but if any such person shall refuse to accept the amount tendered him, or cannot, upon due inquiry, be found within the county in which such municipalities are situated, the sum shall be deposited in some safe bank in such county for the use of the person to whom the same may be due, and the said money so deposited shall be paid to the person or persons entitled thereto on demand and without interest.

Award to be tendered to owner.
Proceedings if he refuse to accept or cannot be found.

589. SEC. 14. That in case any person in whose favor an award shall have been made as aforesaid, shall be dissatisfied with the determination of the commissioners, such person may commence an action on contract against the said joint board as trustees, in the circuit court of the county in which such municipalities are located, or in the supreme court of this state (provided that the trial of such action shall be had in the county in which such municipalities are situated), which action shall proceed in all respects as if such joint board had, upon taking the real estate required for such improvement, agreed, in writing, to pay therefor the value thereof, and the damages done by taking the same; and in case the judgment in such action shall be in favor of the plaintiff for any sum in excess of the amount awarded to him, he shall recover, in addition, his taxable costs, and judgment therein shall be rendered in favor of said plaintiff and against said joint board as trustees, and the amount thereof in excess of the amount of the award made in favor of such plaintiff shall be contributed and advanced by each municipality, in equal proportions, and may be raised by the issue of bonds in the manner hereinbefore provided; but if the plaintiff in any such action shall not recover more than the amount of such award, then the defendants shall recover their taxable costs against the plaintiff, and may deduct the same from the amount of his said award; *provided, always*, that no such action shall be brought by any person who has accepted payment of the amount awarded to him, nor by any person unless notice that such action will be brought be filed with the said joint board within two months after the confirmation of the awards, nor unless such action be commenced within six months after such confirmation.

Proceedings where any person is dissatisfied with award.

Proviso.

590. SEC. 15. That at or after the time of adopting the resolution confirming the report of the commissioners, the said joint board may adopt a resolution directing the improvement, as petitioned for, to be made, and thereupon said joint board shall have full power and authority to enter into contracts with responsible persons, as hereinafter provided, for doing the work and furnishing the necessary materials therefor, which contracts may be for doing the whole improvement, or the joint board may divide the proposed improvement into two or more sections, and may advertise for proposals and enter into contracts for the whole improvement or for sections thereof; they shall advertise for proposals in at least two newspapers published in the county in which such municipalities are situated, and their contracts shall be awarded to and made with the lowest responsible bidder who will comply with the requirements of the joint board and will give ample security for doing the work and performing the contract, but such joint board shall be under no obligation to accept the lowest bid, in which case all other bids will be thrown out and new proposals advertised for in the manner hereinbefore provided.

Joint board may enter into contract for improvement.

591. SEC. 16. That the said joint board shall, on the sworn certificate of the engineer, and on such other evidence as they may require as to the work done, the materials used and furnished on the improvement or any section thereof, order payments to be made to the contractor or contractors for seventy per centum of the contract price for such work and materials, and when the improvement of any section thereof shall have been fully completed and accepted, they may order an additional twenty per centum thereof to be paid, and at the expiration of not less than three months after the acceptance thereof they may order the remaining ten per centum to be paid, unless errors or defects in the work shall have appeared, in which case said amount shall be withheld until such errors or defects shall be rectified to the satisfaction of the said joint board; and the amounts so

Joint board may order payments to contractor.

ordered to be paid by the said joint board shall be advanced by each municipality in equal proportions at the times when the payments aforesaid are required to be made, and each municipality shall be liable to the contractor or contractors to that extent.

Bonds may be issued.

592. SEC. 17. That in order to raise the money to make payments hereinbefore required to be made for or on account of such contracts, it shall be lawful for the governing body of each municipality to issue its corporate bonds in such amount as may be necessary for that purpose, which shall bear interest at not exceeding the rate of six per centum per annum, and shall run not longer than five years.

Costs and expenses of improvement, how ascertained, and to be assessed on lands benefited.

593. SEC. 18. That after the completion of the said improvement, the whole cost and expense thereof shall be ascertained by the three commissioners appointed as aforesaid, and shall be assessed by them, as far as can be, on all the lands, and each tract, lot or parcel of land in such municipalities which, in the judgment of the commissioners, are specially benefited by the said improvement, in proportion to the benefit received by each lot, tract or parcel of land from the said improvement; and no lot, tract or parcel of land shall be assessed more than it is so specially benefited, which assessment shall be manifested by a report and a map, in duplicate, which report and map shall show, amongst other things, each lot, tract or parcel of land assessed, and the names of the owners thereof, and the amount assessed, so far as the same can be ascertained, and also the excess of the cost, if any, over the aggregate special benefits assessed to them, and the total amounts of special benefits assessed by them upon the property lying within each municipality; *provided, however,* that said assessment shall not be finally confirmed by said commissioners until after an opportunity has been given to all persons interested therein to be heard thereon, upon such notice, either personally or by publication, as such commissioners shall determine, which report and map, in duplicate, signed by said commissioners or a majority of them, shall be deposited with said joint board, who shall thereupon cause one of said copies to be filed with the clerk of each of said municipalities; and from and after the time of said filing, the said assessment shall be and become a lien upon each lot, tract or parcel of land as assessed, and so remain until the said assessment is paid, notwithstanding any devise, descent, alienation, mortgage or other incumbrance thereof; and such assessment, if the same remain unpaid, shall be subject to the same interest and penalties, and may be collected and enforced in each of said municipalities in the manner prescribed by law with respect to assessments for other improvements therein; and all moneys received in payment of assessments made under the provisions of this act, shall be kept, held and applied to and for the redemption of the bonds, if any, issued under this act, and for no other purpose whatever.

Proviso.

594. SEC. 19. That after the making of the assessment aforesaid, the joint board shall fix and adjust the proportionate part of the cost and expense of such improvement to be borne by each municipality so and in such manner that each municipality shall be chargeable with and required to pay of such cost and expense in the proportion that the total amount of assessed special benefits therein bears to the aggregate assessed special benefits assessed in both municipalities; and, if after such adjustment, it shall appear that either municipality has contributed or advanced toward the cost of the improvement more than such proportionate part, the excess so contributed or advanced over such proportionate part shall be forthwith refunded and paid to it by the other municipality.

Joint board to fix and adjust cost and expense to be borne by each municipality.

595. SEC. 20. That the said joint board shall, after the completion of the improvement, divide the road into two equal sections, and shall designate the section which each municipality shall maintain and keep in repair; and thereafter each of said municipalities shall maintain and keep in good condition and repair the section of the road so assigned to it.

Road to be divided between the municipalities for maintenance thereof.

596. SEC. 21. That said joint board may choose a chairman and secretary, and such other officers, and may make such rules for government as shall be deemed advisable; the said joint board shall have power to meet and adjourn from time to time and as often as in their judgment it shall be

Organization and powers of joint board.

deemed necessary to fully carry into effect the provisions of this act ; the votes of a majority of all the members of such joint board shall be necessary to decide any question, order, motion or resolution which may come before it ; the secretary of said joint board, and the engineer and commissioners appointed by them, shall receive such compensation for their services as the said joint board shall determine to be just and proper ; and the members of said board shall be entitled to the same compensation as is allowed to them as members of the governing body of the municipality which they represent.

Compensation of certain officers, how allowed.

597. SEC. 22. That no writ of certiorari to review any assessment made for any improvement authorized by this act shall be allowed or granted unless application therefor be made within three months after the filing of the duplicate report and map in the respective clerks' offices of said municipalities.

Limit of time for allowing certiorari.

An act to enable the overseers of roads in certain road districts of this state to call meetings for the purpose of raising money for the use of roads.

Approved May 7, 1889.

P. L. 1889, p. 376.

598. SEC. 1. That in all road districts in this state where, by law, the legal voters of such districts have authority to elect overseers of roads and to raise money for the use of roads in such districts, when, for any cause, the overseer of such district has neglected to call a meeting for the purposes aforesaid within the time prescribed by law, it shall be lawful for the overseer, whose duty it is to call such meeting, to call a meeting of the legal voters of any such district, at any time prior to the first day of May in any year, giving due notice of the time and place of such meeting, and the object thereof, by written or printed notices, signed by him and set up in two of the most public places in said road district at least five days before the day appointed, and all meetings held as aforesaid shall be valid and effectual in law for the purposes aforesaid as if the same had been called in the manner heretofore prescribed.

Road district meetings to be called by district overseer.

An act relative to assessments for streets or roads in this state where no statutory provision exists for a constitutional or lawful assessment of the costs and expenses thereof.

Approved March 4, 1890.

P. L. 1890, p. 23.

599. SEC. 1. That where any improvement of any streets or roads has been heretofore or shall hereafter be made in this state, and no statutory provision or authority exist for making a constitutional or lawful assessment of the cost and expenses thereof, the commissioners, persons, assessors or other tribunal authorized to make any such assessment, by whatever name they may be called, after first ascertaining the costs and expenses thereof, shall, in all such cases, assess the said costs and expenses upon the land and real estate benefited by such improvement, and in proportion to the benefits thereby received, in making which said assessment, the same shall be made and assessed upon the several lots or parcels of land benefited by such improvement, in proportion to the benefit actually received by each one of said lots or parcels of land, and no lot or parcel shall be assessed more than it is benefited, and the excess, if any, of such costs and expenses shall be assessed upon the municipality wherein such improvement shall lie ; *provided, however,* that if said improvement, or any part thereof, shall lie within or run into two or more municipalities, that then such excess, if any, of such costs and expenses, shall be assessed upon the municipalities within or into which said improvement or any part thereof shall lie or run, in the proportion that the total of the assessment of benefits on the owners of land in each of said municipalities bears to the sum of the total assessment of benefits on owners of land in all such municipalities, and shall be paid out of moneys raised by general tax for that purpose ; *and provided further,* that if any portion of the cost and expenses of any such improvement has already been raised and paid by

Manner of assessing benefits of street improvements where no statutory authority for such proceeding exists.

Proviso.

Proviso.

any such municipality or municipalities by general taxation, under any provision of law, the amount or amounts so raised and paid shall not be included in said costs and expenses assessed under and by virtue of this act.

Commissioners to take oath.

600. SEC. 2. That the said commissioners, persons or assessors making said assessment shall, before proceeding to the execution of their duties, take and subscribe an oath faithfully to perform their duties in the matter.

Improvements, what to include.

601. SEC. 3. That where two or more streets or roads, or parts thereof, have been or shall be constructed or improved together as one improvement, such improvements shall be included in the provisions of this act.

Term "municipalities," how construed.

602. SEC. 4. That the term municipalities shall be taken and construed under this act to include any city or cities, town or towns, township or townships, and all other municipal corporations whatsoever.

Repealer.

603. SEC. 5. That all acts inconsistent with this act be repealed, and that this act shall be deemed and taken to be a public act, and shall take effect immediately.

An act authorizing chosen freeholders, with the township committee, to change a road to avoid the expense of building and maintaining a bridge.

P. L. 1890, p. 104.

Approved March 24, 1890.

Board of freeholders and township committee may change road to avoid building bridge.

604. SEC. 1. That whenever it shall appear to the board of chosen freeholders of any county in this state that the building of a bridge or of bridges can be avoided by changing the road in any township or townships within said county, it shall be lawful for said board to refer the matter of the changing of said road to three of its members, in case the said change shall be wholly within one township, and to six of its members in case said change shall extend into two or more townships, who shall act with the township committee or committees of the township or townships wherein said change is proposed to be made; and the said freeholders to whom said matters shall be referred, together with the members of said township committee or committees shall have power to change the said road by vacating such of the old road as shall not be needed and by laying out such new road as may be necessary to effect the purpose of this act.

Freeholders to fix time and place of meeting of committees.

605. SEC. 2. That the said freeholders to whom said matter shall have been referred, as provided for in the preceding section, shall fix a time and place for the meeting of the members of said township committee or committees and themselves for the purpose of changing said road, and shall give written notice thereof to each member of said township committee or committees by delivering the same to him personally or by leaving it at his dwelling-house, with some member of his family, at least six days before the time so fixed for said meeting, and shall also put up for the same time, at three of the public places of each township within which said change is proposed to be made, one of which shall be in the neighborhood of said road, notices setting forth, as near as may be, the change proposed to be made in said road, and the time and place of the meeting of the town committeemen and freeholders to consider said proposed change; and it shall be the duty of said freeholders and committeemen to attend at the time and place so fixed; and proof of the service of such notice upon said committeemen and of the setting up of said notices shall be made to the satisfaction of those so met, upon which they shall decide; and the members so met, or a majority of them, shall have power to adjourn from time to time, announcement of which shall be made at the time; and if they, or a majority of them, shall deem a change in said road desirable, and shall adjudge the expense of opening the new road, together with the damages to be awarded for land taken therefor, not to exceed the expense of building the bridge or bridges that will be rendered needless by said change, they shall lay out such new road and vacate such portion of the old road as they shall think proper to effect the proposed change; and they shall designate the beginning and ending points and the width of said new road, and give a proper description thereof, and shall mark the same at proper distances, and shall fix the time when the same shall be opened for public

Authorized to lay out new road, &c.

use ; and they shall also make an assessment of the damage, if any, which the owner of any land will sustain by reason of said change in said road over and above the advantage that will, in their judgment, accrue to said owner, and shall certify said assessment in their return, particularly specifying the amount assessed in favor of the respective owners, which said assessment shall be evidence of the amount or amounts to which the owner or owners of said land shall be entitled, and if said return shall be confirmed by the board of chosen freeholders the road as changed shall, from the time fixed for the opening thereof, and thenceforth, be the public highway, and shall be opened and maintained as other roads in said township or townships are opened and maintained.

Assessment of damages to be made.

606. SEC. 3. That the said freeholders and township committeemen shall make a return, in writing, signed by at least a majority of them, of all their proceedings to the board of chosen freeholders of said county, and the said board, at its next regular meeting or at a special meeting to be held for that purpose, notice of which special meeting shall be given for at least ten days by setting up notices specifying the purpose of said special meeting, at three or more public places in each township within which said change has been made, stating the time and place when and where said return will be considered by said board, at which time and place any person feeling himself aggrieved may appear and be heard, and said board shall have power to increase, diminish and correct the assessments for lands taken for said road ; and if the said board shall approve of said return, with or without the changes in the assessments, if any, a resolution confirming the same shall be passed by said board, and thereupon the said return, with a copy of said resolution, certified by the clerk under the seal of said county, shall be filed and recorded in the office of the clerk of said county as returns of surveyors of the highways are filed and recorded, and said record shall be evidence of the laying of said road.

Return of proceedings to be made to freeholders.

Board of freeholders to approve return, &c.

607. SEC. 4. That it shall be the duty of said chosen freeholders and of said township committeemen, at the time they make the change in said road, to estimate as nearly as possible the expense of building the bridge or bridges rendered needless by said change, and also the expense of making said new road, and to certify the same with their return, and the board of chosen freeholders, at the time of the confirmation of said return or at any time thereafter, shall direct the payment to the township committee charged by law with the opening and making of said road, the amount of the estimated expense of making the same, and the damages assessed to landowners as aforesaid ; *provided*, the total amount shall not exceed the estimated cost of building said bridge or bridges.

Estimate of expense of bridge and road to be made.

Proviso.

608. SEC. 5. That the said township committee, before opening said road, shall pay to each person entitled to it the amount of the assessment as confirmed by said board of chosen freeholders, but in case any party so entitled shall refuse to receive such payment, or be out of the state, or be under any legal disability, then the same shall remain in the hands of the treasurer of said township until it shall be demanded by the party entitled to receive it, his, her or their legal representatives ; and said township committee shall see that said amount is kept on hand to meet said demand.

Assessments for damages to be paid before opening road.

609. SEC. 6. That all acts and parts of acts inconsistent with this act are hereby repealed, and that this act shall take effect immediately.

Repealer.

An act to permit the voters in road districts to set apart moneys for specific road and sidewalk purposes and to provide for the application of the same.

Approved March 9, 1891.

P. L. 1891, p. 116.

610. SEC. 1. That in all road districts in which the road overseers are elected by the voters therein, that it shall be lawful for the voters in any such road district by resolution introduced and voted upon by ballot, at the time and place of election of the road overseer, to determine by ballot as follows :

Voters in road district may vote money to purchase broken stone and repair sidewalks.

I. As to how much of the money raised for road purposes in said road district shall be used for the purchase of broken stone, and also how the said amount of stone shall be applied, whether by Telford or Macadam process ;

II. As to how much of the money raised for road purposes in any said district shall be used in the construction and repair of sidewalks in any said district, and of what material the said sidewalk shall be constructed.

Duty of secretary
of road meeting.

611. SEC. 2. That it shall be the duty of the person acting as secretary of the road meeting as aforesaid, upon the passage by ballot of such resolution as aforesaid, to make three copies thereof, one to be filed with the clerk of the township in which said road district is located, one to be given to the person elected as road overseer at such meeting, and the third copy to be returned as part of the minutes of said meeting by the person acting as secretary thereof.

Audit committee
of road moneys
to be elected.

612. SEC. 3. That there shall also be selected by ballot and at the same meeting, three resident voters thereof, one of whom shall not have voted for the overseer then elected, whose duty it shall be to oversee and acquaint themselves with the expenditure of the money appropriated as aforesaid, and said committee shall be known as the audit committee of road moneys of road district No. —, of township of —.

Penalty for
neglect of road
overseer.

613. SEC. 4. That if after the passage at the regular annual road meeting in any road district of a resolution regarding the expenditure of money as provided in section one of this act, that the road overseer elected at such annual meeting, or in lieu of election appointed by the town committee of the township in which any said road district shall be located, shall neglect or refuse to carry into effect the requirements of said resolution as aforesaid, then it shall be the duty of the committee of audit of road accounts of said road district to make complaint of said fact to a justice of the peace of the township wherein such road district is located, who shall thereupon issue summons against the said road overseer to appear and show cause for said neglect or failure in regard to the resolution as aforesaid, and further said action shall proceed as any other action for the recovery of a penalty as provided for under the act establishing justices' courts, and upon the conviction of the said overseer for neglect or refusal as aforesaid the justice hearing the cause may impose a fine not to exceed twenty dollars, to be collected together with the legal cost of same, the said fine to be paid to the collector of the township for the use of said road district.

Overseer's
accounts to be
audited before
payment.

614. SEC. 5. That it shall not be lawful for the township committee of any township in which any such resolution as called for in section one of this act shall have been passed to pay over to the road overseer any money until his accounts shall receive the signature of the committee of audit of any said road district.

Repealer.

615. SEC. 6. That all acts and parts of acts inconsistent with the provisions of this act be and the same are hereby repealed.

An act providing for the vacation of roads and parts of roads in townships which have been laid out by surveyors appointed by the court, to open which no appropriation has been made for a period of four years after they were laid out

P. L. 1891, p. 310.

Approved April 2, 1891.

Court of common
pleas may, in cer-
tain cases, vacate
roads previously
laid out but not
opened.

616. SEC. 1. That whenever no legal appropriation has been made for the opening of any road or part of a road laid out by surveyors appointed by the court in any township in this state, for the period of four years after such road or part of road has been laid out, it shall be lawful for the court of common pleas of the county in which such road or part of road lies, wholly or in part, upon the application of ten or more freeholders of such township, and upon proof of the aforesaid facts made or presented by them to the said court to its satisfaction after four weeks' notice of such application to the court for that purpose, published in at least two of the newspapers of the county in which such application is made, if there be that number published in that county, otherwise in one only, to make an

order or decree declaring such road or part of road to be vacated upon such terms as the court may deem just, and thereupon the same shall be vacated and cease to exist the same as if it had never been laid out.

An act concerning public roads, streets and highways adjoining and forming the boundary lines between two municipalities.

Approved March 24, 1892.

P. L. 1892, p. 233.

617. SEC. 1. That whenever it appears that any public road, street or highway adjoins or forms the boundary line between two municipalities, the said public road, street or highway shall be made, improved and graded by the two municipalities bordering on said road, street or highway, and the expenses for making, improving and grading the same, shall be borne equally by said municipalities.

Adjoining municipalities to bear equally expense of maintaining roads on boundary line.

An act for the protection of travelers on the public roads in this state.

Approved April 4, 1892.

P. L. 1892, p. 390.

618. SEC. 1. That when any public road of this state shall be unsafe to travelers by reason of unprotected embankments or unguarded bridge approaches or exposure to overflow for a greater distance than one hundred feet in time of freshet or heavy rains, it shall be the duty of the town committee of the township within whose limits such unsafe road may be to notify in writing the board of chosen freeholders of the county, of the unsafe condition of said road for any of the reasons aforesaid, and it shall be the duty of the said board to provide protection to travelers on such road by erecting or repairing railings and guards along said embankments, bridge approaches or roads exposed to overflow, at the expense of the said county, in the same manner that bridges are built and maintained by said board within said county.

When any public road has become unsafe by reason of unguarded bridge approaches, &c., town committee shall notify the board of chosen freeholders, who shall repair the same.

An act concerning public roads and parks, and creating boards for the control and management of the same.

Approved March 1, 1893.

P. L. 1893, p. 69.

619. SEC. 1. That the township committee in the respective townships of this state, or a majority of such committee, may, at their first regular meeting or at a special meeting, after this act shall have become a law, divide their respective townships into convenient road districts, cause maps thereof to be made and filed in the office of the clerk of the county in which said township is located, with the clerk of such township and with the clerk of the road board to be organized as hereinafter provided, with a copy of their resolution making such division.

Township committee authorized by resolution to divide townships into road districts and file maps.

620. SEC. 2. That the said committees shall, by resolution adopted at said meeting so held as aforesaid, submit the question of the acceptance or rejection of this act to the voters of such township at any general or special election to be held therein, whereof at least ten days' notice shall be given, in the manner now directed, for the giving of notice of the annual township elections or town meetings; and if a majority of those who shall vote for the acceptance or rejection thereof shall be in favor of the acceptance of this act, then this act shall go into effect immediately, and the grant of power herein made to any such township shall be deemed accepted by such township, and such township shall be bound by the terms of this act; persons entitled to vote at any township election or town meeting, where this question is submitted to them, shall express their assent or rejection of this act by depositing ballots at such election in the election district of any township; and those who are in favor of the acceptance of this act and the grants and powers therein contained, shall deposit a ballot containing the words "road act of 1893 (with chapter number of same) accepted," written or printed thereon, and those who are opposed, shall each deposit a ballot with the words "road act of 1893 (with chapter number of same) rejected,"

Act to be submitted to voters for acceptance or rejection.

Manner of conducting election.

written or printed thereon ; and this acceptance or rejection may be expressed upon the ballot on which are the names of the township officers, and no separate ballots shall be required for the purpose of this vote, if had at the general election ; there shall be a canvass on the return of the votes upon this question of such acceptance or rejection made by the election officers, in the same way and manner as for officers voted for at such election ; and if a majority of the ballots on which there shall be either the words " road act of 1893 (with chapter number of same) accepted " or " road act of 1893 (with chapter number of same) rejected," shall be found to be for the acceptance of this act it shall then, but not otherwise, go into effect and be binding upon such township wherein such vote shall have been taken ; if a special election be held under the provisions of this act, the same shall be conducted in every respect as is now provided for the conduct of the general township election or town meeting.

If act is accepted, meeting of freeholders in districts to be called.

621. SEC. 3. That the said township committee in each of said townships in which said act shall have been accepted in manner aforesaid, shall thereupon call an assembly in each of said districts into which said township has been divided as aforesaid, of the freeholders in said district, at such convenient place in said district, and within three weeks after the acceptance of this act as aforesaid, at four o'clock in the afternoon, as the said committee shall deem expedient, upon ten days' notice by printed handbill or a handbill partly printed and partly written, to be posted conspicuously in at least ten public places, in said district, and published in a newspaper printed and published in the said township, or where there is no such newspaper then in one printed and published in the county and circulating in said township, at which assembly after being duly organized, the said freeholders so assembled shall elect by ballot a suitable person, who shall also be a legal voter in the township and a freeholder and resident in the district for which he is nominated, as a road commissioner for said district for the term of three years ; and the said freeholders so assembled shall also have the same powers and authority in relation to the voting and raising of money for the making, maintaining and repairing the public highways within such district as the inhabitants of the said township now have or had in relation to the roads and highways therein when assembled in town meeting, and in addition thereto they shall also have the power of appropriating such sums of money as they may deem proper for keeping in repair or improving any public parks in said township now acquired or that may hereafter be acquired under any of the laws of this state, and also to appropriate moneys for the laying and constructing of sidewalks and keeping the same in repair, the said voters having the option of designating where said money so appropriated for sidewalks shall be expended ; and they and their property, both real and personal, shall be in all respects liable for the same, in like manner as the inhabitants of the said township and their said property are now liable in respect to the roads therein ; *provided*, that in making assessments for the purposes mentioned in this act, no deductions shall be made for debts owing by the owners of the real estate assessed, or for any mortgage thereon ; *and provided*, that each of the said districts respectively shall make, maintain and keep in repair, under the direction of the board to be composed as hereinafter provided, the public highways within their respective limits, in the same manner, to the extent of each district respectively as the said township now is authorized and required to make, maintain and keep in repair the highways within its limits ; *and provided further*, that all moneys so voted and raised by any district shall be applied by the said board to the use of the public highways and sidewalks in such district and not in any other district ; that no decision, vote or appropriation shall be valid unless at least twelve freeholders of said district shall be present and take part therein ; and if twelve freeholders of said district are not present on the day appointed as aforesaid, the said meeting shall be adjourned from day to day until said number of freeholders are present, and a majority of those present shall be necessary to give validity to a decision, vote or appropriation ; that a minute of the proceedings of said meeting shall be made by the secretary

Election of road commissioner.

Powers and authority of said freeholders.

Proviso.

Proviso.

Proviso.

of said meeting, to be entered in the book of minutes of said district, which minute shall specify the names of at least twelve freeholders present at the assembly. (a)

622. SEC. 4. That the said commissioners when so elected as aforesaid, and their successors to be thereafter elected, are hereby constituted a board of commissioners to be known as the "public road board" of the respective townships in which the same may be elected; that the said commissioners or a majority of them shall within ten days after their election, at two o'clock in the afternoon, assemble at such place as may be designated by said township committee by a resolution adopted for that purpose and of which written notice shall be given to each of said commissioners, and proceed to the organization of said board by the election of a president and such other officers as they shall see fit, who shall hold their offices for one year or until their successors are elected, and annually thereafter, on the first Monday in May, at the hour of two o'clock in the afternoon, said commissioners shall meet for such organization as aforesaid, and the said officers when so elected shall hold their offices for the period of one year, or until their successors are elected as hereinbefore provided.

Commissioners to be known as the "public road board."
Time when and how to organize said board.

623. SEC. 5. That the term of office of each commissioner elected after the expiration of the term of office of the commissioners hereinbefore provided for shall be three years; and that he shall be a legal voter of the township and a freeholder and resident of the district for which he is nominated and elected, and shall be elected as hereinafter provided; that all vacancies in said board arising from death, resignation, removal from the township, or any cause other than the expiration of the term of office shall be filled by the said board within thirty days from the occurrence of the same, with a person who is a legal voter of the township and a freeholder and resident of the district for which he is named; that when any vacancy shall arise from other cause than the expiration of the term of office, then the remaining members of the board shall discharge the duties of the retiring member or members until his or their successor or successors shall have been appointed; and each commissioner shall, before he enters upon the performance of the duties of his office, take an oath or affirmation before any officer of this state authorized to take the same, faithfully, fairly and impartially to exercise and perform the duties of said office, which oath or affirmation shall, within five days after taking the same, be filed with the clerk of said township.

Term of office.

Vacancies to be filled by the board.

Oath of commissioners.

624. SEC. 6. That the commissioners herein provided for shall, within the limits of the district to which each shall from time to time be assigned, have the same duties, and be subject to the same penalties as overseers of the highways in the said township now have or heretofore had, perform or performed, or are or were subject to within and for the said township, and that the board hereby created shall, in addition to the other powers and duties conferred and enjoined by this act, have the same powers, perform the same duties, and be subject to the same obligations and penalties as the township committee now have, had, perform or performed, or are or were subject to, in relation to the public highways; and in addition thereto, shall have a general and exclusive supervision, control and management of the public highways and sidewalks in said township and of their repair or regulation, and of all parks and other lands in such township which have been or may be dedicated to the public or which may be acquired as now provided by law, and shall from time to time prescribe, by the vote of the majority of said board, the manner in which the public highways shall be worked, repaired, kept in order, regulated and named, and the time when the same shall be worked and repaired; and if any person shall desire to dedicate to public use, as a highway, any portion of his or her land, and twelve freeholders of the district in which said lands so proposed to be dedicated are situated, shall petition the said board to accept the same for public use, then upon grading the same and putting it

Duties and liabilities of commissioners.

Commissioners to have general and exclusive authority over highways and sidewalks.

(a) As to the constitutionality of the provision restricting the right of suffrage to the freeholders of the district, see *Allison v. Blake*, 28 Vt. 6.

in good condition as a highway and the execution of a deed of the same to the inhabitants of the said township, with an acceptance in writing signed by a majority of the said board, indorsed thereon and recorded with the same in the office of the clerk of the county wherein said township is located, the land so dedicated and accepted shall be a public highway from the time of so recording said deed, with like effect as if the same had been opened under the provisions of any existing law.

Board to call annual assembly of freeholders in each district.

Commissioner to preside.

625. SEC. 7. That the said board shall once in every year call an assembly in each of said districts of the freeholders in said district in the manner provided for in section three of this act; that at said assembly the commissioner of said district shall preside, and the said freeholders so assembled shall have the same powers and authority particularly enumerated and set out in said last-named section, and they and their property shall be subject to the like liability therein particularly stated; that the enactment in this section shall be subject to the three provisos in said last-named section particularly set out, and that no vote or appropriation shall be valid unless under circumstances detailed in said section, and that a minute of said meeting shall be kept and entered as therein provided.

Powers of such assembly.

626. SEC. 8. That the said assembly shall be conducted according to such general rules as the said board may from time to time prescribe, and shall decide, vote and appropriate such sum or sums as they shall deem necessary and proper for the use of the public highways, sidewalks and parks in the district, and the tax so voted shall be assessed by the township assessor and collected by the township collector in the manner provided by law for the assessment and collection of taxes in the said township, and shall be paid over by the officer or officers receiving the same to the president of said board, to be by the said board applied to the purposes prescribed by this act.

Board authorized to employ surveyors, laborers, &c.

627. SEC. 9. That the said board may appoint, employ and discharge from time to time such surveyors, superintendents, engineers and laborers as they may deem necessary in order more effectually to carry out the intentions of this act, and pay them with compensation or wages as they may deem fair and reasonable; also to purchase or hire and to use for the said township such horses, cattle, implements and materials as they may deem proper.

Board shall have full and exclusive power to lay out, alter and grade highways, &c.

Procedure for laying out roads, &c.

628. SEC. 10. That the said board shall (subject only to the right of appeal and review hereinafter provided) have the full and exclusive power and authority to lay out, open, widen, alter, straighten, grade and vacate public highways in such townships; that whenever the said board, upon the written application of twelve freeholders in any of the said districts, shall deem it expedient to lay out, open, alter, widen, straighten, grade or vacate any public highway, or any number of connecting public highways in any such township, the said board shall cause a map of such proposed measures to be made and filed in their office, which map shall be open to inspection at all reasonable times by any person desiring to inspect the same, and shall thereupon cause notice to be given, as provided in section three of this act, and by printed handbills, or handbills partly printed and partly written, posted conspicuously in ten or more public places in such district, stating that such map is open for inspection and requiring all persons interested therein to appear before said board at a convenient time and place, to be specified in said notice, when and where the said board shall hear and weigh all arguments for or against said improvements; and if, at said time, any one or more parties interested desire an adjournment of the said hearing, and give notice in writing to said board of such desire, said hearing shall be adjourned to such other time as may be determined upon by said board; that after said hearing the commissioners shall appoint a committee of their number to examine the route of the proposed road, and to report upon the feasibility and advisability of the same, and what changes, if any, should be made therein, and thereupon the said board shall decide and determine upon the necessity of such proposed improvement, and if the said board shall decide and determine in favor thereof they shall make their decision in writing and shall award such damages as they may deem just to

When map filed, board to give notice thereof.

Commissioners appoint committee to examine routes, award damages and assess such lands in proportion to benefits received by owners thereof.

each and every person affected thereby, and assess such lands as may be benefited in proportion to the benefit received by the owners thereof, but in no case exceeding the same ; that within five days after making such assessment as aforesaid, a printed or written or partly-printed and partly-written notice shall be addressed and mailed to each individual or party so assessed, directed to him or her at his or her post-office address, if the same can be ascertained, stating the amount of said assessment against said individual or party for said improvement, and that said assessment will remain open at the office of said board for examination and inspection by all persons interested therein, at all reasonable times during the fifteen days next succeeding the mailing of said notices as aforesaid, and that said board will attend at their office on a day subsequent to the expiration of said fifteen days, and also on one or more evenings, not exceeding three evenings in all, if so required by any party or parties interested, to hear and weigh all objections thereto; that said board shall thereafter reconsider said assessment and make any alterations therein they may deem just, and thereupon they shall confirm said assessment, and within ten days after such confirmation file a map of the said improvement as finally determined on by them, with their aforesaid written decision and said assessment so confirmed and award so made, in the office of the clerk of the county in which such township is located ; that the said board shall give notice of such filing by publication in a newspaper printed and published in the said township, and where there is none published in said township then in one printed in the county in which said township is located and circulating in said township, once a week for four weeks, and the determination of the said board shall be final and conclusive in the premises, unless an appeal is taken to the court of common pleas in and for such county, within the time and manner provided for in this act, or in case of a proposed new road, a petition against the making of the same shall be presented to the board within twenty days from their determination in the matter, signed by the owners of a majority of lineal feet fronting on the proposed new road.

629. SEC. 11. That all property taken under any provisions of this act shall be deemed taken for public use, and in estimating any award or assessment hereunder the said board shall estimate for benefits as well as for damages as aforesaid.

630. SEC. 12. That the said board shall (subject only to the right of appeal and review hereinafter provided) have the full and exclusive power and authority to construct sidewalks and gutters of such material as they shall deem proper along any public highway in said township, upon the application in writing of the owners of a majority of the lineal feet of lands fronting upon both sides of the highway whereon such improvement is to be made ; that whenever the said board upon receiving such written application as aforesaid shall deem it expedient to construct such sidewalks and gutters as aforesaid, they shall proceed to a determination of said question in the same formal manner particularly enumerated and set out in section ten of this act ; and if the said board shall decide and determine that said improvement is necessary and shall decide in favor thereof, they shall make their decision in writing, and shall assess such lands as may be benefited in proportion to the benefit received by the owners thereof, but in no case exceeding the same ; that thereupon the said board shall give notice of said assessment in manner provided in said section ten of this act, and shall proceed in all things to the final determination thereof as is particularly provided in said last-named section ; that upon such final determination the same shall be final and conclusive unless an appeal be taken as provided for in this act.

631. SEC. 13. That said public road board shall have full power and authority, upon the application in writing of twelve freeholders of any such townships for that purpose, to excavate, build and construct in any road, street or avenue, and with the consent of the owner in any private lands, such sewer or sewers as they may deem requisite or proper for purposes of drainage, and for the preservation of the public health ; that whenever said board shall deem it advisable to construct such sewer or sewers, they

When map filed, board to give notice thereof.

Determination to be final unless appeal is taken to court of common pleas.

Board shall estimate benefits as well as damages.

Board shall have full and exclusive power to construct sidewalks, &c.

Procedure.

Shall assess lands in proportion to benefit received by owners thereof.

The public road board authorized to construct sewers for drainage.

Procedure.

shall proceed to a determination of said question in the same formal manner particularly prescribed and laid down by section ten of this act; and if the said board shall decide and determine that said improvement is necessary, they shall make their decision in writing and shall assess such lands as may be benefited in proportion to the benefits received by the owners thereof, but in no case exceeding the same; that thereupon the said board shall give notice of said assessment in manner provided in said section ten of this act; and shall proceed in all things to the final determination thereof as is particularly provided in said last-named section; that upon such final determination the same shall be final and conclusive, unless an appeal be taken as provided in this act.

Appeal may be had from decision of board to court of common pleas.

632. SEC. 14. That any person feeling himself or herself aggrieved by the action of said board under the tenth, twelfth and thirteenth sections of this act may, within, twenty days from the filing of the decision of the board in the office of the clerk of the county in which said township is located, appeal to the court of common pleas of such county by serving a notice in writing upon any member of the said board, and the said court shall have full power to hear, determine and review the proceedings of the board in the premises, and to confirm, alter, modify, set aside or reverse in whole or in part for errors, either of fact or law, and the said court shall have power to hear and try the same in a summary way and may summon a jury to determine any question of fact, and the said court may proceed in due course according to the power of the court in other cases, and the determination of the said court shall be final and conclusive in the premises and not subject to appeal or review, and the said court or any judge thereof may, until such determination, stay all proceedings in the matter, in reference to which the appeal may be taken until such final determination, and the like fees and costs shall be paid to the judges, jury, officers of the court and parties as are allowed in other causes of which the court has or may have jurisdiction, and the said court shall have power to make and prescribe all necessary forms, rules and regulations in the conduct of any proceeding to be taken under this act.

Trial by jury.

Fees and costs paid.

Rules and regulations.

Assessments to be a lien on lands.

633. SEC. 15. That if no appeal shall be taken within the time and in the manner prescribed herein the action of the said board shall take effect, and the said board may proceed to carry out the same under this act, and any assessment laid by virtue hereof shall be a lien on the lands on which it is laid, and the said commissioners shall procure a certified copy of their award and the judgment of the said court of common pleas, if any appeal shall have been taken, to be placed in the hands of the collector of taxes for the time being of any such township, and thereupon it shall be the duty of the collector to collect the said assessment within sixty days from the time of placing such copy in his hands, and to pay the same over to the president of the said board; and the said collector shall, in the collection of the assessment, be liable to the same pains and penalties and entitled to the same fees as in the collection of the annual township taxes, the said fees being reserved by him out of the amount so collected; *provided*, that the said collector, in each and every year before proceeding under this act, shall enter into bonds to the said board with such sureties and in such sums as the said board shall approve, conditioned for the faithful performance of his duties under this act; and the said president, before receiving any money from said collector, shall enter into bonds to the inhabitants of such township in their corporate name, with such sureties and in such sum as the said board shall approve, conditioned for the faithful performance of his duties as such president.

Collector to collect assessments.

Fees of collector.

Proviso.

Collection of overdue assessments enforced by sale of lands.

634. SEC. 16. That in case any owner or owners of lands assessed for any of the purposes as aforesaid shall fail to pay the assessment laid thereon, within three months from the time of placing the certified copy of the award in the hands of the collector, then the lands upon which the said assessment is a lien shall be sold in the same manner as land is now authorized by law to be sold for unpaid taxes in any such township upon a warrant issued by said court of like character and form as that issued for the collection of said taxes, so as to raise a sufficient sum to pay the said

assessment and the interest, at the rate of twelve per centum per annum, from the expiration of sixty days from the time of placing such copy in the hands of the collector, and the lawful costs and fees of collection and sale.

635. SEC. 17. That notwithstanding any mistake in the name or names of the owner or owners of any lands, tenements and real estate, in the said township in making awards or assessments, or in giving or addressing notice of the same, in pursuance of the tenth section of this act, such awards and assessments shall be valid and effectual in law against such lands, tenements and real estate, and the same may be proceeded against and sold in the manner prescribed in the sixteenth section of this act.

636. SEC. 18. That the said board is hereby authorized to borrow money in anticipation of the sums to be raised annually by tax for road purposes, in the several districts of said township, and thereupon if the commissioner of any district shall in writing require the said board of his township to advance the sum voted in such district, such board shall proceed to raise the same within thirty days after such requisition; the money so advanced to be repaid by the president of said board when he shall receive the amount levied by tax from the township collector.

637. SEC. 19. That this act shall be construed so as to give the commissioners a general and exclusive supervision, control and management of all sidewalks and gutters along the public highways within their respective road districts, and to pay for their repair and regulation out of the moneys voted by the annual assemblies and raised by tax, as in this act provided.

638. SEC. 20. That the said commissioners shall receive two dollars a day for each and every day's attendance upon and about the duties imposed upon them by this act, which shall be paid to them by the township collector upon the order of the president of the board, and there shall be levied and collected in each and every year, at the time and in the manner provided for the collection of taxes in such township, a sum sufficient to defray such fees, advertising expenses and such other general expenses, costs and charges as the said board may become liable for in performing their duties under this act, the amount of which shall be annually determined by said board and certified under seal to the assessor of said township; and that whenever the word "board" is used in this act it shall be considered as meaning a majority thereof.

639. SEC. 21. That at each annual meeting or assembly, held as provided in this act, the commissioner presiding shall present his accounts, which shall give in separate items a statement of work done, the location of it and the amount paid therefor and to whom paid, and also in separate items a statement of all other expenditures for the past year, which accounts shall be read to the meeting and be examined by it or by a committee of three persons appointed by said meeting; and within two weeks thereafter the commissioner presiding shall cause the said accounts to be published in full in a newspaper printed and published in the township, if there be one, and if not, then in a newspaper printed and published in the county in which such township is located.

640. SEC. 22. That this act shall take effect immediately; *provided, however,* that nothing in this act shall apply to or affect any street, avenue or highway under the charge or control of any county public road board in this state.

Mistake in names of owners of lands does not invalidate assessment.

Board authorized to borrow money in anticipation of tax.

Commissioners have general and exclusive control of sidewalks and gutters.

Compensation of commissioners.

Meaning of the word "board."

At annual meeting the commissioner shall present an itemized statement of all expenditures.

Publication of accounts.

Act not to apply to county roads.

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. How bills approved.
- 3. Amended by section 5.
- 4. When act to take effect.
- 5. Salary of secretary of state, allowance for clerical service. Fees of clerk in chancery. Fees of clerk of supreme court.
- 6. Repealer.