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THE
ROAD LAW.

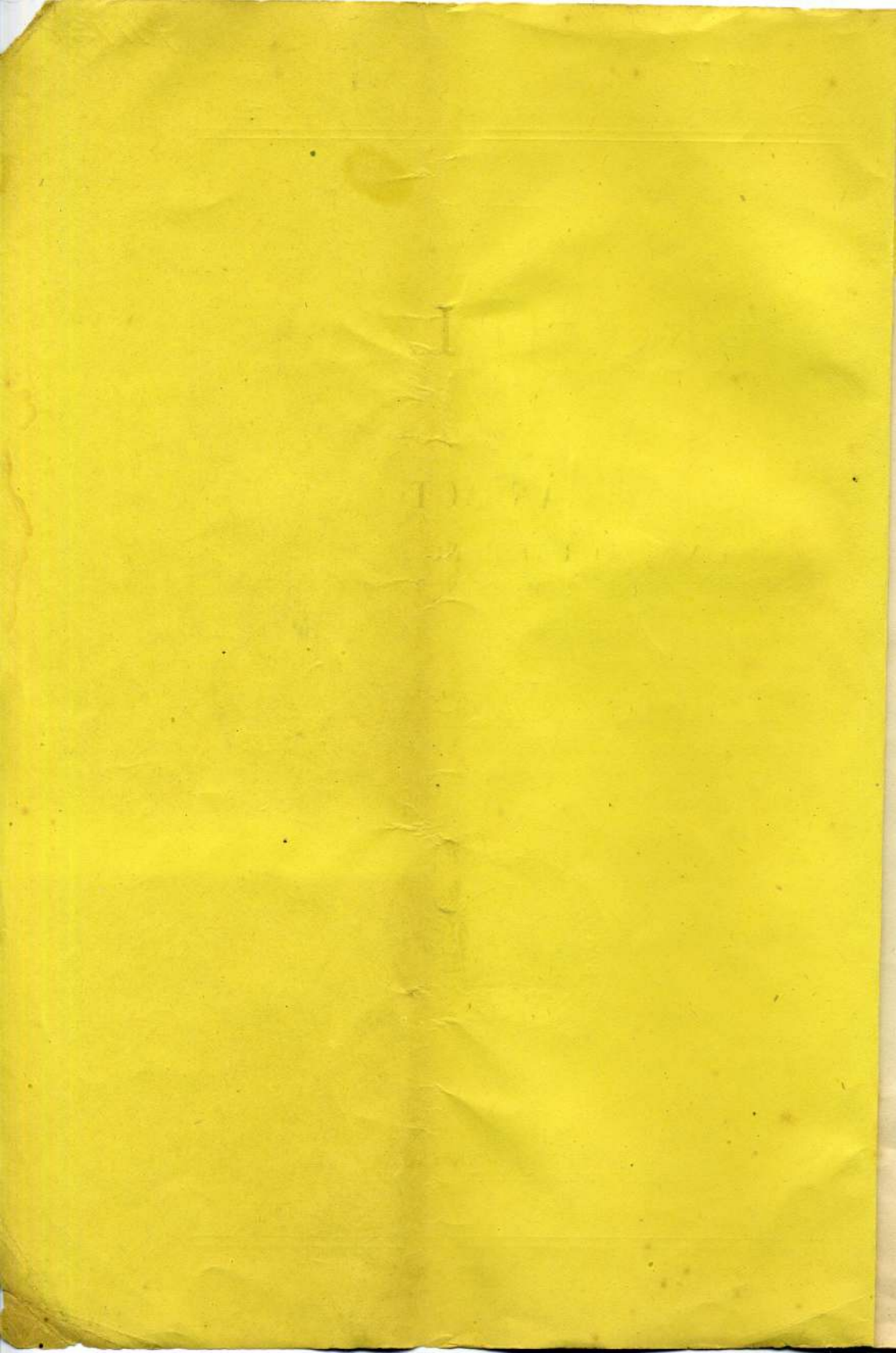
AN ACT

To Provide for Opening and Keeping in Repair
the County Roads.

Passed December 22d, 1873: Amended March 1st, 1877.



CHARLESTON:
KANAWHA GAZETTE PRINT.
1877.



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AN ACT
TO PROVIDE FOR OPENING AND KEEPING IN
REPAIR THE COUNTY ROADS.

APPROVED MARCH 1ST, 1877.



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THE

ROAD LAW

AN ACT

TO PROVIDE FOR THE REGULATION AND IMPROVEMENT OF
ROADS AND BRIDGES

ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES
OF THE STATE OF NEW YORK



CHAPMAN
NEW YORK

THE ROAD LAW.

AN ACT to provide for opening and keeping in repair the County Roads.

Be it enacted by the Legislature of West Virginia :

OF ROAD PRECINCTS.

1. Every district in this State shall be a road precinct, unless the County Court shall otherwise order. Provided, That the road precincts in each county shall remain as now established until changed by the County Court.

2. The County Court of a county may divide the several districts therein into convenient road precincts, and may from time to time change the boundaries of such precincts and increase or diminish the number thereof. The precincts in each district shall be distinguished by consecutive numbers, and the boundary lines thereof shall be recorded in the proceedings of the Court.

3. No road precinct shall include any part of an incorporated village, town or city, which, by the provisions of its charter, keeps its own roads, streets and alleys in order, notwithstanding anything to the contrary contained in the preceding sections.

4. The County Court of every county shall, biennially, at the January, February, or March term of said Court, appoint a surveyor of roads for each precinct of their respective counties, who is a resident of the precinct for which he may be appointed, and whose term of office shall be for two years from the first of April succeeding his appointment. Vacancies in said office shall be filled by the County Court from time to time, as they may occur, and shall be for the unexpired term.

5. If any person appointed such surveyor, refuse to serve, he shall forfeit twenty dollars; but the County Court of the county may, for good cause, remit such forfeiture; and a person who has served one term, may refuse to serve the next term without being subject to any penalty therefor.

6. Within ten days after he is notified of his appointment, and before entering upon the duties of his office, he shall take and subscribe the oath required by article 4, section 5, of the Constitution. Such oath may be administered by a justice of the county, or any other person authorized to administer oaths generally, and when properly certified, shall be filed in the clerk's office of the County Court.

CERTAIN DUTIES OF THE SURVEYORS OF ROADS.

7. Every surveyor of roads shall perform the following duties, within his road precinct, that is to say: he shall superintend the county roads and bridges, cause the same to be put in good order and repair, of the proper width, well drained and to be cleared and kept clear of rocks, falling timber, land slides and other obstructions. He shall cause to be opened and made all new county roads and alterations of former roads ordered by proper authority. He shall cause to be placed and kept at the fork or crossing of every county road, a guide board, on which shall be stated in plain letters the most noted place to which each road leads. Across every stream where it is necessary and practicable, he shall cause to be placed and kept a sufficient bridge, bench or log, for the accommodation of foot passengers. Where any more important bridge is necessary, and it is practicable for him to have it made with the money and labor which is at his disposal, by virtue of his office, he shall cause it to be made safe and convenient, and at least twelve feet broad, with a railing not less than three feet high on each side. He shall notify, or cause to be notified, all persons who are liable by law to work on the roads, of the time and place at which they are required to attend for that purpose, and shall direct and superintend their work. When a county road is suddenly obstructed at any time of the year, by the falling of rock or timber, land slide or other cause, or a county bridge is from any cause rendered unsafe, he shall immediately order out such number of persons liable to work on the roads as may be necessary (notwithstanding such persons may have performed

their full number of days' work on the roads,) and without avoidable delay cause such obstruction to be removed from the road, or the bridge to be made safe.

8. Every surveyor of roads shall keep an exact account of the number of days work done on the roads in his precinct by each person liable to work thereon, and shall, if required, make report thereof to the County Court at any time during the year.

9. He shall also make report annually to the County Court at the fiscal term thereof, of the condition of the roads and bridges in his precinct, the amount of money and labor expended thereon during the year ending on that day, and the improvements, alterations, and new works finished during the year, or in progress; and shall recommend in such report any improvements, alterations, or new works which he thinks ought to be made, stating the probable cost thereof.

10. Every surveyor of roads shall deliver the books, accounts and papers pertaining to his office, to his successor, when he shall demand the same. If he fail to do so, he shall forfeit not less than thirty dollars. And every such surveyor now in office shall, at the expiration of his term of office, pay over to his successor all the money in his hands by virtue of his office, taking duplicate receipts therefor, one of which shall be filed with the clerk of the County Court. If he fail to do so he shall be liable for double the amount in his hands, to be recovered in the name of the county, before any justice or court having jurisdiction.

11. If a surveyor of roads fail to perform any duty required of him by law, and there is no other penalty prescribed therefor, he shall be liable to indictment or presentment, and upon conviction thereof shall be fined not less than five, nor more than thirty dollars, for every such offence. But he shall not be liable for a failure to perform any duty specified in the seventh section, if it appear that the money and labor at his disposal by virtue of his office were insufficient to enable him so to do.

WHO TO WORK ON ROADS; POWER OF COUNTY COURTS; PENALTIES.

12. Every able-bodied male person not under eighteen nor over fifty years of age, residing in any road precinct, and who is not a pauper, having had at least three days' notice, shall, between the first day of April and the first day of September in each year, attend in person or by a sufficient substitute, acceptable to the sur-

veyor of roads, with proper tools, and work on the county roads in such precinct, under the direction of the surveyor thereof, at such places and on such days during such period, as said surveyor may appoint, two days. If the said two days' work herein provided for shall be insufficient to open, construct and keep in good repair the roads and bridges in any county, it shall be the duty of the county Court thereof to levy a tax on the real and personal property of the district or districts of the county sufficient in addition to such labor, to open, construct and keep in good repair the roads and bridges during the year next succeeding such levy. Such levy shall be by districts, and expended in the district where collected. At least two-thirds of the taxes so levied shall be expended on the roads between the first days of April and September of the year for which it was levied.

The County Court of every county shall biennially, at the January, February or March term, appoint three intelligent and discreet persons in each district in such county, to act as road commissioners, whose duty it shall be to examine the roads in their district and report to the County Court at its levy term in each year, the condition of the roads in their respective districts, and the amount necessary to be levied in addition to the labor herein provided for.

13. If any person fail to perform the labor required of him by the preceding sections, he shall pay to the sheriff of the county one dollar and twenty-five cents as a commutation for each day's service; and he shall be deemed to have so failed, if, having attended at the place and day appointed, he refuse to obey any reasonable direction of the surveyor, or spend the time in idleness or inattention to the work assigned him. It shall be the duty of the surveyor on or before the first day of November in each year, to make duplicate lists of all persons who have so failed to work on the public roads in his precinct during the previous year, and who were properly notified, stating therein the number of days each person failed to work when required. One of the lists he shall deliver to the sheriff and the other, after the sheriff shall have endorsed thereon his receipt for such delivery, he shall file with the clerk of the County Court, to be by him preserved, and the amount thereby appearing to be due shall be charged to the sheriff, and accounted for in his next annual settlement with the county, in the same manner as county levies are accounted for. If any sum charged in such lists

be not paid to the sheriff within ten days from the time they are placed in his hands, such sheriff may distrain for the same in the same manner and with like effect as for State and county taxes. Any person claiming to be improperly placed on said lists may apply to the County Court to be released therefrom, within six months from the time such lists are placed in the hands of the sheriff, and if said Court be satisfied that such person is erroneously charged with said road fine, the Court shall release him from its payment. The application shall be heard and determined without costs. All money received by a sheriff under this section shall constitute a fund to be applied to the construction, improvement and repair of roads and bridges in the district in which it may be collected.

14. For the purposes of the twelfth section, the residence of any person who has a family shall be held to be where his family resides, and if he have no family, where he boards. The notice required by that section may be given by the surveyor in person or by any person under his direction, and may be served on the person liable to work as aforesaid, or by leaving a written notice at his residence; and, except in the last case, the notice may be either oral or in writing.

15. The surveyor of roads for any precinct, with the approval of the County Court, may exempt from working on the roads in his precinct any person he may think unable to perform such work, and at the same time unable to pay the commutation. Such exemption must be in writing and shall not continue in force longer than one year from the date thereof.

16. Any person who has performed the work required by the twelfth section, or paid the commutation therefor, in any year in one road precinct, shall not, if he remove into another precinct, be required, during the same year, to work on the roads or pay commutation therein.

17. If any person under the direction of the surveyor, perform more labor on the county roads in his precinct in any year than is due from him, the surveyor shall give him a certificate specifying the amount of extra labor so performed, which certificate shall be received for the amount specified, in discharge of any labor or road tax within the same precinct, due in any subsequent year from the person to whom such certificate was given.

CERTAIN POWERS OF THE SURVEYOR OF ROADS.

18. The County Court of the county may authorize the surveyor of any road precinct therein to hire so many laborers, as, with those liable to work on the roads in such precinct, and the money applicable thereto, will suffice to put and keep the county roads and bridges therein in good order, and open and make such new county roads and alterations as may be ordered by proper authority. The Court may also authorize him to purchase powder for the removal of obstructions in the roads; and tools and implements, to be preserved and transferred from one surveyor to another, as the Court may direct. The surveyor shall return a particular account, on oath, of all expenses so incurred, as also of the expenses of placing and keeping up guide-boards as before mentioned, and such account, when audited and allowed by the Court, shall be paid out of the county treasury.

19. Whenever it may be necessary to have wagons, carts, plows or scrapers, draught oxen, mules or horses, for making or repairing any county road or bridge, the surveyor may hire the same by agreement with the owner, or if he cannot so obtain the use thereof, may impress such of them as shall be necessary, with their gear. The surveyor, in either case, shall allow a fair compensation to the owner for the use thereof; and if the surveyor and the owner do not agree as to the amount, each shall choose a free-holder of the district, and the two so chosen may, if necessary, select a third, to ascertain what would be a fair compensation to the owner for the use of the said property. The sum so agreed on or ascertained, shall be paid, by order of the Court, out of any money applicable thereto.

20. The surveyor of any road precinct may take from any convenient lands, so much wood, stone, gravel or earth, as may be necessary for constructing or repairing any county road or bridge in such precinct, and may, for the purpose of draining any such road, cause a ditch to be cut through any land adjoining the same. But such wood or other articles shall not be taken from, nor such ditch cut through any lot in a town or city, without the consent of the owner. The surveyor shall, if required, allow a fair compensation to the owner for the articles so taken, or the damages done by cutting the said ditch; but if the surveyor and owner do not agree as to the

amount, the same shall be ascertained according to the preceding section. The sum so agreed on or ascertained, shall be paid, by order of the Court, out of any money applicable thereto.

21. The surveyor may change any county road in his precinct, with the consent of the owner of the land in which such change is made, provided such change does not increase the length or grade or require more work to keep the road in repair, or place the same on worse ground than it was before such change, or render the said road in any respect worse than it was before the change. Any surveyor who shall make such change otherwise than as prescribed by this section, shall be guilty of a misdemeanor, and on conviction thereof shall be fined not less than ten dollars.

22. When the County Court of any county shall decide to levy a tax in pursuance of the provisions of this act, it shall ascertain as nearly as possible the amount of money which will be necessary in each district in their county, together with the labor required to be performed therein, to construct, put and keep in good repair, the roads and bridges in such district, and shall, by an order entered in their journal, direct the assessor of the assessment district in which such district may be, to extend on the land and property books required to be made by said assessor, a road tax on the real and personal property taxable in said district, at such rate as may be specified in such order or resolution, which levy shall be made upon the latest assessment thereof for State taxation. Such tax shall be a lien on the real and personal property on which it is imposed, in like manner and effect as county taxes, and shall be collected by and accounted for by the sheriff, in the same manner as county taxes are collected and accounted for. It shall constitute a road fund, to be expended, on the order of the County Court, in the district in which it may be collected, in the construction and repair of the roads and bridges therein. For extending the road levy on the land and property books, the County shall allow the assessor a reasonable compensation, payable out of the county treasury; and for collecting said levy the sheriff shall be entitled to the same commission as for the collection of State taxes.

23. If any person assessed with any road tax desire to pay the same, or any part thereof, in labor, he shall work on the county roads or

bridges in his district, if the same constitute but one road precinct, at such times and places as shall be appointed by the surveyor, or if there be more than one such precinct in the district, at such times and places as the County Court may direct. Provided, that in case there be more than one road precinct in the district, and there be a necessity for the expenditure of such tax in the precinct where such person resides, then such labor shall be performed in that precinct. Such labor shall be performed, in all cases, under the direction of the surveyor, and the price thereof, when performed by an able bodied man, as the law requires, shall be one dollar and twenty-five cents per day, or such other sum as may be fixed by the County Court. When any such labor is performed by, or on behalf of any person assessed with such road tax, the surveyor within whose precinct such labor is performed, shall give the person performing such labor, a certificate setting forth the number of days and fractional parts of days' labor performed by such person, together with the money value thereof, as prescribed by the foregoing rate, or at such rate as may be prescribed by the County Court. The sheriff shall receive such certificate in discharge of any road tax with which such person may be charged to the amount specified in said certificate, and the amount of such certificate shall be allowed to the sheriff in his settlement for the collection of the road tax. Any surveyor knowingly giving a certificate to any person charged with road tax for a greater amount than the labor actually performed, shall be guilty of a misdemeanor, and on conviction thereof, shall be fined not less than ten nor more than one hundred dollars.

COMPENSATION OF THE SURVEYOR OF ROADS.

24. Every surveyor of roads shall be allowed for his services such sum as may be fixed by the County Court, not exceeding two dollars for every day necessarily employed by him in performing his official duties, and his own affidavit shall be received as *prima facie* evidence thereof; and such account, when audited and allowed by the Court, shall be paid out of the county treasury; and if he is liable to work on the roads, there shall be deducted from his compensation two days' work in every year, and such other number of days as he may be required to work on roads by order of the County Court.

CERTAIN POWERS OF THE COUNTY COURT IN RELATION TO ROADS
AND BRIDGES.

25. When a bridge is necessary within a county, or across the boundary thereof, and it is not practicable for the surveyor of the road precinct to have it built or repaired with the means at his disposal, the County Court of the county may contract for the same or any part thereof, on such terms as may be agreed upon, and take bond and security from any contractor for the faithful performance of his contract, and pay for the work in whole or in part out of the county treasury, or by issuing bonds or other evidence of debt for the same, as may be agreed upon. And to this end they may appoint one or more commissioners, or a committee of their own body, to advertise for and receive proposals, and may make such other order in the premises from time to time, as shall be necessary or proper. Upon the completion of any such bridge the Court may charge and receive such reasonable tolls thereon as they may from time to time ordain or establish, subject to the right of the Legislature, or Board of Public Works, to change the same.

26. In like manner they may contract and pay for making, improving or keeping in order the whole or any part of any county roads within the county.

27. When it becomes necessary to build or repair a bridge across any stream on a line between two counties, or to construct or keep in repair any road or to connect any roads between two counties, the County Courts of such counties may enter into such arrangements therefor as to them shall seem best; but if they disagree in relation thereto, it shall be the duty of the County Court of each county to appoint commissioners to meet and arrange the matter; and if they should disagree they shall call to their aid one or more commissioners from an adjoining county to assist them in their decision; and whenever a decision is arrived at, and confirmed by the Court of each county, it shall be binding. If the County Court of any county, upon being required to do so, shall fail to appoint commissioners, or if either Court shall fail in any respect to do its part of what should be done towards the work, the remedy by *mandamus* shall lie before the Circuit Court of the county whose County Court is complained of, on behalf of the Court of the other county; and the Circuit Court

shall compel the County Court complained of to do what ought to be done in the matter.

28. When any joint stock company incorporated by this State shall have been formed to construct a road or bridge, wholly or in part within any county, the County Court of such county may subscribe for, take, hold and dispose of, stock in such company, under the regulations, and subject to the restrictions prescribed by law.

29. The County Court of a county may, upon petition, permit gates to be erected across any county road therein, or cause any gate erected across a county road to be removed; but notice of every petition for that purpose must first be posted at the front door of the court house, and at three public places in the vicinity of the gate proposed to be erected or removed, at least three weeks before the meeting at which such order is made.

30. The County Court of a county may, upon petition, direct any county road or landing therein to be discontinued; but notice of every such petition must, three weeks at least before it is acted upon, be posted at the front door of the court house, and at three public places in every district in which any part of the said road or landing may be. Upon such petition, after notice given as aforesaid, the County Court shall appoint two or more viewers, or a committee of their own body, to view such road or landing, and report in writing whether in their opinion any, and if any, what inconvenience would result from discontinuing the same. Upon such report, and other evidence, if any, the Court may discontinue the road or landing; taking care in every case of an established post road, not to discontinue the same until another has been established. But this section shall not apply to any turnpike road which has been or shall be transferred to any county by the State.

CERTAIN GENERAL PROVISIONS RESPECTING COUNTY ROADS,
BRIDGES, AND LANDINGS.

31. Every county road heretofore established and opened pursuant to law, and which has not been lawfully discontinued, or vacated, shall continue as such, subject to the provisions of this chapter, until properly discontinued; and every road worked as a public road, under the direction of a surveyor of roads, shall in all courts and places be deemed a public road. The roads, bridges and public

landings transferred by the State to the several counties in which they are situated, shall hereafter be regarded as county roads, bridges and public landings.

32. When any road is altered, the former road shall be discontinued to the extent of such alteration, and no further, and the new one established.

33. Not more than two acres of land shall be condemned for any landing. And no road or landing shall be established by the County Court of a county, upon or through any lot in an incorporated village, town or city, without the consent of the council thereof.

34. No bridge, unless it be exclusively for footmen, shall be less than twelve feet wide. Every road shall be thirty feet wide, unless the County Court order it to be of a different width. The grade of any road to be hereafter established shall not exceed five degrees, unless specially authorized by the County Court of the county.

PROCEEDINGS ON PETITION FOR THE ESTABLISHMENT OR ALTERATION OF A ROAD, BRIDGE OR LANDING.

35. When any person desires the establishment or alteration of a public road, bridge or landing, in any county, or a private road for his own convenience, he shall petition the County Court thereof for that purpose, setting forth in his petition, specifically, the nature and location of the proposed work, and the County Court shall thereupon (and they may do so without such petition, in any case in which they deem the interest of the people of the county requires it), appoint two or more viewers, or a committee of their own body, to view the ground, and report the advantages and disadvantages, which, in their opinion, will result as well to individuals as to the public from the proposed work, and the facts and the circumstances that may be useful to enable the Court to determine whether such work ought to be undertaken by the county, stating specially, in either case, whether it would be necessary to take any yard, garden, orchard, or any part thereof, or to injure or destroy any building; the probable cost of the work in case of a public road; the names of the land-owners whose property would have to be taken or injured; which of them requires compensation, and the probable amount to which each of them would be entitled. The viewers or committee may examine other routes or locations than that proposed,

and report in favor of the one they prefer, with their reasons for the preference. They may employ a surveyor, if necessary, who shall be allowed by the County Court, except in the case of a private road, a reasonable compensation, not exceeding two dollars per day, to be paid out of the county treasury. A map or diagram of the route or location shall be returned with the report. The report may be recommitted by the Court with or without special instructions, to the same or other viewers or committee.

36. Upon the report, if the Court be against the proposed establishment or alteration, the petitioner shall pay all costs and expenses of the proceedings, to be ascertained by the Clerk of the said Court, and if necessary execution may issue therefor. But unless the Court upon such report decide against undertaking the proposed work, they shall appoint a day for hearing the parties interested, and cause notice thereof to be given to the proprietors and tenants of the property which would have to be taken or injured, to show cause against the same. Such notice may be served on such of them as are found within the county, and on any agent therein of any proprietor not so found, or by posting a copy thereof on the front door of the court house, for three weeks, and by sending another copy by mail, postage paid, to the postoffice nearest his residence, if it be known, as to any party interested who is not found in the county.

37. At any time, if the Court have enough before them to enable them to ascertain what would be a just compensation to the proprietors and tenants, and such proprietors and tenants are willing to accept what the Court deems just, the said Court, upon such acceptance being reduced to writing and signed by the proprietors and tenants, may determine to undertake the work.

38. Upon hearing the parties interested, in an application for a public road, the County Court shall decide for or against undertaking the proposed work on behalf of the county. If it decide in favor of the same, and the compensation to be paid to any proprietor or tenant be not fixed by agreement, it shall award a writ of *ad quod damnum*, if desired by any proprietor or tenant, or if the Court see cause for awarding the same. Such writ shall command the sheriff to summon and impanel a jury of twelve freeholders of the vicinage, not related to either party, to meet on the lands of such propri-

etors or tenants as may be named in the order and writ, at a certain place and day therein also specified, of which notice shall be given by the sheriff to such proprietors and tenants. Such notice shall be served like the previous process, except only that it need not be given to one present at the time of making the order.

39. The jury, after being duly sworn by the sheriff, shall view the lands of the proprietors and tenants so named, and ascertain what will be a just compensation to each proprietor and tenant so named, for the land of his proposed to be taken, and for the damage to the residue of his lands beyond the peculiar benefits which will be derived in respect to such residue from the road or landing. And in the case of a road, the jury, if it be desired by any party interested, or be directed by the Court, shall also ascertain whether the road will be one of such mere private convenience as to make it proper that it should be opened and kept in order by the person or persons for whose convenience it is desired, and whether a less sum, and if so, what sum will be a just compensation to any such proprietor or tenant, in case he be permitted to erect and keep one or more gates across the road.

40. If the jury shall not be sworn on the day specified, or if they cannot agree upon their inquest, (in which case they may be discharged,) the sheriff shall execute the writ on such other day as he may from time to time appoint, notice thereof being given to the parties interested. If the inquest cannot be completed in one day, the sheriff shall adjourn the jury from day to day until its completion. When completed, it shall be signed by the jurors, and returned by the sheriff, together with the writ.

41. When the record shows that the sum allowed by the jury as compensation to any proprietor or tenant is not more than the Court, before awarding the writ of *ad quod damnum*, had consented to allow him, such proprietor or tenant shall be adjudged to pay the costs occasioned by such writ.

42. After the return thereof, the Court shall, upon the report, inquest and other evidence, if any, determine whether the road or landing shall be established or altered as proposed, whether the road is to be opened and kept in order by the person or persons for whose convenience it is desired, and whether any proprietor or tenant shall be permitted to erect one or more gates across the road, and it shall

be at the option of the Court to pay the sum awarded, or to abandon the proposed undertaking.

43. When the road or landing is established or altered, the county shall be chargeable with the compensation to the proprietor or tenant, which shall be paid with such costs as the Court may allow the applicant, and the costs of the inquest, except in the case mentioned in the next section.

44. Upon hearing the parties interested in an application for a private road, the Court shall grant such private road if it be made to appear that the same is necessary to enable the applicant to reach and enjoy his own property, and that the granting thereof will not entail irreparable injury upon the party through whose land the same will run. If the granting of any such private road shall render any additional fencing necessary, it shall only be granted upon the condition that the applicant shall, at his own expense, build and keep in good repair all such fences for such length of time as he shall use said private road. And upon the payment of the damages assessed therefor, and the completion of the fences aforesaid, if any, the applicant, his heirs and assigns, shall have the free use and enjoyment of the said private road to the same extent as if it were a public road, so long as he and they shall comply with the conditions, if any, upon which it was granted.

DUTIES OF THE OWNER OF A DAM ACROSS WHICH A ROAD PASSES.

45. The owner or occupier of every dam, shall, so far as a road passes over the same, keep such dam in good order, at least twelve feet wide at the top, and also keep in good order a bridge of like width over the pier-head, flood-gates or any waste cut through or around the dam, and shall erect and keep in good order a strong railing on both sides of such bridge or dam. If he fail to comply with this section he shall pay a fine, for every twenty-four hours' failure, of two dollars. But the fine shall not, in any one prosecution, exceed fifty dollars; and where a mill dam is carried away or destroyed, the owner or occupier thereof shall not be thenceforth subject to such fine until one month after the mill shall have been put in operation. And every owner of a dam hereafter built, which dam by the backing of the water or otherwise, or if any race or ditch connected therewith shall materially obstruct any public road, shall, whenever it

may be necessary for the safe and convenient crossing of the same, or the pond created thereby, build and keep in repair over and across the said dam, pond, race or ditch, a bridge of like kind and description as is hereinbefore specified, and for any failure to do so, every such owner or occupier shall be fined as hereinbefore provided.

HOW WHARF, PIER, OR BULKHEAD MAY BE ERECTED.

46. Any person owning land upon a water-course may erect a wharf on the same, or a pier or bulk-head in such water-course opposite his land, so that the navigation be not obstructed thereby, and so that such wharf, pier or bulk-head shall not otherwise injure the private rights of any person. But the County Court of the county in which such wharf, pier or bulk-head shall be, after causing ten days' notice to be given to the owner thereof of its intention to consider the subject, if it be satisfied that such wharf, pier or bulk-head obstructs the navigation of the water-course, or so encroaches on any public landing as to prevent the free use thereof, may abate the same.

47. Any person desiring the privilege of erecting a wharf at, or on, any public landing, may present a petition to the Court of the county for such privilege; but notice of the petition, or of his intention to present the same, must be posted at the front door of the court house, and three public places in the district in which it is proposed to erect such wharf, three weeks, at least, before the petition is acted on. The said Court, upon petition and notice, may grant such privilege, upon such conditions and limitations, and fix such rates and charges for wharfage as it sees fit. But it may, at any time afterwards, upon ten days' notice to the owner of such wharf, or his tenant, revoke such privilege, or alter such conditions or limitations, or regulate the rates of charges.

48. Nothing contained in either of the last two sections, shall be construed to authorize the erection of any wharf, pier or bulk-head within the limits of an incorporated town, village or city, without the consent of the council thereof.

EXCEPTIONS AS TO ROADS IN TOWNS.

49. Nothing contained in this act shall be construed to take from the jurisdiction, charge or control of the council, trustees, or other authority of any town, village or city, so much of any road, bridge,

landing or wharf, as by the laws now in force is under such jurisdiction, charge or control exclusively.

RIGHT OF WAY, ETC., TO TIMBER AND MINERAL LANDS.

50. Any person owning land having timber upon it, or containing coal, ore or other minerals, who desires to obtain a subterranean or surface right of way, by railroad or otherwise, under, through, or over land belonging to another, or over any railroad, canal, or State or county road, for the purpose of mining for such minerals, or conveying such timber or minerals to market, or for the purpose of draining any coal or mineral lands, under, through, or over lands belonging to another, or who desires to obtain land on or near a railroad, navigable stream, or public road, for a place of deposit, sale and shipment of such timber or minerals, may make application therefor in the manner prescribed by law, and the proceedings thereon had shall be according to law.

51. The report of the commissioners appointed pursuant to law to ascertain the just compensation to be paid for the property to be taken or injured for the purpose mentioned in the preceding section, shall not be confirmed and ordered to be recorded by the Court, unless from such report and the evidence in the case, the Court is of the opinion that the purpose for which the property is to be taken is of public utility, nor then, if it appear that the mansion house of any person, or the yard, garden or orchard, pertaining thereto, or any mill, warehouse, factory, store or shop, railroad, canal, State or county road, will be materially injured; and upon payment of the compensation so ascertained, within the time and manner prescribed by law for taking private property for public use, a right of way only shall be vested in the applicant, not to exceed fifty feet wide in any case, except as to the land condemned for such place of deposit, sale, and shipment (which shall in no case exceed one acre) as to which the title shall be absolutely vested in the applicant, upon such payment. When the right is so vested in the applicant as to cross any railroad, canal, State or county road, he shall, at his own expense, make and arrange the said crossing, so as not to interrupt, or in anywise interfere with the free use of such railroad, canal, State, county or other road.

OFFENCES RELATING TO ROADS, BRIDGES, ETC.

52. In the following sections of this chapter, unless a different

construction is required by the context, the word "road" includes any State or county road, turnpike, or road owned by a company or person, and the Cumberland road; and the word "bridge," any State or county bridge owned by a company or person.

53. Any person who shall kill a tree and leave it standing within the distance of fifty feet from a road; or without lawful authority shall knowingly and wilfully break down, destroy, injure or obstruct any bridge or any bench or log placed across a stream for the accommodation of travelers; or destroy, injure, deface or alter any guide-board, mile-stone, or mile-post; or obstruct or injure any road, or any ditch made for the purpose of draining a road, shall be guilty of a misdemeanor, and on conviction thereof, shall be fined not less than ten nor more than fifty dollars.

54. Any person who shall drive or ride on or over a bridge faster than a walk, shall be fined five dollars. The County Court of any county may prescribe by an order what number of stock of any kind may be driven over any bridge within their county at any one time, but in every such case, they shall cause a printed copy of such order to be kept posted in a conspicuous place at every bridge to which the same is applicable. Every person violating any such order posted as aforesaid, or who shall tear down, alter or deface the same, except when ordered by such Court to do so, shall be guilty of a misdemeanor, and on conviction thereof, shall be fined not less than ten nor more than fifty dollars.

55. The fines incurred under the last two sections, shall in the case of a county road, bridge, or work, be to the County Court of the county, and be paid and applied as provided in the fifty-eighth section; in the case of a road, turnpike or bridge owned by a company or person, shall be to such company or person; and in the case of the Cumberland road or any State work, shall be to the State.

56. Any driver of a vehicle meeting any other vehicle, on a road or bridge, shall seasonably drive to the right, if the width thereof will permit, so that they may pass each other without interference, and when a vehicle is overtaken by another vehicle, the driver of which desires to pass the other, the driver of the former, upon being informed of such desire, shall bear to the right, and the driver of the latter to the left, until the latter shall have passed. Any driver failing to do so shall forfeit two dollars.

57. If any horse race be run on any public road or bridge, the rider of any horse in such race, the owner of any such horse, if he consent to such race, and every person who shall bet on such race, shall be fined not less than ten dollars.

58. No fine imposed by this chapter shall bar any action for damages or breach of contract. Except where it is otherwise specially

provided, all fines imposed shall be to the County Court of the county, and be paid to the sheriff of the county, to be applied to the construction, improvement and repair of county roads, bridges and landings in the district in which the offence was committed.

59. Every railroad company heretofore or hereafter incorporated, which has, by the building of their road or otherwise, obstructed, or shall hereafter obstruct, any public road, shall, as far as possible, put the road so obstructed in as good condition, at every crossing of said railroad, as it was before the obstruction.

60. Any person who sustains an injury to his property or person, by reason of a public road or bridge being out of repair, may recover all damages sustained by him, by reason of such injury, in an action on the case brought in any Court of competent jurisdiction against the county in which said road or bridge is. The summons in such case, shall issue against the county by name, and may be served on the President of the County Court or the Clerk thereof. If judgment be for the plaintiff in any such suit, the County Court shall, at the next annual fiscal term of said Court, levy upon the taxable property of the district in which such injury may have been sustained, a sufficient amount to pay such judgment. The amount so levied, shall be collected by the sheriff as other district taxes are collected, and it shall be the duty of such sheriff to pay such judgment, from the proceeds of such levy, as soon as he receives a sufficient amount for that purpose: *Provided*, That, if such road or bridge be in any incorporated city, town or village, and under the jurisdiction of the corporate authorities thereof, then such recovery may be had against such corporation; and it shall be the duty of the proper authorities of such corporation, to levy and collect a sufficient tax to pay the judgment in such case, and to pay the same as soon as such tax is collected.

61. Any person who may be injured as aforesaid, by reason of a turnpike, road or bridge, belonging to any company or person, or to any county in its corporate capacity, being out of repair, may recover all damages sustained by him, by reason of such injury, in the manner prescribed in the preceding section, against any such company, person or county, or against the lessee, for the time being, of any such road or bridge. Any judgment against a city, town, village or county, under this or the preceding section, may be enforced by the Circuit Court, by writ of *mandamus*.

62. The words "County Court," wherever it may occur in this chapter, shall be held to include the Board of Commissioners or other tribunal established, or that may hereafter be established, in any county, in lieu of a County Court, so far as the words "County Court" relate to the management of the police and fiscal affairs of the county.

63. This act shall be in force from its passage.

