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The FARMERS' HANDBOOK

CONTAINING LAWS OF OHIO
RELATING TO AGRICULTURE

By the Secretary of Agriculture

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Ohio Laws

THE FARMERS' HANDBOOK

CONTAINING LAWS OF OHIO

Relating to Agriculture

AND OF USE AND INTEREST TO ALL COUNTRY
RESIDENTS. COMPILED FROM THE
LATEST EDITION OF THE

REVISED STATUTES OF OHIO

BY THE
SECRETARY OF AGRICULTURE.

COLUMBUS, OHIO:
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1901.

THE FARMERS' HANDBOOK OF THE LAWS OF OHIO

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THE FARMERS' HANDBOOK OF THE LAWS OF OHIO.

In compiling the laws contained in this pamphlet it has been the endeavor to include all that have any especial bearing on agriculture and agricultural pursuits and such as generally affect a resident of the country. The many requests received at the Department of Agriculture for laws relating to the different subjects herein contained have demonstrated the need of such a work and great care has been taken in its preparation. The laws have been copied from the latest edition of the Revised Statutes of Ohio, have been carefully compared so as to eliminate all errors, and will, I trust, be found correct in every particular. A complete index has been added to enable one to find readily any matter desired. It is hoped that the book will be found complete, and that it will be of great assistance to the farmers of Ohio.

COLUMBUS, OHIO, May 28, 1901.

WELLS W. MILLER, *Secretary.*

LAWS OF OHIO RELATING TO AGRICULTURE

COMMISSIONERS OF FISH AND GAME.

SEC. 405. [Appointment; terms; removals.] The governor, by and with the advice and consent of the senate, shall appoint five commissioners of fish and game, of whom not more than three shall belong to any one political party, one commissioner to serve for one year, one for two years, one for three years, one for four years, and one for five years, and at the expiration of the term of office of each member of the commission his successor shall be appointed for five years, who shall severally hold their office for five years, any one of whom may be removed by the governor at his pleasure.

SEC. 406. [Bond and oath.] Each of the commissioners shall, before entering upon the discharge of his duties, give a bond to the state, with surety to the satisfaction of the governor, in the sum of two thousand dollars, conditioned for the faithful performance of the duties of his office, which bond, with the approval of the governor and the oath of office indorsed thereon, shall be deposited with the secretary of state.

SEC. 407. [No compensation, but all expenses to be paid them.] The commissioners shall serve without compensation, but they shall be entitled to be paid all their expenses while engaged in the discharge of their duties, which expenses shall be paid to them on their own certificates, severally.

SEC. 408. [Duties.] The commissioners shall examine the various rivers, lakes, ponds and streams in the state or bordering thereon, and ascertain whether they can be rendered more productive of fish and game, and what measures are required to effect this object, either in restoring the production of fish and game in and about them, or in protecting and propagating the fish which at present frequent and abound in them or otherwise; and the commissioners shall carry into effect all such measures, in this behalf, that they deem necessary, so far as means are placed at their disposal for these purposes; and they shall also inquire into the matter of artificial propagation of fish in the waters of the state, and adopt such plans to test the efficiency of this mode of increasing the quality of edible fish as they think best.

SEC. 409. [Appointment of chief warden; special wardens for certain lakes; deputy state wardens and special deputy state wardens; term of office.] The commissioners shall, at their annual meeting in January, or at such time as they deem proper, appoint a chief warden who shall hold his office for one year, unless sooner removed by the commissioners. They may also appoint special wardens for Lake Erie, Buckeye Lake and Indian Lake, and for Mercer County reservoir of the state. They shall also appoint such number of deputy wardens as in their judgment are necessary to properly police the state. They may also appoint special deputy state wardens, when in their judgment they deem it necessary, who shall hold their offices for such time as the commissioners may direct, and who shall possess the same powers and perform the same duties as deputy state wardens, and they shall receive

such compensation for their services as the commissioners deem proper. The special wardens and deputy state wardens shall hold their offices for two years unless sooner removed by the commissioners.

[~~Oath and bond.~~] The chief warden, special wardens and deputy state wardens shall, before entering upon the discharge of their duties, ~~each give a bond to the state of Ohio (the chief warden in the sum of two thousand dollars, and the special wardens and deputy state wardens in the sum of two hundred dollars)~~ conditioned for the faithful discharge of their respective duties, which bonds shall be approved by and be deposited with the commissioners.

[Salaries and fees.] The commissioners may allow the chief warden a salary not to exceed twelve hundred dollars per annum, and, in addition, his expenses (not exceeding six hundred dollars) incurred in the discharge of his duties. The commissioners may allow the special lake and reservoir wardens each a salary not to exceed three hundred dollars per annum. The salary and expenses of the chief warden, and the salaries of the special lake deputy state wardens, and reservoir wardens shall be paid out of the fund appropriated for the use of the commissioners. In addition to any other compensation, each warden shall be entitled to any fees which he may earn, which fees shall be the same as are paid sheriffs for similar services in criminal cases. The commissioners may also direct that any fines collected under prosecutions begun by any warden, shall be paid to such warden by the officer before whom the prosecution is had, or by whom the fine is collected; and, in addition thereto, may pay them such further compensation, out of any moneys received from gun licenses, as may be reasonable.

[Division of state into county police districts.] For the purpose of effectively enforcing the laws for the protection of birds, fish and game, the commissioners shall divide the state into county police districts and assign to each such district at least one deputy state warden, who shall be a resident of the county, but who shall have power to act in any part of the state.

SEC. 409a. [Duty and powers of said wardens.] It shall be the duty of the chief warden, special wardens, deputy state wardens and special deputy state wardens to enforce, within this state, all laws relating to the protection, preservation and propagation of birds, fish and game. The chief warden shall, under the direction of the commissioners, visit all parts of the state and direct and assist the special wardens, deputy state warden [and special deputy wardens] in the discharge of their duties. Each warden shall have full power to execute and serve all warrants and process of law issued for, in connection with, or growing out of the enforcement of any law relating to the protection, preservation or propagation of birds, fish and game, in the same manner and to a like extent, that any sheriff or constable may serve and execute such process; they may arrest on sight and without a warrant, any person detected by them in the act of violating any such laws; they shall have the same right as sheriffs to require aid in executing any process, or in arresting without process any person found by them in the act of violating any of said laws; and they shall have authority to seize without process, any birds, fish or game then found in the possession of any such person, which is so in possession contrary to law, together with the guns, nets, seines, traps or other devices with which the same were taken or killed, and forthwith convey such offender before a court or magis-

trate having jurisdiction of the offense, who shall, upon the filing by the warden of a proper complaint, proceed speedily to try and determine the truth of the charge. Such arrest may be made on Sunday, in which case the offender shall be taken before such court or magistrate, who may require bond for his appearance at the time fixed for the hearing of the complaint, which complaint shall be heard as soon as practicable on a week day following the arrest. In case the offender fails to give bond for his appearance (if any bond be required), the court may order him committed to the jail of the county, or to some other suitable place until the time set for the hearing of the complaint. It shall be the duty of all sheriffs, deputy sheriffs, constables and other police officers, to enforce all laws relating to the protection and propagation of birds, fish and game, and in their enforcement they shall have the same powers as are conferred upon the wardens, and they shall be entitled to like fees for similar services. Prosecutions by the wardens, or other police officers, for offenses not committed in their presence, shall be instituted only upon the approval of the prosecuting attorney of the county in which the offense is committed, or under the direction of the attorney general; and for his services the prosecuting attorney shall receive twenty per cent. of all fines assessed and collected upon prosecutions conducted by him.

SEC. 409b. [Seizure of instruments used for unlawful catching of birds, fish or game.] Any gun, net, seine, trap or other device whatever used in the unlawful taking, catching or killing of birds, fish or game, is hereby declared to be a public nuisance and shall, upon lawful seizure by any warden or police officer, be deemed forfeited to the state; and it shall be the duty of every warden or other police officer, to seize any such property and institute proceedings for its forfeiture, as provided in section 409c, Revised Statutes. When any such gun, net, seine, trap or other device is seized and condemned, as provided in the next succeeding section hereof, the costs of such proceeding shall be adjudged against the owner or the user thereof at the time of the seizure, if known, which judgment shall be the first lien upon his property, and against which lien no exemption can be claimed. When a seizure of any such property has been made no writ of replevin shall lie to take it from the custody of the officer seizing it, or from the custody or jurisdiction of the court before whom such proceeding [is pending], but such property shall be held by such officer or court to await the final determination of such proceeding; and such proceeding shall in no wise affect or bar a criminal prosecution of the person so using such property in violation of law. No warden or other police officer shall be liable in damages to any person for or on account of any arrest, or for or on account of any search or examination of any package, parcel, box or other receptacle, or room, building, boat or other place, or for the seizure of any gun, net, seine, trap or other device, or birds, fish or game, when such arrest, search, examination or seizure is made in the discharge of his duties in accordance with the provisions of this act.

SEC. 409c. [Proceedings for condemnation and forfeiture of said instruments.] When any gun, net, seine, trap or other device is seized as provided in section 409b hereof, it shall be the duty of the warden or other officer seizing it, to safely keep such property in his possession, or under his control, and to institute, within three days, in the proper court of the county wherein such property is seized, proceedings for its condemnation and forfeiture. Such proceedings shall

be instituted by the filing of an affidavit, describing the property seized, setting out the unlawful use to which it was found put, giving the time and place of seizure, and setting out, if known, the name of the person owning, or using the same, at the time of seizure, and if such person be unknown, such fact shall be stated. The court before whom such affidavit is filed shall thereupon issue a summons setting out the facts alleged in the affidavit, and stating the time and place when the cause will be for hearing, a copy of which summons shall be served upon the owner, or person using the property at the time of its seizure (if he be known) personally, or by leaving a copy thereof at his usual place of residence, or business, if in the county, at least three days before the hearing of the complaint. If such owner or user be unknown, or if he be a non-resident of the county, or cannot be found therein, a copy of the summons shall be posted up at a suitable place nearest the place of seizure, and copy mailed him (if his address be known) at least three days before the time set for the hearing of the complaint. The officer making such service shall make a return on the day set for the hearing, of the time and manner of making such service. The court may postpone the hearing upon a proper showing by either party, for such reasonable time as may be necessary. Upon the hearing, proceedings shall be had as provided in section 409d of this act. If the court or jury shall find, by a preponderance of the evidence, that the property at the time of its seizure, was being used in violation of law, the court shall adjudge the property forfeited, and shall render judgment against the owner or user thereof, for the costs, and shall order the property turned over to the commissioners of fish and game, to be by them sold at such time and place as they shall deem best, and the proceeds thereof covered into the state treasury as provided by law. But if the court or jury shall find that the property, at the time of its seizure, was not being used in violation of law, the court shall order the property released. A writ of error may be prosecuted by the officer or person filing the complaint, or by the owner or user of the property seized, to review the judgment and order of the court in forfeiting the property, or in ordering its release, to the court of common pleas, circuit court, and supreme court, in the same manner as writs of error are prosecuted in other civil causes. But if the owner or person so unlawfully using the property at the time of seizure shall be arrested, and shall plead guilty, and shall confess that the property seized was, at the time of its seizure, being used by him in violation of law, in such case it shall not be necessary to institute a proceeding to forfeit the same, but the court before whom the offender has pleaded guilty, shall, in imposing sentence, further order and adjudge that the property so seized be forfeited to the state.

SEC. 409d. [Final jurisdiction.] Any justice of the peace, mayor, or police judge, within his county, shall have final jurisdiction of all criminal prosecutions brought under this act; and shall have jurisdiction of any and all proceedings to condemn and forfeit property, used in violation of any law relating to the protection, preservation or propagation of birds, fish, or game.

[Jury trial, etc.] If such prosecution, or condemnation proceedings be before a justice of the peace, and a trial by jury be demanded the said justice shall issue his venire to any warden or constable of the county, containing the names of sixteen electors of the county to serve as jurors to try such cause or condemn such property, and make due return thereof. Each party shall be entitled to two peremptory chal-

lenges, and shall be subject to the same challenges as jurors are subject to in criminal cases in the court of common pleas. If the venire of sixteen names be exhausted without obtaining the required number to fill the panel the justice may direct the constable, or the warden to summon any of the bystanders to act as jurors, or direct him to bring in other persons to act as jurors; and in criminal prosecutions like proceedings shall be had as in criminal cases in the court of common pleas, and in condemnation proceedings, like proceedings shall be had as in civil cases in the court of common pleas. If the prosecution, or proceedings be before a mayor, or police judge, and a trial by jury be demanded, the jury shall be chosen in the manner now provided for the impanelling of juries in other criminal cases. In all prosecutions and condemnation proceedings under the provisions of this act, no cost shall be required to be advanced, secured or paid by, or bond or undertaking required of, any person authorized under the law to prosecute such cases; and if the defendant be acquitted, or if convicted and committed in default of payment of fine and costs, or if the property seized be released, the costs in such cases shall be certified under oath to the county auditor, who, after correcting the same, if found incorrect, shall issue his warrant on the county treasurer in favor of the person or persons to whom such costs and fees are due, and for the amount due each person.

SEC. 409c. [Prima facie evidence of guilt.] The finding of any gun, net, seine, trap, or other device set, maintained, or in use, in violation of any law relating to the protection or propagation of birds, fish, or game, shall be prima facie evidence of the guilt of the person owning, using or making claim to the same; and the finding of any birds, fish, or game, unlawfully in the possession of any person, shall be prima facie evidence of the guilt of such person.

[Meaning of certain words.] Wherever the word "person" is used in any law relating to the protection of birds, fish, or game, it shall be held to include "company," "partnership," "association," "corporation," or any "officer," "agent" or "employee" thereof; and wherever the word "warden" is used, it shall be held to include "chief warden," "special warden," "deputy state warden," "special deputy state warden," or any other police officer charged with the duty of enforcing such laws. In every case of conviction, the cost of prosecution, and of condemnation shall, in addition to the fine imposed, of forfeiture declared, be adjudged against the person convicted, or the owner or user of the property condemned. The word "costs" shall be held to include the fees of jurors, which shall be one dollar per day for each juror. Whenever, upon conviction, the person convicted fails to pay the fine and costs imposed upon him, he shall be committed to the jail of the county or to some workhouse and shall there be kept confined one day for each one dollar fine and costs adjudged against him, and he shall not be discharged or released therefrom by any board or officer, except upon payment of the portion of the fines and costs remaining unserved, or upon the order of the commissioners of fish and game.

[Disposition of fines, etc.] All fines, penalties, and forfeitures arising from prosecutions, convictions, confiscations, or otherwise (unless [otherwise] directed by the commissioners of fish and game) shall be paid by the officer before whom the prosecution is had or by whom the fine is collected, to the chief warden, and by him paid into the state treasury to the credit of a fund which is hereby appropriated for the use of the commissioners.

AGRICULTURAL EXPERIMENT STATION.

(409-1) [**Agricultural experiment station.**] For the benefit of the interests of practical and scientific agriculture, and for the development of the vast agricultural resources of the state, an Ohio agricultural experiment station is established as hereinafter provided.

(409-2) [**Agricultural experiment station appointed; board of control; governor ex-officio member of the board.**] The location, control and general management of the experiment station shall be submitted to a board of control, which shall consist of five members, three of whom shall be appointed by the governor, and their term of office shall be three years and until their successors are duly appointed and qualified, except that those first appointed under this amended law shall hold their office as follows: One for one year, one for two years, and one for three years from date of appointment. The governor of the state and the person appointed as hereinafter provided to be director of the station, shall be ex-officio members of the board of control, and together with the three members appointed by the governor shall constitute the full board of control.

(409-3) [**When board to be called together, and how to be organized.**] The board of control shall be called together by the governor at as early a date as practicable, and shall organize by the election of a president, secretary and treasurer, who shall hold their offices until their successors are elected. Three members shall constitute a quorum.

(409-4) [**Annual meeting of the board.**] The board of control shall hold an annual meeting at the date of the annual meeting of the state board of agriculture in January, and other meetings at the call of the president, at such times and places as shall best promote the objects of the station.

(409-5) [**Board of control required to locate station, appoint director, and make rules for government; board of control to make annual report to governor.**] The board of control shall locate said station, and shall appoint a competent director, who shall have the general management and oversight of the experiments and investigations necessary to carry out the objects of the station. The said board shall also make such rules, by-laws and regulations for the government of the station and its work, and for carrying out the business and purposes of the station, as shall be necessary and proper in their judgment. It shall also make an annual report of its experiments and work to the governor of the state, and the same shall be published annually in the Ohio agricultural report, and five thousand copies separate in pamphlet form for free distribution, and the pamphlet copies to be printed and paid for the same as other public printing.

(409-6) [**Salary of the director and expenses of members of board of control.**] The director's salary shall be fixed by the board of control in proportion to the amount of service required and performed, and shall be paid out of the funds appropriated by congress, in such installments as may be determined by them. The members of the board of control shall be paid their actual expenses while on duty, but no compensation shall be allowed them for time or services.

FOOD AND DAIRY COMMISSIONER.

(409-7) [**Ohio dairy and food commissioner; salary and expenses.**] That there is hereby created the office of dairy and food commissioner of the state of Ohio. Said commissioner shall be elected at the general election held on the first Tuesday after the first Monday in November, A. D. one thousand eight hundred and ninety-six. He shall take his office on the first Tuesday following the fifteenth day of February next after his election, and shall serve for two years, and until his successor is elected and qualified. He shall be charged with the enforcement of all laws against fraud and adulteration or impurities in foods, drinks or drugs, and unlawful labeling in the state of Ohio. His salary shall be two thousand dollars (\$2,000) per year, and his necessary and reasonable expense incurred in the discharge of his official duties, to be paid in monthly installments at the end of each calendar month.

(409-8) [**General duties of himself and his assistants.**] It shall be the duty of said commissioner or assistant commissioner, to inspect any articles of butter, cheese, lard, syrup, or other article of food or drinks, made or offered for sale in the state of Ohio, as an article of food or drink, and to prosecute or cause to be prosecuted, any person or persons, firm or firms, corporation or corporations, engaged in the manufacture or sale of any adulterated article or articles of food or drink, or adulterated in violation of, or contrary to any laws of the state of Ohio.

(409-9) [**Powers; prosecutions.**] The said commissioner, or any assistant commissioner, shall have power in the performance of their duty, to enter into any creamery, factory, store, salesroom, drug store or laboratory, or place where they have reason to believe food or drink are made, prepared, sold or offered for sale, and to examine their books, and to open any cask, tub, jar, bottle or package, containing or supposed to contain any article of food or drink, and examine or cause to be examined and analyzed the contents thereof, and it shall be the duty of any prosecuting attorney in any county of the state, when called upon by said commissioner or assistant commissioner, to render him any legal assistance in his power, to execute the laws, and to assist in the prosecution of cases arising under provisions of this act.

(409-10) [**Assistant commissioners, experts, etc.; expenses; office, report, etc.**] Said commissioner may appoint not to exceed two assistant commissioners, whose salaries shall be one thousand dollars per year, and necessary traveling expenses incurred in the discharge of their official duties, to be paid in like manner with the commissioner's and on itemized vouchers approved by said commissioner; the said commissioner shall have power to employ such experts, chemists, agents, inspectors and counsel as may by him be deemed necessary for the proper enforcement of the laws, their compensation to be fixed by the commissioner. All charges, accounts and expenses authorized by this act shall be paid out of the state treasury upon vouchers certified by the commissioner, and upon warrant by the state auditor. The entire expense of said commissioner shall not exceed in one year the amount specifically appropriated for such purposes. All vacancies in the office of the food and dairy commissioner shall be filled by appointment of the governor until the next general election, then the same shall be filled as in the original election. All fines, fees and costs assessed and

collected under prosecutions begun, or caused to be begun, by the commissioner, and all fines, fees and costs heretofore assessed and collected under prosecution begun or caused to be begun by the commissioners, shall be paid by the court to the commissioner, and by him paid into the state treasury and be credited to the general revenue fund of the state. The center room on the north side of the southwest corridor in the capitol building, now occupied by the dairy and food commissioner, is set apart for his use, wherein shall be kept his books, records, and other property of the office. He shall keep a seal with which to attest official acts and documents, and shall be entitled to stationery and supplies from the secretary of state as are other state officers. The commissioner shall make an annual report to the governor on or before the fifteenth day of November of each year, containing itemized statements of all receipts and disbursements, attorney fees in each specified suit brought in this department and all persons employed by him, together with such statistics and other matter as he may regard of value; said reports to be published as are the other reports of the other state officers.

(409-13) [**Dairy and food commissioner to give bond.**] The Ohio dairy and food commissioner before entering upon the discharge of his official duties, shall give bond in the sum of five thousand dollars to the state, with two or more sureties to the acceptance of the governor, conditioned that he will truly account for and apply all moneys or other property which may come into his hands in his official capacity, and for the faithful performance of the duties of his office as the same are prescribed by law; which bond with his oath of office indorsed thereon, shall be filed with the secretary of state.

(409-14) [**Commissioner's clerk.**] The dairy and food commissioner of Ohio be and is hereby authorized to employ a clerk for his office, whose compensation shall not exceed twelve hundred dollars per annum, the same to be paid out of fines collected by such commissioner.

FORESTRY BUREAU.

(409-15) [**State forestry bureau; appointment and terms of members.**] There be and hereby is established at the state university, at Columbus, Ohio, a central office for the promotion of forestry, to be entitled the state forestry bureau, which shall consist of three members, to be appointed by the governor, as a board of directors. The members of the board of directors shall be commissioned by the governor, and be duly qualified as like officers of the state; one of three directors shall serve for six years, the second for four years and the third for two years, and on the expiration of terms of service, appointments shall be made for the term of six years.

(409-16) [**Duties of the bureau; forestry station; appointment of secretary; expenses of bureau; compensation.**] It shall be the duty of said state forestry bureau to thoroughly inquire into the character and extent of the forests of the state; to investigate the causes which are in operation to produce their waste or decay; to suggest what legislation, if any, may be necessary for the development of a rational system of forestry, adapted to the wants and conditions of this State, and with the consent of the trustees of the Ohio state university, the said directors may establish a forestry station on the grounds of said

university. The directors shall select one of their number, or appoint a qualified person as secretary, to carry out the plans of the board, who shall receive such compensation for his services as shall be agreed upon by the board; provided, that all expenses incurred under this act shall not exceed the amount hereinafter provided. Said directors shall serve without compensation, but shall be allowed their necessary expenses incurred in discharge of the duties of their office.

(409-17) [**Their annual report.**] This bureau shall annually make a report to the governor, which shall contain the results of the investigation, together with such other information as the board may deem necessary for the promotion of forestry in this state. Five thousand (5,000) copies of this report are to be printed by the state, two thousand (2,000) of which shall be distributed by this bureau of forestry, and the remainder by the general assembly.

(409-18) [**Appropriation for their expenses.**] There is hereby appropriated for the ensuing year, for the maintenance of said bureau, the sum of one thousand dollars, or so much thereof as may be necessary, for the purpose of meeting the actual expenses of carrying out the provisions of this act.

(409-19) [**Expenditures.**] No money shall be expended except on order of the president direct, or by and with the approval of the board.

CROP AND STOCK SERVICE.

(409-35) [SEC. 2. [**Crop and stock service.**] There shall be and is hereby established in the state of Ohio, to be under the supervision of the secretary of agriculture, a crop and stock service, for the purpose of collecting crop and stock statistics, and disseminating them over the state; said secretary of agriculture shall appoint volunteer crop correspondents, receive reports from them, tabulate the same for permanent record, and shall issue monthly crop and stock reports; and it shall be the duty of the state printer to print the same promptly and without delay as preferred matter for distribution from the department of agriculture.

BRIDGES.

SEC. 860. [**Commissioners shall construct and repair bridges, except, etc.; demand of portion of bridge tax in Hamilton Co.**] The commissioners shall construct and keep in repair all necessary bridges over streams and public canals on all state and county roads, free turnpikes, improved roads, abandoned turnpikes and plank roads in common public use, except only such bridges as are wholly in such cities and villages having by law the right to demand, and do demand and receive part of the bridge fund levied upon property within the same; and when they do not demand and receive said portion of bridge tax the commissioners shall construct and keep in repair all bridges in such cities and villages. Provided, that in all cases, except counties containing a city of the first grade of the first class, the granting of the demand, made by any city or village for its portion of the bridge tax, shall be optional with the said board of commissioners.

SEC. 861. [The approaches to such bridges shall be made by the commissioners, except, etc.] The commissioners shall also construct and keep in repair, approaches or ways to all bridges named in the preceding section, except as therein excepted, and also, except that when the cost of the construction or repair of the approaches or way to any such bridge does not exceed fifty dollars, such construction or repair shall be done by the township trustees.

SEC. 862. [Commissioners of two or more counties may build bridges near county line, and keep them in repair jointly.] When it becomes necessary for the public convenience, to bridge any stream of water which is on or near the lines of two or more counties, which counties are traversed by, or lie on or near the road or roads on which such bridge is needed, the commissioners of such counties interested, may build, or authorize the building of, such bridge, jointly, to be paid for, with the approaches thereto, in proportion as the commissioners agree; and the expense of keeping such bridge in repair, shall be paid by the counties interested, in the same proportion as the expense of building such bridge was paid by said counties.

SEC. 863. [Commissioners shall bring suits in certain cases for injuries to bridges, roads, and buildings.] Where a bridge or [on] any state or county road, or any public building, the property of or under the control or supervision of any county, is injured or destroyed, or when any state or county road or public highway has been injured or impaired by placing or continuing therein, without lawful authority, any obstruction, or by the changing of the line, filling up or digging out of the bed thereof, or in any manner rendering the same less convenient or useful than it had been previously, by any person or corporation, such person or corporation shall be subject to an action for damages; and the board of commissioners of the proper county is authorized to sue for and recover of such person or corporation so causing or having caused such injury or impairment, such damages as have accrued by reason thereof, or such as are necessary to remove the obstruction or repair the injury; but in case the county commissioners shall neglect, fail or refuse to bring such action for ten days after being petitioned to do so by at least ten owners of property adjoining such county road or living within one mile of such bridge or public building, then any one or more of such owners of property shall have the right and are hereby authorized to bring suit in the name of the prosecuting attorney of the county in which such property is situated, and recover of such person or corporation so causing or having caused such injury or impairment, such damages as have accrued by reason thereof, or such as are necessary to remove the obstruction or repair the injury; and the money so recovered shall, when so collected by the proper officer, be paid into the treasury of the proper county and shall be appropriated by the commissioners thereof in repairing such bridge, building or road, or removing such obstruction, as the case may be, or to reimburse the county for expenditures in that behalf; the court may, in case of a recovery, make such order as is deemed necessary to repair the injury or remove the obstruction complained of; and the statute of limitations shall not run in favor of any person or corporation committing any acts, injuries or obstructions concerning any such road or public highway.

SEC. 864. [A bridge to replace one destroyed may be located elsewhere.] In rebuilding a bridge destroyed or injured by flood or fire, the commissioners may select a new site for the bridge; but before

the change is made, or any contract for that purpose entered into, the commissioners shall give at least twenty days' notice of the time when the question of change will be considered, and on the hearing, all persons interested may present their views and wishes to the board, either by petition, remonstrance, or orally.

SEC. 865. [Authority for straightening creeks or watercourses.] The commissioners may cause any creek or water-course to be straightened or cleaned out for the protection of any bridge or road within their control.

SEC. 866. [Petition shall be first filed therefor, and what it shall contain.] Before the commissioners proceed to straighten or clean out any creek or water-course, there must be filed with the county auditor of such county a petition, signed by one or more tax-payers of the county, setting forth the benefits to be derived from straightening or cleaning out said creek or water-course, the starting point and terminus, with a description of said creek or water-course, and an estimate of costs to be incurred to complete the work, and the auditor shall, at the next regular or called meeting of the commissioners, notify them of the filing of the petition.

SEC. 867. [Viewer shall be appointed, who shall report.] The commissioners upon receiving said petition shall forthwith appoint a competent engineer, resident of the county, who shall go upon the line of said creek or water-course, and examine the same carefully, and make his report to the county auditor in writing, stating whether he deems the straightening or cleaning out of said creek or water-course, will be beneficial for the protection of any bridge, state, or county road, or other road in control of the commissioners, and if so an estimate of the amount of money required to perform the same.

SEC. 868. [If report favorable, work shall be advertised and let to the lowest bidder, who shall give bond.] At the first regular session after receiving the report, if it recommends the straightening or cleaning out of such creek or water-course, and the commissioners deem the same advisable, they shall advertise the letting of the work at least twenty days, and let the same to the lowest responsible bidder, taking from him a bond in a sum fixed by them, payable to the state, with good sureties, for the performance of the work in a proper manner, and within a time therein named; but no bid shall be accepted that exceeds the estimated cost in such report; and the commissioners may reject all bids.

SEC. 869. [Costs and expenses shall be paid out of bridge fund.] All costs of letting the work, and the expense of the work, and other expenses in this behalf, shall be paid out of the bridge fund of the county, when the work is accepted and approved by the commissioners, and they direct the payment.

STATISTICS.

SEC. 1522. [Statistics to be gathered and returned by assessors.] The assessor shall, annually, at the time of taking the lists of personal property for taxation, require and take for each person, company and corporation in his township or precinct the statements following, verified by oath, for the preceding year:

AGRICULTURE.

The number of sheep killed by dogs and their value, and the number of sheep injured by dogs, and an estimate of the amount of damages by such injury; the number of acres put in wheat, rye, barley, corn, oats, and buckwheat, and the number of bushels of each produced; the number of acres in timothy and other grass, except clover, and the number of tons of grass and bushels of seed produced therefrom; the number of acres in clover, the number of tons of hay made therefrom, the number of bushels of seed obtained therefrom, and the number of acres of clover plowed under for manure; the number of acres planted in tobacco, and the number of pounds obtained therefrom; the number of acres put in flax, and the number of pounds of fiber gathered, and the number of bushels of seed obtained; the number of acres planted in sorgo, and the number of gallons of syrup and pounds of sugar manufactured; the number of pounds of maple sugar, and the number of gallons of maple syrup manufactured; the number of pounds, each, of butter and cheese manufactured; the number of acres planted in potatoes, and the number of bushels produced; the number of acres planted in sweet potatoes, and the number of bushels produced; the number of acres in vineyard, the number of acres planted within the year, and the number of pounds of grapes gathered, and the number of gallons of wine produced; the number of pounds of wool shorn; the number of acres in orchard, and the number of bushels of apples, peaches, cherries, plums, and pears produced; the number of acres used for pasturage, and the number of acres not cultivated or pastured; the number of hives of bees, and the number of pounds of honey produced; the number of dozens of eggs shipped to places beyond the state; also the number of acres sowed, planted or to be sowed or planted in wheat, rye, barley, oats, corn, and potatoes, for the harvest of the then present year.

SEC. 1523. [Return of statistics; agricultural statistics.] The assessor shall make return of all the preceding statistics to the county auditor, at the same time he returns the lists of personal property for taxation; and the county auditor shall make return to the auditor of state on or before the first day of August, annually, of all statistics returned to his office, except those statistics under the head of "agriculture" (Sec. 1522, R. S.), which he shall return to the secretary of the state board of agriculture, on or before the tenth day of July, annually, and said secretary of agriculture shall compile and publish the same in the monthly crop and stock bulletins and annual report issued by the state department of agriculture.

LABOR UPON HIGHWAYS.

(2664-4) SEC. 4. [Labor upon highways within road district; who liable; exemptions.] All male persons between the age of twenty-one and fifty-five years, able to perform or cause to be performed the labor herein required, except every honorably discharged soldier who served in the United States army during the actual war, pensioners of the United States government, acting and contributing members of companies, troops and batteries of the Ohio national guard during their membership, and any person who is a member of any fire engine, hook and ladder, hose, or other company, for the extinguishment of fire or the protection of property at fires, under the control of the corporate authorities of any municipal corporation, and who receives no pay for such services during the time he may continue an acting member of such

company, shall be liable annually, to perform two days' labor on the highways, under the direction of the road supervisor of the road district in which he resides.

(2664-5) SEC. 5 [**Commutation.**] But if a person, being warned as hereinafter provided, pay to the supervisor in whose district he resides the sum of three dollars (\$3.00) within three days after being notified by the supervisor, the same shall be received in lieu of the two days' labor, and shall be applied by the supervisor to the improvement of the roads in his district, and accounted for as herein provided.

(2664-6) SEC. 6 [**Ordering out of persons liable; penalty.**] Each supervisor shall order out every such person resident in his district between the fifteenth day of April and the first day of July annually, and direct him to do and perform the work aforesaid on the public roads within the district; the order shall be given to each person at least two days prior to the performance of the labor, either personally, or by written notice left at his usual place of abode; and if any person so notified who is liable to perform such labor, refuses or neglects to attend, by himself or substitute, to the acceptance of the supervisor, or having attended, refused to obey the directions of the supervisor, or spend the time in idleness or inattention to the duties assigned him, he shall forfeit and pay the sum of one dollar for every such offense, and shall further be liable in all cases of non-attendance, to the amount allowed for two days' work, to be recovered by action before a justice of the peace of the proper township, at the suit of the supervisor within whose district he resides; and the money so collected shall be applied by the supervisor to the improvement of roads in his district, and accounted for by him at the annual settlement with the trustees of his township.

(2664-7) SEC. 7. [**Non-exemption against execution; costs in certain case.**] The defendant shall not be entitled to any exemption under any of the laws of this state against execution issued on any judgment and the costs incurred by said supervisor in any suit brought under this act, when the same can not be collected from the defendant, shall be paid by the trustees out of the township fund.

(2664-8) SEC. 8. [**Non-release by neglect to order out; directions governing time of performance.**] No person shall be released from performance of labor on the public highway by reason of neglect of any supervisor to order him out on or before the first day of July; but if the trustees of any township, or any two of them, within three days after the election and qualification of any supervisor within their township, direct him in writing to defer any portion of the work to a date not later than the first of November, then the supervisor shall be governed by the directions so given as to the time the labor shall be performed.

(2664-9) SEC. 9. [**Production or non-production of certificate in case of removal.**] If a person remove[d] from one district to another between the first day of April and the fifteenth day of November who has prior to such removal, performed the whole or any part of the labor aforesaid, or in any other way has paid the whole or any part of the amount aforesaid in lieu of such labor, and produce a certificate of the same from the supervisor of the proper district, such certificate shall be a complete discharge for the amount therein specified; but without producing such certificate he shall be required to perform two

days' labor, or such part thereof as he has not performed under the direction of the supervisor.

(2664-10) SEC. 10. [Appearance with required implements, etc.] Any person called upon to perform labor upon the public roads and highways under any provision of this chapter shall by himself or substitute, appear at the place appointed by the supervisor at the hour of seven o'clock in the forenoon with such necessary tools and implements as the supervisor may direct; and the supervisor may, if necessary for the improvement of the road, require any person owning the same to furnish a team of horses, mules, or oxen, and wagon, cart, plow, or scraper, to be employed and used on the roads under the direction of the supervisor.

(2664-11) SEC. 11. [Residence.] For the purpose provided for in the preceding sections; the residence of any person who has a family shall be held to be where his family resides, and the residence of any (other) person shall be held to be where he boards in any road district.

(2664-12) SEC. 12. [Collection of fines, etc.] Supervisors within their respective districts, shall collect, by suit or otherwise, all fines, forfeitures, and penalties arising and accruing under the provisions of this chapter, unless the collection thereof is otherwise herein provided for; and they are hereby required before their settlement with the township trustees, to prosecute a [to] final judgment all persons neglecting or refusing to comply with the provisions of this chapter, from whom such fine, forfeiture, or penalty, in the opinion of the supervisor, can be collected by execution; and the judgments, if not paid together with the costs thereon, shall remain and be in force against the judgment debtor, as other judgments at law. And the costs incurred by any supervisor in any suit brought under this chapter, when the same is not collected from the defendant, shall be paid by the trustees of the township out of the township fund.

(2664-13) SEC. 13. [Expenditures and accounts; list of those ordered out and those delinquent; disposition of recovered fines, etc.; money on hand; unpaid judgments; order as to prosecutions.] Supervisors shall expend all money by them collected, and all other sums that come under his supervision as supervisor shall be applied on the public highway in their respective road districts at the rate not to exceed \$1.50 per day for day labor, and \$3.00 per day for teams, unless otherwise ordered by the township trustees, for the benefit of the roads and highways in their respective districts and every supervisor shall account to the trustees of the township, at the annual settlement, for all money expended under this chapter; and they shall also return a full and true list and statement of the name of all persons within their respective districts who have been ordered out to perform the two days' labor as required herein, and those who have refused or neglected to perform the same; and all fines and forfeitures sued for and recovered under the provisions of this chapter, shall be paid by the justice of the peace or constable collecting the same on demand, to the supervisor of the road district wherein the fine or forfeiture accrued, and the supervisors shall also render an account to the trustees at the annual settlement of all money that remains in their hands at the time of settlement, and all judgments that remain unpaid and the name of the judgment debtor, and the justice before whom such judgments were obtained with the amount thereof; and the trustees shall make such order as to the prosecution of suits by the supervisors of the proper districts, against such

delinquents, as in the judgment of the trustees the interest of the township may require.

(2664-14) SEC. 14. [Transfer of money; receipt; executions on unpaid judgments; expenditure of proceeds.] All money that may remain in the hands of the supervisor at the time of the annual settlement with the township trustees shall be paid to his successor in office as soon as such successor is elected and qualified, and a receipt taken therefor, and he shall deposit the receipt with the township clerk; and any supervisor may sue out executions on any judgments that remain unpaid within his district, at any time when, in his opinion, the same can be collected, and the money so received and collected, shall be expended as provided in the foregoing sections.

COUNTY TAXES.

SEC. 2822. [Commissioners to determine annually amount to be levied, and amount for each purpose.] The county commissioners shall, at their March or June session, annually, determine on the amount to be raised for ordinary county purposes, for public buildings, for the support of the poor, and for interest and principal of the public debt, and for road and bridge purposes; and they shall set forth in the record of their proceedings specifically the amount to be raised for each of said purposes.

SEC. 2822-1. [Levy for "state and county road improvement fund."] The county commissioners at their March or June session annually, in addition to the levy authorized for road and bridge purposes may levy on each dollar of valuation of taxable property within their county not to exceed five-tenths ($\frac{5}{10}$) of a mill for the creation of a fund to be known as the state and county road improvement fund, and to be used for the improvement of state and county roads in the county.

SEC. 2822-2. [Improvement of State and county roads.] The county commissioners of such counties as shall make such levy, shall have power to improve any state or county road, or any part thereof, by grading, draining, curbing, improving and paving the same with stone, brick or other suitable material, or with a combination of any or all of these materials, graveling, planking or macadamizing the same, and shall use the funds realized from such levy for that purpose;

[Petition of abutting landowners necessary.] Provided, however, that no such improvement shall be made until the owners of at least a majority of the foot frontage of the land abutting on said road or part thereof shall petition therefor,

[Cost.] And the county commissioners shall assess one-fourth of the cost and expense thereof on said abutting land, and provided, however, that not to exceed ten per centum of the said levy may be used for making sidewalks or bicycle paths.

[SEC.] 2822-3. [Surveys, profiles, estimates and specifications.] When the commissioners determine to make any such improvement, they shall direct and employ the county surveyor to make all necessary surveys, profiles, estimates, and specifications, and submit the same to them for their approval, and the same shall be filed and preserved in their office, and the county surveyor shall receive as compensation for his services, the same compensation as is provided in section 4664.

[SEC.] 2822-4. [Bids; letting of contract.] Upon the approval of said surveys, profiles, estimates and specifications, the commissioners of said county shall advertise for bids in some newspaper of general circulation in the county, for a period of three weeks, and shall let the contract for making such improvement to the lowest and best bidder or bidders, who shall give such reasonable security for the proper performance of their contract within the time and in the manner prescribed therein, as the county commissioners shall require. But when the estimated cost of any improvement does not exceed five hundred (\$500) dollars, the same may be let without publication in a newspaper as herein required.

SEC. 2824. [Levy of taxes for county road and bridge purposes.] The commissioners, at their March or June sessions, annually, may levy on each dollar of valuation of taxable property within their county, for road and bridge purposes, as follows: In a county where the valuation of taxable property exceeds eighty millions and does not exceed one hundred and twenty millions dollars, five-tenths of a mill; where the amount exceeds fifty millions and does not exceed eighty millions, seven-tenths of a mill; where the amount exceeds twenty millions and does not exceed fifty millions of dollars, one mill and one-tenth; where the amount exceeds ten millions and does not exceed twenty millions of dollars, one mill and five-tenths; where the amount exceeds five millions and does not exceed ten millions of dollars, three mills; and where the amount is less than five millions of dollars, five mills and five-tenths; and of the tax so levied, the commissioners shall set apart such portion, as they may deem proper, to be applied to the building and repair of bridges, which portion so set apart shall be called a bridge fund, and shall be entered on the duplicate in a separate column, and shall be collected in money, and expended, except as may be otherwise provided by law, under the directions of the commissioners in building bridges and culverts, or in repairing the same;

[Hamilton county.] Provided, that in any county containing a city of the first grade of the first class, where the valuation of taxable property exceeds two hundred millions of dollars, the commissioners of said county may levy on each dollar of valuation of taxable property within said county, for bridge purposes exclusively, not to exceed one-half of a mill, which shall be collected in money and placed by the auditor to the credit of the bridge fund of the county, and the same shall be expended by the commissioners in building bridges and culverts, and in repairing and making fills and approaches to the same in the townships outside of the corporate limits of said city, and for no other purpose whatever;

[Payment to Cincinnati.] Except that a portion of said fund collected in the said county, amounting to not less than a levy of one-sixth of a mill on each dollar of valuation of the taxable property within said county in all cases where the board of legislation of said city of the first grade of the first class shall demand it, shall be paid into the city treasury of said city and shall be expended by the board of administration of said city, for the purpose of building and repairing of bridges within the corporate limits of the same;

[Special tax to restore important bridge.] Provided, further, that in case an important bridge belonging to or maintained by any county has been or shall be destroyed or become dangerous to public travel by decay or otherwise, and the restoration thereof is deemed

necessary for public accommodation, the commissioners may levy a special tax for that purpose, not exceeding one mill and five-tenths, the proceeds of which shall be applied solely to such restoration;

[**Anticipation thereof.**] And the commissioners may anticipate the collection of such special tax by borrowing any sum not exceeding the amount so specially levied or to be levied, at any rate of interest not exceeding six percentum, and issue notes or bonds therefor, payable upon the collection of such special tax;

[**Cleveland and cities of second class.**] Provided, further, that in all cities of the second grade of the first class, and all cities of the second class one-half of the proportion of said bridge fund collected upon the property within said cities, in all cases where the city council shall demand it, shall be paid into the city treasury, and shall be expended by such city for the purpose of building and repairing bridges;

[**Marietta.**] And provided further, that in cities having at the last federal census, or at any subsequent federal census a population of 8,273, the whole of the proportion of said bridge fund collected upon the property within said city shall upon demand of the council of said city therefore be paid into the treasury of said city, and shall be expended by said city for the purpose of building and maintaining bridges therein;

[**Montgomery county.**] Provided further, that the commissioners of Montgomery county shall levy not exceeding one mill and six-tenths for road and bridge purposes, and that said levy shall only be on property subject to taxation outside the city of Dayton, and the proceeds of such levy shall be applied exclusively to roads and bridges outside of said city;

[**Dayton.**] And the council of said city may annually levy on the taxable property within the same, for bridge purposes, a tax of one mill and one-tenth in addition to the total aggregate of taxation now authorized by said council, to be expended for building and repairing bridges within said city;

[**Trumbull county.**] And provided further, that the commissioners of Trumbull county may levy not to exceed the rate allowed by law for road and bridge purposes, and that said levy shall only be on property subject to taxation outside of the city of Warren, and the proceeds of such levy shall be applied to road and bridge purposes exclusively outside of said city;

[**Warren.**] And the council of said city may annually levy on each dollar of valuation of taxable property within said city for bridge purposes, one and five-tenths of a mill, in addition to the total aggregate of taxation now or hereafter authorized by law, to be expended for building and repairing bridges within said city; except that in the event that the commissioners of the county transfer from the road and bridge fund to some other fund, the whole or some part of the six-tenths of a mill as now allowed by law, the council of said city shall make a like transfer to the same county fund; and the council of said city may anticipate the whole or some part of the annual levy for said purposes for the period of ten years or less, by borrowing a sum, not exceeding twenty thousand dollars, at a rate of interest not exceeding six percentum, and issue bonds therefor, payable on the collection of said tax.

[**Expiration of proviso.**] Said last proviso relating to the city of Warren in said Trumbull county shall expire by limitation after twelve

years from the time it becomes a law, and said city shall again become a part of the county, for bridge purposes under the general law;

[**Holmes county.**] Provided further, that the commissioners of Holmes county at their March or June sessions shall levy on all the taxable property of said county, the amount now authorized by law for road and bridge purposes to be used on roads and bridges, and the commissioners of Holmes county may turn over such portion of the taxes so raised for roads and bridges on the taxable property in said incorporated village of Millersburg, said county, to the council of said incorporated village for road and bridge purposes as they may deem proper, and the commissioners of said county on the demand of said council of the incorporated village of Millersburg shall turn over to the treasury of said village the pro rata share of the taxes levied in 1899.

TOWNSHIP TAXES.

SEC. 2827. [**When and how made.**] The trustees of each township shall, on or before the fifteenth day of May, annually, determine the amount of taxes necessary for all township purposes, and certify the same to the county auditor; and there shall be levied annually, by the county auditor, for township purposes, including the relief of the poor, but not including the support of common schools, or the payment of the interest and principal of the debts of the township, such rates of taxes as the trustees of the respective townships may certify to the county auditors to be necessary, not exceeding one mill on each dollar of the taxable valuation of the property of the township, which does not exceed two hundred thousand dollars, and eight-tenths of one mill on each dollar of such taxable valuation exceeding two hundred thousand dollars, and not exceeding three hundred thousand dollars; and one-half of one mill on each dollar of such taxable valuation exceeding three hundred thousand dollars, and not exceeding five hundred thousand dollars; and four-tenths of a mill on each dollar of such taxable valuation exceeding five hundred thousand dollars, and not exceeding eight hundred thousand dollars; and one-fourth of one mill on each dollar of such taxable valuation exceeding eight hundred thousand dollars; and for the payment of the interest and principal of the debts of the township, such sum as the trustees may determine is necessary for that purpose; provided, that in counties where there are no county infirmaries, a further township tax, not exceeding one mill and five-tenths of a mill on each dollar of the taxable property of the township, may be levied for the relief of the poor, to be applied solely to that purpose.

(2827-1) [**Authorizing trustees of certain townships to levy a road tax.**] The trustees of townships having a population, at the last federal census, of not more than 2,116, nor less than 2,112, be and are hereby authorized and empowered, in addition to the two days' labor, to determine a percentum, to be levied for road purposes, upon each dollar of valuation of the taxable property of their respective townships, exclusive of any incorporated village, as follows: In townships having a valuation of taxable property of one million dollars and over, not exceeding two mills on each dollar; in townships having a valuation of less than one million, and more than five hundred thousand dollars, any rate not exceeding three mills on each dollar; and in townships having less than five hundred thousand dollars valuation, any rate not

exceeding four mills on each dollar; and said trustees shall certify the same to the county auditor, in writing, on or before the 15th of May of each year; and the county auditor shall assess the same on all the taxable property in said township, exclusive of any incorporated village, and the same shall be collected, one-half in the December installment, and one-half in the June installment, by the county treasurer, and paid over by him to the treasurer of the township from which said taxes were collected, the same to be expended for the improvement of roads in the township where collected; but nothing in this act shall prevent the working out of all or a part of this tax, by any person so assessed, who desires so to do. The amount of work so performed shall be certified to by the road supervisor, and such receipt shall be received by the county treasurer in part payment of the December tax.

SEC. 2828. [Township liabilities for the relief of the poor.] The trustees of any township which has incurred, or may hereafter incur, liabilities for the relief of the poor, beyond the amount raised by the levy now authorized, shall have power to make an additional levy, for the purpose of discharging such liabilities, not exceeding six-tenths of one mill on the dollar of the taxable property of such township.

SEC. 2830. [Labor on public highways; county treasurer shall receive certificates as money for road tax; money or labor; when paid in labor; when labor to be performed; expenditure of road fund; time for payment of road tax extended in certain counties.] Any person charged with a road tax may discharge the same by labor on the public highways, within the proper time at the rate of one dollar and fifty cents per day and a ratable allowance per day for any team and implements furnished by any person under the direction of the supervisor of the proper district, who shall give to such person a certificate specifying the amount of tax so paid and the district and township wherein such labor was performed which certificate shall in no case be given for any greater sum than the tax charged against such person; and the county treasurer shall receive all such certificates as money in the discharge of said road tax; provided, that when the commissioners of any county so direct the supervisor shall write on the margin of his lists, opposite to the amount charged against all such as may pay the same by money or labor the word "Paid," and shall return his list, on or before the fifth day of September in the year in which levied to the township clerk, who shall write on the margin of the list sent him by the auditor, opposite to the amount charged against each person who may have paid the same in labor or money as shown by the return of the supervisor, the word "Paid" and shall forthwith forward the same to the county auditor who shall charge all such as may remain unpaid as shown by the township clerk upon the duplicate of the proper county, and the same shall be collected as other moneys are collected in the December installment by the county treasurer. When such road tax is paid in labor such labor shall be performed before the first day of September in the year in which levied. All road taxes collected by the county treasurer shall be paid over to the treasurer of the township or municipal corporation from which the same were collected, and shall be expended on the public roads, and in building and repairing bridges in the township and municipal corporation from which the taxes were collected, under the direction of the trustees of the proper township or council of such municipal corporation; and all funds heretofore levied for road purposes and not expended, shall

be expended by the trustees of the township or council of the municipal corporation from which the same were collected, as other taxes collected under the provisions of this title: provided that in all counties containing either graveled roads or free turnpikes, or both, except Shelby and Allen counties the time for the payment of the road tax in labor on such roads may extend to the fifteenth of October of the year in which the same is levied, but on all other roads in such counties the labor shall be performed before the fifteenth of September; and the supervisors in such counties shall return their lists as provided for in this section, before the twenty-fifth of October of the year in which the tax was levied.

SEC. 2831. [Levy to pay bonds of county, city, or township, given for railroad subscription.] The competent authorities of any county, city, or township, that shall have subscribed to the capital stock of any railroad company, and shall have issued its bonds or other securities for the payment of such subscription, may, at any time within five years next before the principal of such bonds, or other securities, shall be payable, if the market price of the stock of such railroad company be less than seventy-five per cent. on its par value, levy, or cause to be levied, annually, on the taxable property of such county, city, or township, such tax not exceeding one mill on the dollar, as will be sufficient to balance the discount on the railroad stock held by such county, city, or township, by the time such bonds may become due; and the proceeds of all such taxes shall form, with such stock, a sinking fund, and shall be invested in the purchase of the bonds issued by such county, city, or township, or in other safe and productive securities, and shall be applied to the payment of the bonds so issued, and to no other use or purpose whatever.

SEC. 2833. [Tax on dogs.] In the tax list duplicate there shall be columns for the number of and per capita tax on dogs, and in addition to the proper tax on any valuation that may be fixed upon dogs by the owners, which shall be included with the personal property valuation, and taxed therewith, the auditor shall levy one dollar on each male, and spayed female dog, and two dollars on each unspayed female dog, which per capita tax shall constitute a special fund to be disposed of as provided by law; provided, that in cities of the second grade of the first class, the per capita tax provided for by this section shall be collected by the city clerk, and the city council of such cities shall provide by ordinance for enforcing the payment of the taxes on all dogs in such cities and disposing of the money derived therefrom.

SEC. 2834. [Surplus of special tax or loan may be transferred to general fund.] Whenever there is in the treasury of any city, village, hamlet, county, township or school district, any surplus of the proceeds of a special tax, or of the proceeds of a loan for a special purpose, which surplus is not needed for the purpose for which the tax was levied, or the loan made, such surplus may be transferred to the general fund by an order of the proper authorities entered on their minutes; and whenever there is in the treasury of any such civil division, at the annual meeting or meetings otherwise provided by law at which the annual tax levy is to be considered and adopted any surplus not exceeding one thousand dollars in any one established fund or division of the funds, which surplus is not needed for the purpose for which the fund was created, or the money appropriated, or the tax levied, before such annual tax levy is made, such surplus may be considered as unappropriated and may be reappropriated, and transferred, by an order as aforesaid, to some other existing fund

for which a tax is to be or would otherwise be levied, and the sum which it would be necessary to raise by taxation for any purpose, if no such reapportionment was made, shall thereupon be reduced to the extent of the transfer thus made; provided, however, that this act shall in no wise be considered as authority to make such reapportionments or any transfer of funds at any other time than the meeting aforesaid to determine the tax levy nor to authorize transfers at any one such meeting of over three thousand dollars in the aggregate, nor that the amount which may be lawfully raised by taxation for any purpose may be increased by such transfer.

SEC. 2834a. [Power to borrow, to extend time or change debt.]

The trustees of any township, the board of education of any school district, except in cities of the first class, and the commissioners of any county, for the purpose of extending the time of payment of any indebtedness which, from its limits of taxation, such township, school district, board of education or commissioners, for the best interest of said township, school district or county, shall have power to issue bonds of such township, school district or county, or borrow money, so as to change but not to increase the indebtedness, for such length of time, in such amounts, and at such a rate of interest as the said trustees, board of education or commissioners may deem proper, not to exceed six per cent. per annum, payable annually or semi-annually;

[Resolution as to such debt.] Provided, however, that no indebtedness of any township, school district or county shall be funded, refunded or extended unless such indebtedness shall first be determined to be an existing, valid and binding obligation of any such township, school district or county by a formal resolution of the trustees, board of education or commissioners of any such township, school or county, which resolution shall so state the amount of the existing indebtedness to be funded, refunded or extended, the aggregate amount of bonds to be issued therefor, their number and denomination, the date of their maturity, the rate of interest they shall bear, and the place of payment of principal and interest.

[Levy to meet payment of bonds.] And for the payment of the bonds issued under this section, the township trustees, the board of education or commissioners shall levy a tax in addition to the amount otherwise authorized, every year during the period the bonds have to run, sufficient in amount each year to pay the bonds falling due within the year and the accruing interest.

SEC. 2834b. [Restrictions; no contract, etc., unless money is in treasury and set apart; non-applicability of section to employment of teachers, officers and other school employes.] The commissioners of any county, the trustees of any township and the board of education of any school district, except in cities of the first class, of first, second and third grade, shall enter into no contract, agreement, or obligation involving the expenditure of money, nor shall any resolution or order for the appropriation or expenditure of money be passed by any board of county commissioners, township trustees or board of education, except in cities of the first class, of first, second and third grade, unless the auditor or the clerk thereof shall first certify that the money required for the payment of such obligation or appropriation is in the treasury to the credit of the fund from which it is to be drawn, or has been levied and placed on the duplicate, and in process of collection and not appropriated.

for any other purpose; which certificate shall be filed and immediately recorded, and the sums so certified shall not thereafter be considered unappropriated until the county, township or board of education, except in cities of the first class, of first, second or third grade, is fully discharged from the contract, agreement or obligation, or so long as the order or resolution is in force, and all contracts, agreements or obligations, and all orders or resolutions entered into or passed contrary to the provisions of this section, shall be void. Provided, that none of the provisions of this section shall apply to the contracts authorized to be made by other provisions of law for the employment of teachers, officers, and other school employes of boards of education.

SEC. 2834d. [Disposition of surplus under Dow tax.] Whenever there is in the treasury of any city, village, hamlet, county or township any surplus arising under an act entitled "An act providing against the evils resulting from the traffic in intoxicating liquors," passed May 14, 1886, 83 O. L., 157, which surplus is not needed for the purpose named in section 9 of said act, such surplus may be, at any time, transferred to any other fund, including school fund, by an order of the proper authorities entered on their minutes.

SEC. 2835. [Townships and municipalities may issue and sell their bonds for purposes that are specified; interest and sale.] The trustees of any township or hamlet or the council of any municipal corporation may issue and sell their bonds, in amount and denominations such as they may deem necessary for the special purpose in view, whenever it is desired by the voters of such township or municipal corporation to make any of the following improvements or to provide for any of the following public purposes:

1. For procuring the real estate and right of way for any improvement authorized by this section.
2. For extending, enlarging, improving, repairing or securing a more complete enjoyment of any building or improvement authorized by this section, and for equipping, furnishing, maintaining, administering and operating the same.
3. For sanitary and street cleaning purposes, and for erecting a crematory or providing other means for disposing of garbage and refuse matter.
4. For improving highways leading into the township or corporation, or for building or improving a turnpike, or for purchasing one or more turnpike roads and making the same free.
5. For constructing wharves and landings on navigable waters.
6. For constructing levees and embankments, and for improving any watercourse passing through the township or corporation.
7. For constructing bridges and culverts.
8. For erecting infirmaries and providing for the support of the dependent poor.
9. For erecting workhouses, prisons and police stations.
10. For erecting houses of refuge and correction.
11. For erecting market-houses and providing market-places.
12. For erecting hospitals and pest-houses.
13. For erecting halls and public offices.
14. For maintaining a fire-department, erecting buildings therefor, purchasing fire-engines, fire-boats and apparatus, and constructing reservoirs.

15. For erecting or purchasing water-works and supplying water to the township or corporation and the inhabitants thereof.

16. For erecting or purchasing gas-works and electric light works, and for supplying light to the township or corporation and the inhabitants thereof.

17. For providing grounds for cemeteries and for park purposes, for inclosing and embellishing the same, and for erecting vaults.

18. For constructing sewers, drains and ditches.

19. For maintaining a free public library and reading-room.

20. For constructing, erecting or providing any public work, building or improvements not hereinbefore mentioned, and for which a tax may constitutionally be levied.

Nothing herein contained shall be construed as limiting or restricting any power to issue bonds for any of the purposes named in this section otherwise conferred by law; but no bonds issued for any of the above named purposes and in accordance with the provisions of this section, shall bear a higher rate of interest than six per centum per annum, payable semi-annually, or be sold for less than their par value.

SEC. 2836. [Tax shall be levied to pay bonds and interest.] For the payment of bonds issued under the preceding section, the township trustees or municipal council shall levy a tax in addition to the amount otherwise authorized, every year during the period the bonds have to run, sufficient in amount each year to pay the bonds falling due within that year, and the accruing interest.

[Surplus water-works fund in Columbus applied on interest on storage dam bonds, and for creation of sinking fund.] Provided, however, that in cities of the first grade of the second class any surplus of the water-works fund of such cities after paying the expense of conducting, managing, repairing and extending the water-works of such cities, shall first be applied to the payment of the interest accruing on any bonds issued or which may hereafter be issued for the construction of dams for storing water for the purpose of supplying water to any such cities and the inhabitants thereof, and for the creation of a sinking fund for the payment of the principal of such bonds, before applying the proceeds of any tax levy made in pursuance of this provision, and that the councils of any such cities be authorized to levy a tax for the exclusive purpose of paying the excess of such bonds and interest, and creating such sinking fund after the application of such surplus as herein provided.

SEC. 2837. [Question to be submitted to the voters.] Before any bonds are issued or tax levied, as provided in the next two preceding sections, the question of issuing the bonds shall be submitted to the voters of the township or municipal corporation at a general or special election. And whenever the trustees of any township or hamlet or the council of any municipal corporation shall by resolution declare it necessary to issue and sell the bonds of such township, hamlet or municipal corporation, as the case may be, for any or either of the purposes mentioned in section 2835 of the Revised Statutes in any amount specified in such resolution and shall by such resolution fix a date upon which the question of issuing and selling such bonds shall be submitted to the electors of such township, hamlet or municipality, and shall cause a copy of such resolution to be certified to the deputy state supervisors of the county in which such township, hamlet or municipal corporation is situated, or

board of election in such cities as have such boards, [and] such deputy state supervisors, or such boards of election, shall within ten days thereafter proceed to prepare the ballots and make all other necessary arrangements for the submission of such question to the electors of any such township, hamlet or municipal corporation at the time fixed in said resolution. Such election shall be held at the regular place or places of voting in such township, hamlet or municipality and shall be conducted, canvassed and certified in the same manner except as otherwise provided by law as April elections in such township, hamlet or municipal corporation for the election of officers thereof; provided, however, that when a special election for such purposes is held in a municipal corporation divided into wards there shall be but one voting place in each ward which shall be designated by the deputy state supervisors of election or in cities having a board of elections by such board, and the notice hereinafter provided for shall designate the voting place in each ward. In all cities in which registration is required certificates of removal shall not be necessary except when transfers are required from one ward to another, and the board of elections of all such cities shall issue all such removal certificates. Fifteen days' notice of the submission shall be given in one or more newspapers printed therein once a week for two consecutive weeks, stating the amount of bonds to be issued, the purpose for which they are to be issued, and the time and place of holding the election; and if no newspaper is printed therein the notice shall be posted in a conspicuous place and published once a week for two consecutive weeks in some newspaper of general circulation in the township or municipal corporation; and if two-thirds of the voters voting at such election upon the question of issuing the bonds, vote in favor thereof, then and not otherwise the bonds shall be issued and the tax levied. Those who vote in favor of the proposition shall have written or printed on their ballots "For the issue of bonds"; and those who vote against the same shall have written or printed on their ballots the words, "Against the issue of bonds."

SERVICE OF STALLION OR JACK.

(3213-1) [Lien of keeper of stallion or jack.] That the keeper of any stallion or jack shall have a lien upon the get of the same for the period of twelve months after birth of the same, for the payment of the service of any such stallion or jack.

[Enforcement of lien.] Such keeper or owner may enforce said lien by replevin of the property before any justice of the peace of the township where the property is found, and after gaining possession of the same, he may, after first giving ten days' notice to the reputed owner thereof of his intention to do so, sell the same at public sale after two weeks' notice of the time and place of sale by notices posted up in five conspicuous and public places in the township where proceedings in replevin are had.

[Disposition of proceeds from sale.] And out of the proceeds of sale retain the amount due him for said service, with the costs by him incurred in said replevin suit, and accounting to the owner for the surplus realized by said sale. And the owner of any such stallion or jack,

when payment is made to him, or his agent, for any such get, shall deliver to the payee a receipt in full for the amount so paid, and stating for what paid.

[Penalty for misrepresenting pedigree of stallion or jack.] And any such keeper or owner of any stallion or jack, who misrepresents the pedigree, or fails to publish a correct pedigree of his stallion or jack, when excellency of good qualities are claimed on account thereof, shall, upon proof of such misrepresentation, forfeit the services in any case when legally contested and proven, and shall be otherwise punished as provided by law against the use of false pedigree.

AN ACT TO FIX RESPONSIBILITY AND TO PROTECT LABOR AND THE RIGHTS OF CONTRACTORS AND SUB-CONTRACTORS ON ALL PUBLIC WORKS OR WORK DONE FOR COMPANIES, CORPORATIONS, CONTRACTING COMPANIES, OR INDIVIDUALS.

(3231-1) SEC. 1. [Lien upon railroad, for labor or material furnished.] Any person who shall have performed common or mechanical labor upon, or furnished supplies to any railroad, turnpike, plank road, canal or on any public structure being erected, or on any abutment, pier, culvert or foundation for same, or for any side track, embankment, excavation or any public work, protection, ballasting, delivering or placing ties, or track-laying, whether the labor is performed for, or the supplies or material is furnished to any company, corporation, contractor or sub-contractor, construction company or an individual, shall have a first, immediate, and absolute lien on the whole of the property on which said work is done, and to which said supplies have been contributed, and shall hold the railroad, canal, turnpike, plank road or structure to the creation or construction of which the said labor or supplies has been contributed, or so much thereof as may have been in whole or in part created by said labor or supplies, to the exclusion of any railroad, canal, turnpike, plank road, public work or structure, as to operation, occupation or use, until the claim for such labor or supplies is properly adjusted and paid in full.

(3231-2) SEC. 2. [How lien obtained.] When it shall be deemed necessary for any construction company, contractor, sub-contractor, mechanic, laborer, or person contributing supplies or material to secure their claim against any railroad, canal, turnpike, plank road, public work or public structure, either for work done or material furnished, they shall file a sworn itemized statement, within thirty days after said work was performed or materials furnished, of the amount of work done or material furnished, showing the balance due and claimed for labor or material furnished, with the recorder of the county or counties within which said work was done or materials furnished. And if several liens be obtained by several persons on the same job, in the manner prescribed by this act, they shall have no priority among themselves, but payments thereon shall be made pro rata.

(3231-3) SEC. 3. [Bond; when injunction may issue.] Any construction company, contractor, mechanic, laborer, or person contributing supplies or material to any work named in section *one* (1) of this act, shall at the time of filing the sworn statement of account as provided in section *two* (2) of this act, file a good and sufficient bond of indemnity

for an amount equal to the amount claimed, which bond shall be approved by the probate judge, and shall be so conditioned as to save and protect the defendant in any case arising under this act, and shall then be entitled to a decree of the common pleas court, enjoining and prohibiting the operation, use or occupancy of the property created in whole or in part by the party or parties asking for said injunction; and the said injunction shall not be dissolved until the court is satisfied that the claim has been adjusted and paid in full.

(3231-4) SEC. 4. [**Engineer to make measurements, estimates, etc.**] Any civil engineer who shall be employed as chief or assistant engineer in the surveying, platting or cross-sectioning of any railroad, canal, turnpike, plank road or other public road, shall, before the work is commenced, make an accurate measurement of the same, and shall prepare a profile of each section of one mile or less of said work, showing quantities of each and every class of work to be done on said mile or less; and shall also designate the nearest benchmark or point from which measurements are made, and shall drive stakes at top of slope, at foot of embankments, at sides and center of grade and around every burrow pit for each one hundred feet, showing in plain figures by feet and tenths of a foot the depths of cut or height of fill or embankment, together with a correct showing of the quantity of overhaul beyond a given number of feet, in cubic yards, for each section of a mile or less; and it shall be the duty of such chief or assistant engineer to furnish, on demand, when any work is finished, to any company, contractor, sub-contractor or person a final statement of quantities in each class of work done or supplies or material furnished by parties interested.

(3231-5) SEC. 5. [**Penalty.**] Any civil engineer or assistant engineer, whose duty it is to ascertain quantities from actual measurement, and on which final estimates are to be made, who shall knowingly give other than the true quantities, with intent to defraud the construction company, contractor, sub-contractor, laborer or person furnishing supplies or material, shall, if the amount of the discrepancy exceed at the contract price, thirty-five dollars, be deemed guilty of a felony, and shall be punished by a fine of not less than the amount at contract price of all work done or material furnished and not included in his final estimate, or be confined in the penitentiary for not less than one or more than five years.

OHIO STATE BOARD OF AGRICULTURE.

(3691-25.) [**Incorporation.**] That Michael L. Sullivant, * * * be and they are hereby created a body corporate, with perpetual succession, in the manner hereafter described, under the name and style of the "Ohio State Board of Agriculture."

(3691-26) SEC. 1. [**Number of the board; quorum.**] The Ohio state board of agriculture shall consist of ten members, five of whom shall constitute a quorum.

(3691-27) SEC. 2. [**Names of members.**] That Allen Trimble, M. L. Sullivant, Samuel Medary, Darius Lapham, A. E. Strickle, Arthur Watts, M. B. Bateham, John Coddington, Jared P. Kirtland, and Isaac Moore, be continued members of the board; their term of service

and the mode of appointing their successors to remain unaltered by this act.

SEC. 3692. [Annual meeting of board.] There shall be held in the city of Columbus, on the first Thursday after the second Monday in January, an annual meeting of the Ohio state board of agriculture, together with the president of each county agricultural society, or duly authorized delegate therefrom, who shall, for the time being, be ex-officio members of the state board of agriculture, for the purpose of deliberation and consultation as to the wants, prospects and condition of agriculture throughout the state; and at such meeting, the several reports from the county societies shall be delivered to the president of the state board of agriculture.

[Election of members; term.] And, at the annual meeting to be held in 1898, there shall be elected five members of the state board of agriculture, two members for a term of two years, two members for a term of three years, and one member for a term of four years; and, at the annual meeting to be held in 1899, there shall be elected five members, one member for a term of three years, two members for a term of four years, and two members for a term of five years; and annually thereafter there shall be elected two members whose term shall be five years, and until their successors are elected.

SEC. 3693. [Annual report of board to general assembly.] The board may elect such officers as may by it be deemed necessary. It shall hold an annual exhibition of the agricultural and general productive industries of the state; shall make an annual report to the general assembly, embracing its proceedings for the past year, and an abstract of the proceedings of the several county agricultural societies, as well as a general view of the condition of agriculture throughout the state, accompanied by such recommendations as it may deem interesting and useful.

SEC. 3694. [State board of agriculture; real estate acquired by; auditing of expenses; annual report; legal adviser.] The board may hold in fee simple such real estate as it may have heretofore purchased, or may hereafter purchase, as sites whereon to hold its annual fairs, and all such lands held by the board for said purpose shall be exempt from taxation, but when any such real estate as may have heretofore been purchased or may hereafter be purchased, shall cease to be used by the board as sites whereon to hold such annual fairs, then such real estate with the improvements thereon, belonging to the board, shall revert to the state of Ohio; and no portion of any such real estate shall be disposed of except by act of the legislature. The board shall have the power to audit and pay its ordinary expenses, including the necessary personal expenses of the members in their attendance on the meetings of the board, out of any funds in its possession or out of the state agricultural fund, and shall, in its annual report, make a complete showing of its financial transactions; and the attorney-general shall act as the legal adviser of the board, the same as for other state departments.

SEC. 3695. [How state agricultural fund at disposal of board.] The state agricultural fund shall be at the disposal of the board for the improvement of the agricultural interests of the state; and when escheated property is legally reclaimed by any heir, it shall be held subject to the payment, to the purchaser of the state, of so much of the original purchase-money as it received, and legal interest to the time of such reclamation.

SEC. 3696. [Secretary of state authorized to furnish stationery to board of agriculture.] The secretary of state is authorized to furnish the board with such stationery as may be requisite to the proper discharge of its duties, together with such blank books as may be necessary to keep the records of the transactions of the board.

COUNTY AGRICULTURAL SOCIETIES.

SEC. 3697. [Organization of district or county agricultural societies.] When thirty or more persons, residents of any county, or district embracing two or more counties, organize themselves into a society for the improvement of agriculture within such county or district, and adopt constitutions and by-laws, agreeable to the rules and regulations to be furnished by the state board of agriculture, and appoint the usual and proper officers, and the society pays to its treasurer, by voluntary subscription, or by fees imposed upon its members, any sum of money in each year not less than fifty dollars, and the president of the society certifies to the respective county auditors the amount thus paid, attested by the oath of the treasurer before a magistrate, the county auditors embraced within the district in which such society is organized, shall draw an order on the treasurer of the respective counties in favor of the president and treasurer of the society, for a sum equal to the amount thus raised, not exceeding two cents to each inhabitant of the county upon the basis of the last previous national census, but not exceeding in any county the sum of eight hundred dollars; and the treasurer of said [the] county shall pay the same. Provided, that where in any county containing a city of the second grade of the first class, the site for holding county fairs is situated so far from the geographical center of said county, that, in the opinion of the commissioners of said county, the agricultural interests of said county will best be promoted by the establishment of another and additional society and site whereon to hold fairs; upon the organization of such additional society in the manner provided herein, said additional society shall be entitled to receive out of the county treasury in any sum not to exceed the amount which said commissioners are now authorized to allow by this section and section 3702a.

SEC. 3698. [For what premiums may be offered by agricultural societies.] The several county or district societies which may be formed under the provisions of the preceding section shall, annually, offer and award premiums for the improvement of soils, tillage, crops, manures, implements, stock, articles of domestic industry, and such other articles, productions, and improvements, as they deem proper, and may perform all such acts as they deem best calculated to promote the agricultural and household manufacturing interests of the district and of the state, and shall regulate the amount of premiums, and the different grades of the same, so that it shall be competent for small as well as large farmers to have an opportunity to compete therefor; and in making their awards special reference shall be had to the profits which accrue, or are likely to accrue, from the improved mode of raising the crop, or of improving the soil, or stock, or of the fabrication of the articles thus offered, so that the premium shall be given for the most economical mode of improvement; and all persons offering to compete for premiums on improved modes of tillage, or the production of any crops or other articles, shall be required, before such premium is adjudged to deliver to the awarding committee a full and correct statement of the process of such mode of

tillage or production, and the expense and value of the same, with a view of showing accurately the profits derived or expected to be derived therefrom. Provided, that during any year, when the state board of agriculture shall hold its fair upon the grounds of any county or district agricultural society, such society shall be excused if its board of directors so decides from complying with the provisions of this section, and shall incur no forfeiture of its rights as such agricultural society, by reason of not holding such fair.

SEC. 3699. [Must publish a list of awards, etc.] County and district societies shall publish, annually, a list of awards, and an abstract of the treasurer's account, in a newspaper of the district, and make a report of their proceedings during the year, and a synopsis of the awards for improvements in agriculture and household manufactures, together with an abstract of the several descriptions of these improvements, and also make a report of the condition of agriculture in their county or district, which report shall be made in accordance with the rules and regulations of the state board of agriculture, and shall be forwarded to the state board at its annual meeting in January in each year; and no subsequent payment shall be made from the county treasury unless a certificate be presented to the auditor, from the president of the state board, showing that such reports have been made.

SEC. 3700. [County societies erected into corporations.] All county societies which have been or may hereafter be organized are declared bodies corporate and politic, and as such shall be capable of suing and being sued, and of holding in fee simple such real estate as they have heretofore purchased or may hereafter purchase as sites whereon to hold their fairs.

SEC. 3701. [Conveyance to such societies declared valid.] All deeds, conveyances and agreements in writing, made to and by such county societies, for the purchase of real estate as sites whereon to hold their fairs, shall be good and valid in law and equity, and shall vest a title in fee simple in such societies to the real estate, without words of inheritance.

SEC. 3702. [Commissioners may assist agricultural societies in purchasing, etc., sites for fairs; levy of tax.] When a county society has purchased, or leased for a term of not less than twenty years, real estate as a site whereon to hold fairs, or where the title to the grounds is vested in fee in the county, but the society has the control and management of the lands and buildings, the county commissioners may, if they think it for the interests of the county, and society, pay out of the county treasury the same amount of money for the purchase or lease and improvement of such site as is paid by such agricultural society or individuals for such purpose; and such commissioners may levy a tax upon all the taxable property of the county sufficient to meet the provisions of this section.

(3702-1) SEC. I. [Submission of question if issuing bonds to liquidate debt of county agricultural society.] In all counties in which there may be a county agricultural society which has purchased a site whereon to hold fairs, or where the title to such grounds is vested in fee in the county, and such society has become indebted to an extent of not less than fifteen thousand dollars upon the presentation of a petition signed by not less than five hundred resident electors of the county praying for the submission to the electors of the county of the question

whether or not the bonds of the county shall be issued and sold for the purpose of liquidating the indebtedness of such society, it shall be the duty of such county commissioners within ten days thereafter, by resolution, to fix a date which shall be within thirty days, upon which the question of issuing and selling such bonds, in amount and denomination such as may be necessary for the purpose in view, shall be submitted to the electors of the county, and shall cause a copy of such resolution to be certified to the deputy state supervisors of elections of the county, and such deputy state supervisors of elections shall, within ten days thereafter, proceed to prepare the ballots and make all other necessary arrangements for the submission of such question to the electors of such county, at the time fixed by such resolution. Such election shall be held at the regular places of voting in such county and shall be conducted, canvassed and certified in the same manner, except as otherwise provided by law, as elections for the election of county officers. Fifteen days' notice of the submission shall by the deputy state supervisors of elections, be given by publication in one or more newspapers published in the county once a week for two consecutive weeks, stating the amount of bonds to be issued, the purpose for which they are to be issued and the time and place of holding such election; and if the majority of the voters voting upon the question of issuing the bonds vote in favor thereof, then and not otherwise the bonds shall be issued, and the tax hereinafter mentioned shall be levied. Those who vote in favor of the proposition shall have written or printed on their ballots "for the issue of bonds" and those who vote against the same shall have written or printed on their ballots "against the issue of bonds."

(3702-2) SEC. 2. [**Bonds.**] In the event that a majority of the voters of such county voting upon the question of issuing the bonds vote in favor thereof, it shall be the duty of the board of county commissioners, for the purpose of liquidating such indebtedness, to issue and sell the bonds of the county according to law, in such amount as may be necessary, and bearing interest not to exceed six per cent. per annum, payable semi-annually.

[**Levy.**] Said bonds to be issued for a period of not less than ten nor more than twenty years; and such county commissioners shall thereupon levy a tax upon all the taxable property upon the duplicate of the county to pay such bonds as they may mature and the interest thereon, at such rate and for such length of time as may be necessary for the purpose.

(3702-3) SEC. 3. [**Proceeds used in liquidation of debt.**] The county commissioners, upon the sale of such bonds, shall, from the proceeds arising from such sale, pay off and liquidate the indebtedness for which they were so sold.

(3702-4) SEC. 1. [**Money raised for county agricultural societies applied to purposes intended by act though life of act expired.**] Where money has been raised by taxation in any county for the purpose of leasing lands for county fairs, or for the purpose of erecting buildings for county fair purposes, or for making any improvements on county fair grounds, or for any purpose connected with the use of county fair ground or the management thereof by any county agricultural society, shall be used for such purpose only, notwithstanding the law under which money was raised by taxation may have expired by limitation; such moneys shall be used for the purposes intended by the act under which such moneys were levied and collected by taxation.

SEC. 3702a. [Commissioners in certain counties may assist agricultural societies in purchasing, leasing or improving sites for fairs.] When a county society in a county containing a city of second grade of the first class has purchased or leased for a term of not less than twenty years, real estate as a site whereon to hold fairs, or when the title to the grounds is vested in fee in the county, but the society has the control and management of the lands and buildings the county commissioners may if they think it for the interests of the county and society, pay out of the county treasury the same amount of money for the purchase or lease and improvement of such site or either of them as is paid by such agricultural society or individuals for such purpose or either of them, and such commissioners may levy a tax upon all the taxable property of the county sufficient to meet the provisions of this section.

SEC. 3702b. [Commissioners may levy tax for encouragement of agricultural fairs.] When a county has purchased or leased for a term of not less than twenty years, real estate as a site whereon to hold fairs, or where the title to the grounds is vested in fee in the county, but the agricultural society has the control and management of the lands and buildings, or when such lands and buildings are held by lease from any such society by another society, association or incorporated company, the county commissioners are authorized for the purpose of encouraging agricultural fairs, to annually levy a tax of not exceeding one-tenth of one mill upon all the taxable property of the county, for the purpose of raising not to exceed one thousand dollars in any county, which sum shall be paid by the treasurer of the county to the treasurer of agricultural society except in case of such lease by such society when such sum shall be paid to the treasurer of such lessee society, association or incorporated company upon an order from the county auditor duly issued therefor;

[**Payment in anticipation of levy.**] And the county commissioners prior to the levy of any such tax, may, if they think it for the interest of the county and society, pay out of the county treasury any sum not exceeding one thousand dollars, as herein provided, out of any money in the general fund not otherwise appropriated.

SEC. 3703. [County commissioners may purchase fair grounds.] If a county society and the county commissioners decide that the interests of the society and county demand an appropriation from the county treasury for the purchase and improvement of county fair grounds greater than that authorized by the preceding section, or without any action of or purchase by the society, the commissioners may levy a tax upon all the taxable property of the county, the amount of which shall be fixed by the commissioners, but shall in no event exceed one-half of one mill on the dollar of the taxable property of the county in addition to the amount authorized in the last section to be paid for such purpose.

SEC. 3704. [The tax must be submitted to the electors.] No such additional tax shall be levied until the question as to the amount to be levied has been submitted by the commissioners to the qualified electors of the county at some general election, and a notice of which, specifying the amount to be levied, has been given at least thirty days previous to such election, in one or more newspapers published and of general circulation in the county; those voting at such election in favor of such tax shall have written or printed on their ballots "Agricultural tax, Yes," and those voting against the same, "Agricultural tax, No,"

and if a majority of the votes cast be in favor of paying such tax, the same may be levied and collected as other taxes; and when such tax is collected by the county treasurer, the auditor shall issue his order for the amount so collected to the treasurer of the county agricultural society, on his filing with the auditor an undertaking, in double the amount so collected, with good and sufficient sureties to be approved by the auditor, conditioned for the faithful paying over and accounting to such society for such funds.

SEC. 3705. [When real estate vests in the county.] When a society is dissolved or ceases to exist, in any county where payments have been made for real estate, or improvements upon such real estate, or for the liquidation of indebtedness, for the use of such society, all such real estate and improvements shall vest in fee simple in the county by which such payments were made.

SEC. 3705a. [Insurance on fair ground property.] The county commissioners of any county owning agricultural or fair ground property be and are hereby authorized to keep the buildings thereon insured, if deemed proper by said commissioners.

(3705-11) SEC. 1. [Corporations for the apprehension and conviction of horse-thieves, etc.] Any number of persons not less than fifteen, a majority of whom shall be residents of the state of Ohio, are hereby authorized to become incorporated for the purpose of apprehending and convicting horse-thieves and other felons.

(3705-12) SEC. 2. [Seal; constitution; officers; oath of office; certificate of appointment or election; powers of officers and members.] Any association so incorporated may make and use a common seal with the name of the corporation thereon. A majority of the members of such association shall have power to adopt a constitution and by-laws for their government; and may elect or appoint such officers as they may deem proper, who shall hold their office during the term provided for by the constitution and by-laws thereof, and who shall perform the duties required of them by said constitution and by-laws, and the provisions of this act; and the presiding officer of any such association or corporation may administer the proper oaths of office to any of its officers or members, and certify the appointment or election thereof under the seal of said corporation. The presiding officer may also appoint deputies, not exceeding one in each township, in any county or counties where such corporation is located, who may administer said oath of office, or membership, and certify the appointment or election thereof, which shall be valid when approved by said presiding officer under the seal of said corporation, and the officers or members of said association or corporation, upon the proper certificate of the presiding officer thereof, when so elected or appointed, shall have full power and authority, when a felony has been committed, to pursue and arrest, without warrant, any person or persons whom they believe or have reasonable cause to believe is guilty of the offense, and arrest and detain such alleged criminal or criminals in any county in the state to which they may have fled, and return such accused person or persons to any officer of the county in which the offense was committed, and there detain such accused person or persons until a legal warrant can be obtained for his or their arrest.

(3705-13) SEC. 3. [Assessments; indemnity for losses; expenditures.] Any such association may make and collect from its members such assessments as may be authorized by its constitution or by-

laws, and may, if so provided in its constitution, indemnify its members for losses caused by horse thieves or other felons, and expend such moneys as may be deemed necessary in the pursuit and arrest, and procuring the conviction of felons.

(3705-14) SEC. 4. [Reimbursement of expenses by county.] Upon the apprehension and conviction of any such horse thief or other felon by any such association, the commissioners of the county in which the crime was committed, may reimburse said association in any sum not exceeding one hundred dollars, for necessary expenses, not otherwise provided for by law, incurred in the apprehension and conviction of such criminal.

SEC. 3706. [Societies may sell, and purchase other sites.] When a county society desires to sell its site for holding county fairs, for the purpose of purchasing another site, it may sell the same in such manner and on such terms as it may deem proper, and the money arising from the sale shall be paid by the purchaser to the county treasurer, who shall pay it out only upon the certificate of the president and secretary of the society that the same is to be used in the purchase or improvement of another site, which site the certificate shall show to have been purchased; and in cases where the county has paid any portion of the purchase money for the site proposed to be sold, the written consent of the county commissioners shall first be given to such sale, and the money shall not be paid out of the treasury without their consent.

SEC. 3707. [How conveyances to be executed.] Conveyances of grounds sold under the preceding section, which are owned exclusively by any society, may be executed by the president of the society as such president; and grounds owned partly by the society and partly by the county may be conveyed by deed executed by the president of the society, as such president, and by the county commissioners.

SEC. 3708. [Society cannot incumber its grounds.] When the commissioners of any county have paid, or hereafter pay, any money out of the county treasury for the purchase of real estate as a site for any agricultural society whereon to hold its fairs, such society shall not incumber such real estate with any debt, by mortgage or otherwise, without the consent of the commissioners.

SEC. 3709. [Incorporation of township societies.] When any number of natural persons of any township form a society for the promotion of agriculture in such township, and under their hands and seals make a certificate, and acknowledge the same before a justice of the peace, in which shall be specified the name of the society, the objects of its formation, and the township in which it shall be located, and file the same in the office of the secretary of state, such society shall be deemed a body corporate, with succession, and with power to sue and be sued, defend and be defended, and contract and be contracted with, may make and use a common seal, and the same alter at pleasure, and may purchase and hold in fee simple, or rent or lease, such real estate as may be required as a site for holding fairs, not exceeding forty acres, and establish all necessary rules and regulations for the management of such fairs and the legitimate business of the society.

SEC. 3709a. [Authorizing township societies to incorporate for the detection of horse thieves and other criminals and for mutual protection of property against such.] When any number of natural persons of any township, form a society, for the detection and arrest of

horse thieves and other criminals, and for the mutual protection of the property of its members, such society may become a body corporate in the manner prescribed in section thirty-seven hundred and nine of the Revised Statutes, to which this is supplementary, with the right of succession, and the right to make and use a common seal, and with power to sue and be sued, to contract and be contracted with, to levy and collect, by suit, if necessary, such assessments not exceeding three dollars annually from each member, as may be required to carry out the objects of the society, and to make for such society needful rules and regulations not in conflict with the laws of this state.

SEC. 3710. [Justices of the peace may appoint special constables.]

A justice of the peace may, on the application of a state, county, township, or an independent agricultural society, or industrial association, appoint a suitable number of special constables to assist in keeping the peace during the time when such society is holding its annual fair, and shall make an entry in his docket of the number and names of all such persons so appointed.

SEC. 3711. [Powers of such constables.] Constables so appointed shall have all the power of constables to suppress riots, disturbances and breaches of the peace; they may, upon view, arrest any person guilty of a violation of any of the laws of the state, and may pursue and arrest any person fleeing from justice in any part of the state; and they may apprehend any person in the act of committing an offense, and, upon reasonable information, supported by affidavit, procure process for the arrest of any person charged with a breach of the peace, and forthwith bring such person before the competent authority, and enforce all the laws for the preservation of good order.

SEC. 3712. [Duties of certain officers to suppress sale of liquor at fairs.] A judge of any court, sheriff, coroner, justice of the peace of the proper county, a constable of the proper township, or the constables specially appointed, shall, upon view or information, without warrant, apprehend any person selling intoxicating liquors in violation of law at or within two miles of the place where an agricultural fair is being held, and seize the booth, tent, wagon, carriage, stand, vessel, or boat at or from which such liquors are being sold, and convey the same to a place of safe keeping, and take the person so offending before some officer having competent jurisdiction, together with an inventory of the things so seized, and the officer before whom such offender is brought, shall proceed forthwith to inquire into the truth of the accusation, and proceed as provided by law.

SEC. 3713. [How articles seized to be disposed of.] The articles so seized shall be bound for the payment of all fines and costs assessed against the accused in the proceeding, including the necessary expenses of seizing and detaining the same, and shall remain in the possession of the officer who makes the seizure until the determination of the prosecution, and may be sold on process issued therein against the accused.

FARMERS' INSTITUTES.

(3713-1) SEC. 1. [When farmers' institute society deemed body corporate.] That when twenty or more persons, residents of any county in the state, organize themselves into a farmers' institute society, for the purpose of teaching better methods of farming, stock raising,

fruit culture and all branches of business connected with the industry of agriculture, and adopt a constitution and by-laws agreeable to rules and regulations furnished by the state board of agriculture; and when such society shall have elected proper officers and performed such other acts as may be required by the rules of the state board of agriculture, such society shall be deemed a body corporate.

(3713-2) SEC. 2. [**Number, times and places of annual meetings.**] Not to exceed four farmers' institute societies organized under the provisions of this act, shall hold annual meetings under the auspices of the state board of agriculture in any one county of the state, and the state board of agriculture shall have power to determine the number and name the times and places for holding such institute meetings.

(3713-3) SEC. 3. [**County payments to societies and state board of agriculture.**] When a society organized under the provisions of this act shall have held an annual farmers' institute meeting in accordance with the rules of the state board of agriculture, the secretary of said board shall issue certificates, one to the president of the farmers' institute society, and one to the president of the state board of agriculture, setting forth these facts and, on the presentation of these certificates to the county auditor, he shall each year draw orders on the treasurer of the county as follows: Based on the last previous national census, a sum equal to three mills for each inhabitant of the county in favor of the president of the state board of agriculture, and a sum equal to three mills for each inhabitant of the county in favor of the president of the farmers' institute society, where but one society is organized, but in counties where there are more than one farmers' institute society organized under the provisions of this act, and holding meetings under the auspices and by direction of the state board of agriculture, the said three mills for each inhabitant shall be equally apportioned among such societies, and warrants in the proper amounts issued to the respective presidents, and the treasurer of the county shall pay the same from the county fund; provided that in no county shall the total annual sum exceed two hundred and fifty dollars; and provided further that the payment to any institute society shall not exceed the expenses, as per detailed statement, provided in section four of this act.

(3713-4) SEC. 4. [**Society's statement of expenses; what secretary's certificate to indicate.**] With each certificate of the secretary of the state board of agriculture to the county auditor, which certificate shall indicate the number of societies organized in the county and holding meetings by direction of the state board of agriculture, and before the auditor issues his order upon the treasurer there shall be filed with the auditor a detailed statement of the expenses of the institute for the current year, no part of which shall be for salaries of officers of the institute society; but this provision shall not apply to the order in favor of the president of the state board of agriculture, which board shall issue statement as required in section six of this act.

(3713-5) SEC. 5. [**Lectures at annual meetings.**] At the annual farmers' institute meetings, held under the provisions of this act and under the auspices of the state board of agriculture, the said board shall furnish lecturers or speakers whose compensation and expense shall be paid by the board.

(3713-6) SEC. 6. [**Publication and distribution of lectures and papers.**] At the close of each session's institute work, the state board

of agriculture shall publish in pamphlet or book form, such lectures and papers delivered at the several institute meetings, as may seem of general interest and importance to the farmers, stock breeders and horticulturists of the state, copies of which shall be furnished the secretary of each institute society, and the balance issued to be for general distribution; the cost of preparing the matter and the distribution of the pamphlet or book to be paid by the state board of agriculture. Said board shall also publish, in such pamphlet or book, a detailed statement of its receipts under the provisions of this act and the disbursements on account of institute work.

TRESPASS.

(3713-7) SEC. 1. [**Trespass.**] That whenever any person or persons, corporation or association, whether incorporated or otherwise, shall be possessed of, as owners, or shall have the lawful custody of any tract or parcel of land within this state, for the purpose of an agricultural or other fair grounds, or for the purpose of meetings of pioneers, or for public or private entertainments or other lawful assemblages, or for the protection of trees, plants and shrubs, or either of them, or the fruits and products thereof, or for any one or all of said purposes, it shall be unlawful for any person or persons to enter or go upon said grounds, either through or over any fence, or in any other manner, without the consent and permission of the owner or owners thereof, or other person having lawful control of the same, or in violation of the regulations of the same.

(3713-8) SEC. 2. [**Penalty.**] Whoever shall wilfully, and in violation of the provisions of section one (3713-7) of this act, enter or go upon any lands referred to in said section one (3713-7), or shall injure or destroy any tree, plant, shrub or other property thereon, or shall take or carry away fruit, nut or other thing of value, or shall willfully damage or destroy any fence enclosing said lands, shall on conviction thereof be fined in any sum not exceeding three hundred dollars nor less than five dollars, or be imprisoned in the jail of the proper county, or in any city, town, or village prison or lockup (when the offense shall have been committed within the corporate limits thereof), for any period not exceeding three months, and until said fine and costs are paid, or both fine and imprisonment at the discretion of the court; and shall moreover be liable, in a civil action to the party damaged thereby, in double the value of the property taken, carried away or destroyed, and in double the amount of the damage thereto, to be recovered before a justice of the peace or other court of competent jurisdiction.

(3713-9) SEC. 3. [**Prosecutions hereunder.**] Prosecutions under and by virtue of this act, may be by indictment in the court of common pleas in the county where the offense shall have been committed, or before a justice of the peace of such county, or before the mayor of a city, town, or village, when the offense shall have been committed within the corporate limits of the same.

APPROPRIATION.

(3713-10) SEC. 1. [**Proceedings for appropriation of lands for enlargement of fair grounds.**] When it shall be deemed necessary by the board of directors of any county agricultural society to enlarge the fair grounds under the control of such society, and the owner or owners of

the proposed addition to said grounds and the said board of directors are unable from any cause to agree upon the sale and purchase of said additional grounds, the board shall make an accurate plat and description of the land which it desires for said purpose and file the same with the probate judge of the proper county; and thereupon the same proceedings of appropriation shall be had which are provided for the appropriation of private property by municipal corporations, said board to act for such society therein as the council would for the municipal corporation.

(3713-II) SEC. 2. [Board of directors to prosecute proceedings.] That if, under any existing law, it is made the duty of the county commissioners to purchase any such additional ground for the use of any such society, said board of directors shall prosecute the said proceedings of appropriation to their final conclusion, except so far as relates to payment, or any part of the purchase money, before said commissioners shall be called upon to act in the matter. All such payments or deposits, not exceeding fifteen thousand dollars (\$15,000) in amount, shall be made by said commissioners when required so to do by said board of directors, or by the court, and no delay on the part of said commissioners shall defeat or prevent the purchase or appropriation aforesaid.

SOCIETIES TO PREVENT CRUELTY TO ANIMALS.

SEC. 3714. ["Ohio Humane Society"; powers, etc.; representatives; the object of; power to acquire property; board for management of bequests, etc.; officers and rules; agents; powers of agents; branch societies; societies now organized may become branches.] The Ohio state society for the prevention of cruelty to animals, heretofore incorporated, shall be and remain a body corporate, under the name of "the Ohio humane society" with all the powers, privileges, immunities, and duties heretofore possessed by said Ohio state society for prevention of cruelty to animals, hereinafter specified, as to county associations, and may appoint any person, in any county in this state where there is no such active association, to represent the state society, and to receive and account for all funds coming to the society, from fines or otherwise. The objects of said society and all societies heretofore or hereafter organized under sections *three thousand seven hundred and fifteen* and *three thousand seven hundred and sixteen* of the Revised Statutes shall be the inculcation of humane principles, and to secure the enforcement of laws for the prevention of cruelty, especially to children and animals, to promote which object the said societies may respectively acquire property, real or personal, by purchase or gift. All property acquired by gift, devise, or bequest for special purposes shall be vested in a board of trustees consisting of three members elected by the society, which board shall manage said property, and apply the same in accordance with the terms of the gift, devise, or bequest, with power to sell the same and re-invest the proceeds. Said society may elect such officers, and make such rules and regulations and by-laws as may be deemed necessary or expedient by their members for their own government and the proper management of their affairs. Said society may appoint agents in any county of this state, where no active society exists under sections *three thousand seven hundred and fifteen* and *three thousand seven hundred and sixteen* of the Revised Statutes to represent the

society, and receive an account for all funds coming to the society from fines or otherwise, and may also appoint agents at large to prosecute the work of said society throughout the state. The agents of said society and of all societies heretofore or hereafter organized under sections *three thousand seven hundred and fifteen* and *three thousand seven hundred and sixteen* of the Revised Statutes whose appointment has been approved as hereinafter provided, shall have power to arrest any person found violating any law for the protection of persons or animals, or the prevention of cruelty thereto, and upon making such arrest shall forthwith convey the person arrested before some court or magistrate having jurisdiction of the offense, and there make complaint against them, but said agents shall not be authorized to make such arrests within any municipal corporation unless their appointment has been approved by the mayor thereof, nor within any county beyond the limits of a municipal corporation, unless their appointment has been approved by the probate judge of said county, and the mayor or probate judge shall keep a record of all such appointments. Branches of the society consisting of not less than ten members may be organized in any part of the state to prosecute the work of the societies in their several localities, under rules and regulations prescribed by the society. Societies for the prevention of acts of cruelty to animals organized in any county under section *three thousand seven hundred and fifteen* may become branches of said society by resolution adopted at a meeting thereof called for that purpose, a copy of which resolution shall be forwarded to the secretary of state.

As to excess of dog tax in Lucas county, see latter part of § 4215.

SEC. 3715. [Other societies authorized.] Societies for the prevention of acts of cruelty to animals may be organized in any county, by the association of not less than seven persons, and the members thereof shall, at a meeting called for the purpose, elect not less than three of their members directors, who shall continue in office until their successors are duly chosen.

SEC. 3716. [How incorporated.] The secretary or clerk of the meeting shall make a true record of the proceedings thereat, which he shall certify, and forward to the secretary of state, who shall record the same; the record shall contain the name by which such association shall have determined to be known, and from and after the filing of the same the directors and associates, and their successors, shall be invested with the powers, privileges, and immunities incident to incorporated companies; and a copy of the record, duly certified by the secretary of state, shall be deemed and taken, in all courts and places in this state, as evidence that such association is a duly organized and incorporated body.

SEC. 3717. [May elect officers, and make regulations.] Such associations may elect such officers, and make such rules, regulations, and by-laws, as may be deemed necessary or expedient by their members for their own government, and the proper management of their affairs.

SEC. 3718. [Societies to prevent cruelty to animals may appoint agents to enforce law.] Such associations may appoint agents for the purpose of prosecuting any person guilty of any act of cruelty to persons or animals within this state, who shall have power to arrest any person found violating any of the provisions of this chapter, or any other law for the purpose of protecting persons or animals, or preventing any act of cruelty thereto; and, upon making such arrest, such

agent shall convey the person so arrested before some court or magistrate having jurisdiction of the offense, within the municipal corporation or county wherein the offense was committed, and there forthwith make complaint, on oath or affirmation, of the offense; but all appointments by such associations under this section must have the approval of the mayor of the city or village in which the association exists, and if it exists outside of any city or village the appointment must be approved by the probate judge of the county; and the mayor or probate judge shall keep a record of all such appointments.

SEC. 3718a. [In prosecutions for adulteration of food, etc.; for cruelty to animals; judicial proceedings in such cases before justices; costs, how paid; as to attorney.] Any justice of the peace within his county and city, and police judge or mayor of any city or village within his city or village, shall have jurisdiction in cases of violation of the laws to prevent adulteration of food and drink, the adulteration and deception in sale of dairy products, and drugs and medicines, and any violation of the law for prevention of cruelty to animals, or under section 6984 of Revised Statutes, or section 6984a thereof, as herein enacted. If such prosecutions be before a justice of the peace and a trial by jury be not waived, the said justice shall issue a venire to any constable of the county, containing the names of sixteen electors of the county to serve as jurors to try such case and make due return thereof. Each party shall be entitled to two peremptory challenges and shall be subject to same challenges as jurors are subject to in criminal cases in court of common pleas. If the venire of sixteen names be exhausted without obtaining the required number to fill panel, the justice may direct the constable to summon any of the bystanders to act as jurors; provided, that in all cases prosecuted under the provisions of this section, no costs shall be required to be advanced or paid by person or persons authorized under the law to prosecute such cases; and provided further, that in all cases brought under the provisions of this section, if the defendant be acquitted, or if convicted and committed in default of paying fine and costs, the costs of each case shall be certified under oath to county auditor, who, after correcting the same, shall issue a warrant on county treasurer in favor of the person or persons to whom such costs and fees shall be paid. And in cases brought for any violation of law for the prevention of cruelty to animals, or under section 6984 of Revised Statutes, or under section 6984a or 7017-3 thereof, the humane society or their agents, may employ an attorney to prosecute the same, who shall be paid for his services out of the county treasury, as the county commissioners may deem just and reasonable.

SEC. 3719. [Magistrates may authorize certain inspections.] When complaint is made, on oath or affirmation, to a magistrate or court authorized to issue warrants in criminal cases, that the complainant believes that any of the provisions of law relating to or affecting animals are being or are about to be violated in any particular building or place, such magistrate or court shall issue and deliver immediately, a warrant directed to any sheriff, constable, police officer, or agent of such association, authorizing him to enter and search such building or place, and to arrest any person there present violating, or attempting to violate, any such law, and to bring such person before some court or magistrate of competent jurisdiction within the city, village, or county within which such offense has been committed, to be dealt with according to law, and such attempt shall be held to be a violation of such law, and shall sub-

ject the person charged therewith, if found guilty, to the penalties provided therein.

SEC. 3719a. [Duties of police officer; penalty.] When a sheriff, constable, marshal, police officer, or any agent for any duly incorporated society for the prevention of cruelty to animals, has reason to believe that any person within his jurisdiction is about to violate the provisions of section *sixty-nine hundred and fifty-two*, of the Revised Statutes, he shall forthwith arrest such person, and take him before a magistrate named in section *seventy-one hundred and six*; upon the proper affidavit being filed, such officer shall hear the witnesses produced, on oath, and if he find the complaint true, order the accused to enter into a recognizance, with sufficient sureties, in a sum not less than one hundred dollars nor more than five hundred dollars, that he will not violate the provisions of said section *sixty-nine hundred and fifty-two*, within one year thereafter, within this state, and in default of such recognizance the officer shall commit the accused to jail, there to remain until such order is complied with, or he is otherwise discharged by due course of law, or until he shall make and subscribe an oath, in the presence of two witnesses, that he will not violate the provisions of said section *six thousand nine hundred and fifty-two* of the Revised Statutes of Ohio, nor aid or abet in so doing within said year. Upon conviction of such person for a subsequent violation of the provisions of said section within said year, he shall be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500), or imprisoned not less than thirty days nor more than ninety days, or both, in the discretion of the court.

SEC. 3720. [Police powers of officers and agents.] An officer, agent, or member of any such association may interfere to prevent the perpetration of any act of cruelty to animals in his presence, and may use such force as may be necessary to prevent the same, and to that end may summon to his aid any bystanders.

SEC. 3721. [Interpretation of certain words.] In this chapter, and in every law of the state relating to or in any manner affecting animals, the word "animal" shall be held to include every living dumb creature; the words "torture," "torment," and "cruelty," shall be held to include every act, omission, or neglect whereby unnecessary or unjustifiable pain or suffering is caused, permitted, or allowed to continue, when there is a reasonable remedy or relief; and the words "owner" and "person" shall be held to include corporations; and the knowledge and acts of agents and employes of corporations, in regard to animals transported, owned, employed by, or in the custody of a corporation, shall be held to be the act of such corporation.

SEC. 3722. [Member may require police officer to act.] A member of any such association may require the sheriff of any county, the constable of any township, the marshal or policemen of any city or village, or the agent of any such association, to arrest any person found violating the laws in relation to cruelty to persons or animals, and to take possession of any animal cruelly treated, in their respective counties, cities, or villages, and deliver the same to the proper officers of such associations; and for such service, and for all services rendered in carrying out the provisions of this chapter, such officers, and the officers and agents of the association, shall be allowed and paid such fees as they are allowed for like services in other cases, which shall be charged as costs, and reimbursed to the association by the person convicted.

SEC. 3723. [A person guilty is liable in damages.] A person guilty of cruelty to an animal, the property of another, shall be liable to the owner thereof in damages, in addition to the penalties prescribed by law.

SEC. 3724. [Conviction of agent no bar to action against principal.] The conviction of an agent or employe shall not bar an action for cruelty to animals against an employer for allowing a state of facts to exist which will induce cruelty to animals on the part of such agent or employer.

SEC. 3725. [Any person may protect an animal from neglect.] Whenever it may be necessary, in order to protect any animal from neglect, any person may take possession of the same; and whenever an animal is impounded, yarded or confined, and continues without necessary food, water, or proper attention for more than fifteen successive hours, any person may, from time to time, and as often as it may be necessary, enter into and upon any place in which such animal is so impounded, yarded, or confined, and supply it with necessary food or water and attention, so long as it there remains, or may, if necessary or convenient, remove such animal, and shall not be liable to any action for such entry; in all cases the owner or custodian of such animal, if known, shall be immediately notified of such action, by the person taking possession of such animal; if the owner or custodian be unknown, and cannot be ascertained with reasonable effort, such animal shall be held to be an estray, and shall be dealt with as such; the necessary expense for food and attention given to any animal under the provisions of this section, may be collected of the owner of such animal, and the animal shall not be exempt from levy and sale upon execution issued upon a judgment therefor.

For strays and drifts, see § 6627 et seq.

SEC. 3725a. [Animal may be ordered killed.] Any sheriff, constable, marshal, policeman, or agent, of any society for the prevention of cruelty to animals, may kill, or cause to be killed any animal found neglected or abandoned, and which in the opinion of three reputable citizens, is injured or diseased, past recovery or by age has become useless.

This section is unconstitutional: *Brice v. Humane Society*, 4 C. C. 358.

(3725-1) SEC. 1. [Removal of child from possession of parent by officer of humane society.] Whenever any officer or agent of a society in this state, organized under title 2, chapter 13, of the Revised Statutes, shall deem it for the best interest of any child, either by reason of cruelty inflicted upon said child or by reason of the surroundings of the child, that said child be removed from the possession and control of the parents or other person or persons having charge thereof, said officer or agent may take possession of said child summarily;

[Notice.] And shall cause a notice to be personally served upon the person having control or possession of said child, and upon the parent or parents of said child, if within the state, that the said society will apply to the probate court of the county in which said society is situated, at a time and place named in such notice, for an order as hereinafter set forth.

(3725-2) SEC. 2. [Order of probate court making general agent of society guardian of child.] At the time set forth in said notice, if it shall appear to the satisfaction of the probate judge, that it is for the best interest of said child that possession and control thereof be

taken from said parent or other person having control or possession thereof, said probate judge shall make an order conferring upon the general agent of said society the powers of a guardian as to such child:

[Guardian to provide home for child.] And, as such guardian, said general agent may, with the approval of the probate judge, provide a suitable home for such child until said child reaches the age of majority or until such time as the probate judge may be satisfied that the parent or parents of said child are in a position to properly provide and care for said child.

FARM LABORERS' ASSOCIATIONS.

SEC. 3843. [Farm laborers' association.] No association incorporated for the purpose of promoting the interests of agriculture, and for the relief of distressed farm laborers, or their widows and orphans, whether such widows and orphans are members of such association or not, and for any other charitable purpose, shall take or hold any real estate, except such as may be actually occupied in the exercise of its legitimate business, and such as it may acquire in security for or satisfaction of debts justly due it; but real estate so occupied shall not in any case exceed in value the sum of fifty thousand dollars.

SEC. 3844. [What investment it may make.] Such associations shall, after paying their expenses, invest their funds exclusively for the purposes mentioned in their articles of incorporation, and may invest the same in mortgages upon real estate, or in county, state, or United States securities; they may in their articles of incorporation, designate the kinds of securities in which their funds shall be invested, in which case no part thereof shall be invested in securities other than those named therein; but they shall not make any loan to any of their trustees or officers; and they may take by gift, subscription, purchase, devise, or loan; but no loan shall be taken for a less term than three years nor for a greater term than twenty years, nor to an amount exceeding one hundred thousand dollars, nor at a rate of interest greater than four per centum, payable semi-annually.

SEC. 3845. [Must report to attorney-general.] Every such association shall make, annually, and transmit to the attorney-general, under the signatures of a majority of the trustees, attested by the clerk, a full and true statement of its condition and affairs; and for any wilful neglect to make such report within one month after its annual meeting, the attorney-general may proceed against such association for the forfeiture of its charter for such neglect.

SEC. 3846. [Consolidation of two associations.] Any unincorporated association or society organized for any purpose named in section *thirty-eight hundred and forty-three* may be consolidated with an association incorporated for a purpose named therein, by a resolution of each, adopted by not less than two-thirds of its members, at a meeting called for that purpose; such resolutions, and the votes thereon, shall be recorded by the clerk of the corporate association, and the consolidated association shall thereupon assume the name or title of the corporate association, and be entitled to all its privileges; but the members of the consolidated association shall not be liable for the debts or obligations of the unincorporated association or society.

SEC. 3847. [Attorney-general to report annually.] The attorney-general shall, annually, report to the general assembly, in a condensed

form, the number and condition of such associations, as derived from the annual reports of the trustees.

SEC. 3848. [May maintain libraries, etc.] All such incorporated associations may keep and maintain libraries, and a museum of art consisting of models of such improved instruments and machinery as are best calculated to promote the interests of agriculture, for the benefit of such associations, under such rules and regulations as its members from time to time adopt, and may make all needful by-laws for the good government and regulation of the same.

SEC. 3858. [Market-house companies.] A company incorporated for the purpose of constructing and maintaining a market-house may construct, erect, establish, and maintain, at the place named in its articles of incorporation, a suitable building or buildings to be appropriated and used exclusively as a public market-house, for the sale and vending of meats, vegetables, and all other kinds of provisions, and of fruits, plants, and flowers, and all other articles commonly sold and vended in public market-houses or spaces, on market days, in market hours.

SEC. 3859. [Powers of such companies.] Such companies may rent, lease, sell, or dispose of stalls, cellar vaults, or other divisions or spaces in their buildings, in such manner, and upon such terms and conditions, as the directors shall determine; but a uniform rule in renting or leasing such stalls, cellar vaults, or other divisions or spaces, shall be established, printed and hung in conspicuous places in the buildings, and the same may be changed, from time to time, by the directors thereof; and no preference shall be made, by any variation or difference in rates or prices, in favor of citizens of the city or village wherein the buildings are erected, and against farmers, butchers, or producers not residing in such city or village, and no rule, regulation, order, or condition shall be made or exacted by any company to prevent farmers, butchers, or other persons from disposing of their produce, meats, vegetables, or other articles, in such quantities and upon such terms as they may deem proper; but such companies shall prohibit and prevent in their buildings the use of false weights or measures, the exposure or sale of any diseased or decaying meats or vegetables, and any offensive or injurious articles.

SEC. 4183. [County auditor to take possession of and sell escheated lands.] Any real property escheated to the state, except in a city of the first grade of the first class, shall be taken possession of, in the name of the state, by the auditor of the county in which it is found, and by him sold at public auction, at the county seat of the county, to the highest bidder, after having given thirty days' notice of such intended sale, in some newspaper printed within the county.

SEC. 4184. [Appraisal, terms of sale, and deed.] The court of common pleas shall, on the application of the county auditor, appoint three disinterested freeholders of the county, to appraise such real property, who shall be governed by the same rule as appraisers in sheriffs' or administrators' sales; and the auditor shall sell such property at not less than two-thirds its appraised value, and may, in his discretion, sell the same for cash, or for one-third cash, and the balance in equal annual payments, the deferred payments to be amply secured; upon the payment of the whole amount of consideration money, he shall execute a deed to the purchaser, in the name and on behalf of the state of Ohio; and the proceeds of such sales shall be paid by the auditor to the county treasurer.

SEC. 4185. [When lands sold, how proceeds disposed of.] The county treasurer shall pay the proceeds, not exceeding six hundred dollars in any case, of a sale of escheated lands to the regularly organized agricultural society within the county, and the excess of such proceeds, or the whole thereof, if there be no such society within the county, to the treasurer of state, as other moneys collected for state purposes, for the use of the state agricultural fund.

(4200-9) SEC. 1. [Regulating sale of milk; penalty.] Whoever, by himself or by his servant, or agent, or as the servant or agent of any other person, sells, exchanges, or delivers, or has in his custody or possession with intent to sell or exchange, or exposes or offers for sale or exchange, adulterated milk, or milk to which water or any foreign substance has been added, or milk from sick or diseased cows, shall, for a first offense, be punished by a fine of not less than fifty nor more than two hundred dollars; for a second offense, by fine of not less than one hundred dollars nor more than three hundred dollars, or by imprisonment in the work-house for not less than thirty nor more than sixty days; and for a subsequent offense, by fine of fifty dollars, and by imprisonment in the work-house of not less than sixty nor more than ninety days.

(4200-10) SEC. 2. [Pure milk; penalty.] Whoever, by himself or by his servant, or agent, or as the servant or agent of any other person, sells, exchanges or delivers, or has in his custody or possession, with intent to sell or exchange, or exposes or offers for sale as pure milk, any milk from which the cream or part thereof has been removed, shall be punished by the penalties provided in the preceding section.

(4200-11) SEC. 3. [Skimmed milk; penalty.] No dealer in milk, and no servant or agent of such a dealer, shall sell, exchange, or deliver, or have in his custody or possession, with intent to sell, exchange or deliver, milk from which the cream or part thereof has been removed, unless in a conspicuous place, above the center, upon the outside of every vessel, can or package, from which or in which such milk is sold, the words "skimmed milk" are distinctly marked in uncondensed gothic letters not less than one inch in length. Whoever violates the provisions of this section shall be punished by the penalties provided in section one (4200-9).

(4200-12) SEC. 4. [Adulterated milk defined.] In all prosecutions under this chapter, if the milk is shown upon analysis, to contain more than eighty-eight per cent. of watery fluid, or to contain less than twelve per cent. solids, not less than one-fourth of which must be fat, it shall be deemed for the purpose of this chapter to be adulterated, and not of good standard quality, except during the months of May and June, when milk containing less than eleven and one-half per cent. of milk solids shall be deemed to be not of good quality.

(4200-13) SEC. 1. [Butter and cheese; imitations.] No person, by himself or his agent, or his employe, shall render or manufacture for sale out of any animal or vegetable oils, not produced from unadulterated milk or cream from the same, any article in imitation or semblance of natural butter or cheese produced from pure unadulterated milk or cream from the same, nor compound with, or add to milk, cream or butter any acids or other deleterious substance, or animal fats or animal or vegetable oils not produced from milk or cream, so as to produce any article or substance, or any human food, in imitation or semblance of natural butter or cheese, nor shall sell, keep for sale or offer for sale any article, substance or compound made, manufac-

tured or produced in violation of the provisions of this section, whether such article, substance or compound shall be made or produced in this state or elsewhere.

(4200-14) SEC. 2. ["Natural butter and cheese," etc., defined; oleomargarine.] For the purpose of this act the terms "natural butter and cheese," "natural butter or cheese produced from pure unadulterated milk or cream from the same, butter and cheese made from unadulterated milk or cream, butter or cheese, the product of the dairy," and butter or cheese shall be understood to mean the products usually known by the terms butter and cheese, and which butter is manufactured exclusively from pure milk or cream or both, with salt and with or without any harmless coloring matter, and which cheese is manufactured exclusively from pure milk or cream or both, with salt and rennet and with or without any harmless coloring matter or sage. It is further provided that nothing in this act shall be construed to prohibit the manufacture or sale of oleomargarine, in a separate and distinct form, and in such manner as will advise the consumer of its real character, free from any coloring matter or other ingredient causing it to look like or to appear to be butter, as above defined.

(4200-15) SEC. 3. [Penalty.] Whoever violates the provisions of this act shall be guilty of a misdemeanor, and be punished by a fine of not less than one hundred dollars, nor more than five hundred, or not less than six months' nor more than one year's imprisonment, for the first offense, and by imprisonment for one year for each subsequent offense.

(4200-16) SEC. 1. [Oleomargarine; restrictions.] No person shall manufacture, offer or expose for sale, sell or deliver, or have in his possession with intent to sell or deliver, any oleomargarine which contains any methyl (methyl) orange, butter yellow, annatto, analine dye, or any other coloring matter.

(4200-17) SEC. 2. [Placards to be displayed by dealers.] Every person who shall offer or expose for sale, sell or deliver, or have in his possession with intent to sell or deliver, any oleomargarine, shall keep a white placard not less in size than ten by fourteen inches, in a conspicuous place where the same may be easily seen and read, in the store, room, stand, booth, vehicle or place where such substance is offered or exposed for sale, on which placard shall be printed in black letters, not less in size than one and one-half inches square, the words "oleomargarine sold here;" and said placard shall not contain any other words than the ones described; and no person shall sell or deliver any oleomargarine unless it be done under its true name and each package has on the upper side thereof a label on which is printed in letters not less than five-eighths of an inch square, the word "oleomargarine," and in letters not less than one-eighth of an inch square, the name and per cent. of each ingredient therein.

(4200-18) SEC. 3. [Placards to be displayed by hotel proprietors and others.] Every proprietor, keeper, manager or person in charge of any hotel, boat, railroad car, boarding-house, restaurant, eating-house, lunch-counter or lunch-room, who therein sells, uses, serves, furnishes or disposes of or uses in cooking, any oleomargarine, shall display and keep a white placard in a conspicuous place, where the same may be easily seen and read, in the dining-room, eating-room, restaurant, lunch-room or place where such substance is furnished, served, sold or disposed of, which placard shall be in size not less than ten by

fourteen inches, upon which shall be printed in black letters, not less in size than one and a half inches square, the words "oleomargarine sold and used here," and said card shall not contain any other words than the ones above described, and such proprietor, keeper, manager or person in charge shall not sell, serve or dispose of such substance as for butter when butter is asked for or purported to be furnished or served.

(4200-19) SEC. 4. [**Oleomargarine defined.**] The word "oleomargarine" as used in this act shall be construed to mean any substance, not pure butter of not less than eighty per cent. of butter-fats, which substance is made as substitute for, in imitation of, or to be used as butter.

(4200-20) SEC. 5. [**Penalty.**] Any manufacturer who violates any of the provisions of this act shall, upon conviction thereof, be fined in any sum not less than one hundred dollars nor more than five hundred dollars; and for each subsequent offense, in addition to the above fine, may be imprisoned in the county jail not more than ninety days. Any other person violating any of the provisions of this act shall, upon conviction thereof, be fined not less than fifty dollars nor more than one hundred dollars.

(4200-21) SEC. 1. [**Branding of "filled cheese" and "skimmed cheese."**] Whoever, by himself or by his agents, sells, exposes for sale, or has in his possession with intent to sell, any article, substance, or compound made in imitation or semblance of cheese, or a substitute for cheese, and not made exclusively or wholly of milk or cream with salt, rennet, and with or without harmless coloring matter, or containing any fats, oils or grease not produced from milk or cream, shall have the words "filled cheese," and all cheese made exclusively and wholly from milk or cream with salt, rennet, and with or without harmless coloring matter, and containing less than twenty per cent. of pure butter fat, shall have the words "skimmed cheese" stamped, labeled or marked, in printed letters of plain, uncondensed gothic type, not less than one inch in length, so that the words cannot easily be defaced, and upon the side of every cheese, cheese-cloth or band around the same, and upon the top and side of every tub, firkin, box or package containing any of said articles, substance or compound. And in case of retail sales of any of said articles, substance or compound, not in the original package, the seller shall, by himself or by his agents, attach to each package so sold, and shall deliver therewith to the purchaser, a label or wrapper bearing in a conspicuous place upon the outside of the package the words "filled cheese," or "skimmed cheese," as the case may be, in printed letters of plain, uncondensed gothic type, not less than one inch in length.

(4200-22) SEC. 2. [**Penalty for violating preceding section.**] Whoever, by himself or his agents, sells, exposes for sale, or has in his possession with intent to sell, any article, substance, or compound made in imitation or semblance of cheese or as a substitute for cheese, except as provided in section 1 (4200-21) of this act, and whoever with intent to deceive, defaces, erases, cancels, or removes any mark, stamp, brand, label or wrapper provided for in said section, or in any manner shall falsely label, stamp or mark any box, tub, article, or package marked, stamped or labeled as aforesaid, shall be punished by a fine of not less than fifty nor more than one hundred dollars, or by imprisonment in

the county jail not less than ten nor more than thirty days for the first offense, and by a fine of not less than one hundred nor more than two hundred dollars, or by imprisonment in the county jail not less than twenty nor more than sixty days, or both for each subsequent offense.

(4200-23) SEC. 3. [**Penalty for selling or offering imitation when cheese is called for.**] Whoever, by himself or his agents, sells or offers for sale, to any person who asks, sends or inquires for cheese, any article, substance, or compound made in imitation or semblance of cheese, or as a substitute for cheese, not made entirely from milk or cream, with salt, rennet, and with or without harmless coloring matter, and containing not less than twenty per cent. pure butter fats, shall be punished by a fine of not less than fifty nor more than one hundred dollars, or by imprisonment in the county jail not less than ten nor more than thirty days for the first offense, and by a fine of not less than one hundred nor more than two hundred dollars, or by imprisonment in the county jail not less than twenty nor more than sixty days, or both, for each subsequent offense.

(4200-24) SEC. 4. [**Penalty for selling, etc., imitation without proper brands and placard.**] Whoever, by himself or his agents, sells or offers for sale, any article, substance, or compound made in imitation or semblance of cheese, or as a substitute for cheese not made entirely from milk or cream, with salt, rennet, and with or without harmless coloring matter, not marked and distinguished by all the marks, words and stamps required by this act, and not having in addition thereto upon the exposed contents of every opened tub, box, or parcel thereof, a conspicuous placard with the words "filled cheese" or "skimmed cheese" as the case may be printed thereon in plain, uncondensed letters, not less than one inch long, shall be punished by a fine of not less than fifty nor more than one hundred dollars, or by imprisonment in the county jail not less than ten nor more than thirty days for the first offense, and by a fine of not less than one hundred nor more than two hundred dollars, or by imprisonment in the county jail not less than twenty nor more than sixty days, or both, for each subsequent offense.

(4200-25) SEC. 5. [**Posting of placard at place of business.**] Whoever, by himself or his agents, sells "filled cheese," or "skimmed cheese" or any substance made in imitation or semblance of cheese, or as a substitute for cheese, not made entirely from milk or cream, with salt, rennet, and with or without harmless coloring matter, from any dwelling, store, office or public mart, shall have conspicuously posted thereon the placard or sign, in letters not less than four inches in length "filled cheese sold here," or "skimmed cheese sold here" as the case may be. Any person neglecting or failing to post the placard herein provided for shall be punished by a fine of one hundred dollars for the first offense, and by a fine of one hundred dollars for each day's neglect thereafter.

(4200-26) SEC. 6. [**Placard on sides of vehicle.**] Whoever, by himself or his agents, peddles, sells, solicits orders for the future delivery of, or delivers from any cart, wagon or other vehicle, upon the public streets or ways, "filled cheese," or "skimmed cheese" or any substance made in imitation or semblance of cheese, or as a substitute for cheese, not made entirely from milk or cream, with salt, rennet, and with or without harmless coloring matter, not having on both sides of said cart, wagon, or other vehicle, the placard in uncondensed gothic letters not less than three inches in length, "filled cheese" or "skimmed cheese," shall be punished

by a fine of not less than fifty nor more than one hundred dollars or by imprisonment in the county jail not less than ten nor more than thirty days for the first offense, and by a fine of not less than one hundred nor more than two hundred dollars or by imprisonment in the county jail not less than twenty nor more than sixty days, or both, for each subsequent offense.

(4200-27) SEC. 7. [Notice to guests, etc.] Whoever, by himself or his agents, furnishes, or causes to be furnished, in any hotel, restaurant, or [at] any lunch-counter "filled cheese," or "skimmed cheese" or any substance made in imitation or semblance of cheese, or as a substitute for cheese, not made entirely from milk or cream, with salt, rennet, and with or without harmless coloring matter, to any guest or patron of said hotel, restaurant or lunch-counter, in the place or stead of cheese, shall notify said guest or patron that the substance so furnished is not cheese, and any person so furnishing without said notice, shall be punished by a fine of not less than ten nor more than fifty dollars for each offense.

(4200-28) SEC. 1. [Branding.] Every manufacturer of full milk cheese may put a brand upon each cheese so manufactured indicating "full milk cheese," with the date and year when made, and no person shall use such a brand upon any cheese made from milk from which any of the cream has been taken. The food and dairy commissioner shall procure and issue to the cheese manufacturers of the state, upon proper application, which application shall be made on or before the first day of April, 1896, and on or before the first day of April, of each year thereafter, and under such regulations as to the custody and use thereof, as he may describe, a uniform stencil brand bearing a suitable device or motto, and the words, "Ohio state full cream cheese." Every such brand shall be used upon the outside of the cheese, cheese-cloth or band around the same, and upon the box or package containing the same, and shall bear a separate number for each separate factory. The said commissioner shall keep a book in which shall be registered the name, location and number of each manufacturer using the brand, and the name or names of the person or persons in each factory authorized to use the same. No such brand shall be used upon any other but full cream cheese or packages containing the same; provided that nothing in this section shall be construed to prohibit the manufacture and sale of pure skimmed cheese made from milk that is clean, pure, healthy, wholesome, and unadulterated except by skimming. The commissioner shall receive a fee of one dollar for each registration according to the provisions of this section, such fee to be paid by the person applying for such registration. Whoever, by himself or his agents, violates any of the provisions of this section, shall be punished by a fine of not less than fifty nor more than one hundred dollars or by imprisonment in the county jail not less than ten nor more than thirty days for the first offense, and by a fine of not less than one hundred nor more than two hundred dollars or by imprisonment in the county jail not less than twenty nor more than sixty days, or both for each subsequent offense.

(4200-29) SEC. 9. ["Person" defined.] The word "person" as used in this act, shall include persons, corporations and companies.

(4200-30) SEC. 1. [Restrictions on sale of artificial dairy products.] That no person shall sell, expose or offer for sale or exchange, any substance purporting, appearing, or represented to be butter

or cheese, or having the semblance of either butter or cheese, which substance is not made wholly from pure milk, or cream, salt and harmless coloring matter, unless it is done under its true name, and each vessel, package, roll or parcel of such substance has distinctly and durably painted, stamped, stenciled or marked thereon the true name of such substance in ordinary bold faced capital letters, not less than five line pica in size, and also the name of each article or ingredient used or entering into the composition of such substance, in ordinary bold faced letters, not [less] than pica in size, or sell or dispose of in any manner to another any such substance, without delivering with each amount sold or disposed of, a label on which is plainly or legibly printed in ordinary bold faced capital letters, not less than five line pica in size, the true name of such substance, and also the name of such articles used and entering into the composition of such substance in ordinary bold faced letters, not less than pica in size, if the same be not made wholly from pure milk or cream, salt and harmless coloring matter; and the words "butter," "creamery," or "dairy," or any word or combination of words embracing the same shall not be placed on any vessel, package, roll or parcel containing any imitation dairy product or substance not made wholly from pure milk, or cream, salt, and harmless coloring matter.

(4200-31) SEC. 2. [**Restrictions on manufacture of.**] No person or persons shall manufacture out of any oleaginous substance or substances, or any compound of the same other than that produced from unadulterated milk or cream, salt and harmless coloring matter, any article designed to be sold as butter or cheese made from pure milk or cream, salt and harmless coloring matter. Nothing in this section shall prevent the use of pure skimmed milk in the manufacture of cheese.

(4200-32) SEC. 3. [**Further restrictions on manufacture; sale of, etc.**] No person or persons shall manufacture, mix, compound with or add to natural or pure milk, cream, butter or cheese, any animal fats, animal, mineral or vegetable oils, nor shall any person or persons manufacture any oleaginous or other substance not produced from pure milk or cream, salt and harmless coloring matter, or have the same in his possession, or offer or expose the same for sale or exchange with intent to sell or in any manner dispose of the same as and for butter and cheese made from unadulterated milk or cream, salt and harmless coloring matter, nor shall any substance or compound so made be sold or disposed of to any one as and for butter or cheese made from pure milk or cream, salt and harmless coloring matter.

(4200-33) SEC. 4. [**False brands and labels.**] No person or persons shall sell, exchange, expose or offer for sale or exchange, dispose of or have in his possession any substance or article made in imitation or resemblance of, or as a substitute for any dairy product which is falsely branded, stenciled, labeled or marked as to the place where made, the name or cream value thereof, its composition or ingredients, or in any other respect.

(4200-34) SEC. 5. [**Brands, continued; skimmed milk cheese.**] No person or persons shall sell, exchange, expose or offer for sale or exchange, dispose of or have in his possession any dairy products which are falsely branded, stenciled, labeled or marked as to the place where made, date of manufacture, the name or cream value thereof, composition or ingredients, or in any other respect, and cheese wholly made from skimmed milk shall have branded upon the box or can "made from skimmed milk."

(4200-35) SEC. 6. [**Card to be displayed by dealers in artificial dairy products; sale of less than original package.**] Every person in this state who shall deal in, keep for sale, expose or offer for sale or exchange, any substance other than butter or cheese made wholly from pure milk or cream, salt and harmless coloring matter, which appears to be, resembles, or is made in imitation of, or as a substitute for butter or cheese, shall keep a card not less in size than ten by fourteen inches, in a conspicuous and visible place where the same may be easily seen and read in the store, room, stand, booth, wagon or place where such substance is, on which card shall be printed, on a white ground, in bold, black Roman letters, not less in size than twelve line pica, the words "oleomargarine" or "imitation cheese" (as the case may be), "sold here," and said card shall not contain any other words than the ones above prescribed; and no person shall sell any oleomargarine, suine, imitation cheese, or other imitation dairy product, at retail or in any quantity less than the original package, tub or firkin, unless he shall first inform the purchaser that the substance is not butter or cheese, but an imitation of the same.

(4200-36) SEC. 7. [**Card to be displayed by keepers of hotels, restaurants, etc.**] Every proprietor, keeper, or manager, or person in charge of any hotel, boarding house, restaurant, eating house, lunch counter, or lunch room, who therein sells, uses, or disposes of any substance which appears to be, resembles, or is made in, or as an imitation of, or is made as a substitute for butter or cheese, under whatsoever name, and which substance is not wholly made from pure milk or cream, salt, and harmless coloring matter, shall display and keep a card in a conspicuous place, where the same may be easily seen and read in the dining, eating, restaurant, and lunch room, and place where such substance is sold, used, or disposed of, which card shall be white and in size not less than ten by fourteen inches, upon which shall be printed in plain, bold, black Roman letters, not less in size than twelve line pica, the words "oleomargarine sold and used here," or "imitation cheese sold and used here" (as the case may be), and said card shall not contain any other words than the ones above described, and such proprietor, keeper, manager, or person in charge shall not sell, furnish, or dispose of such substance as and for "butter and cheese," made from pure milk or cream, salt, and harmless coloring matter, when butter or cheese is asked for.

(4200-37) SEC. 8. [**Fraudulent shipments.**] No person or persons shall pack, box, inclose, ship or consign any substance, as butter or cheese made from pure milk or cream, salt, and harmless coloring matter, in such a manner as to conceal an inferior article by placing a finer grade of butter or cheese upon the surface of the same.

(4200-38) SEC. 9. [**Sale of diluted milk; false accounts.**] No person or persons shall sell to any person, or deliver or carry or cause to be carried to any cheese or butter factory to be manufactured, any milk diluted with water or in any way adulterated, or from which any cream has been taken, or milk commonly known as "skimmed milk," or milk from which [the] part known as "strippings" has been withheld with the intent to defraud, or keeps or renders any false account of the quantity or weight of milk furnished at or to any factory for manufacture or sold to any manufacturer.

(4200-39) SEC. 10. [**Impure and skimmed milk.**] No person or persons shall sell, exchange, or offer for sale or exchange, any unclean, impure, unhealthy, unwholesome milk, or sell, exchange, or offer for sale

or exchange as "pure milk," milk diluted with water or milk known as skimmed milk.

(4200-40) SEC. 11. [**Milk falsely labeled, etc.**] No person or persons shall sell, exchange, expose, or offer for sale or exchange, have in his possession or dispose of in any manner, any milk which is falsely branded, labeled, marked or represented as to grade, quantity or place where produced or procured.

(4200-41) SEC. 12. [**Cows unhealthy fed, etc.**] No person shall keep cows for the production of milk for any purpose, in a cramped or unhealthy condition, or feed them on unhealthy food, or upon food that produces impure, unhealthy or unwholesome milk.

(4200-42) SEC. 13. [**Condensed milk.**] No person shall manufacture, sell, exchange, expose or offer for sale or exchange, any condensed milk, unless the package, can or vessel containing the same shall be distinctly labeled, stamped or marked with its true name, brand, by whom and under what name made, and no condensed milk shall be made, exchanged, exposed or offered for sale or exchange, unless the same be made from pure, clean, healthy, fresh unadulterated and wholesome milk, from which the cream has not been removed, or unless the proportion of milk solids contained in the condensed milk shall be in amount the equivalent of twelve per centum of milk solids in crude milk, and of such solids twenty-five per centum shall be fat.

(4200-43) SEC. 14. [**State institutions.**] No butter or cheese not made wholly from pure milk or cream, salt and harmless coloring matter, shall be used in any of the charitable or penal institutions of the state.

(4200-44) SEC. 15. [**Penalties.**] Any person or persons violating any of the provisions or sections of this act shall, upon conviction thereof, be fined not less than fifty or more than two hundred dollars for the first offense, or for each subsequent offense not less than one hundred dollars or more than five hundred dollars, and be imprisoned not less than ten days or more than ninety days, or both.

(4200-50) SEC. 1. [**Adulterated vinegar; its manufacture and sale forbidden.**] No person shall manufacture for sale, offer or expose for sale, sell or deliver, or have in his possession with intent to sell or deliver, any vinegar not in compliance with the provisions of this act. No vinegar shall be sold as apple, orchard or cider-vinegar which is not the legitimate product of pure apple-juice, known as apple-cider; or vinegar not made exclusively of said apple-cider; or vinegar into which foreign substance, drugs or acids have been introduced, as may appear upon proper test, and upon said test shall contain not less than two per cent., by weight, of cider-vinegar solids upon full evaporation at the temperature of boiling water.

(4200-51) SEC. 2. [**Fermented and distilled vinegars.**] All vinegar made by fermentation and oxidation without the intervention of distillation shall be branded "fermented vinegar," with the name of the fruit or substance from which the same is made. And all vinegar made wholly or in part from distilled liquor shall be branded "distilled vinegar," and all such distilled vinegar shall be free from coloring matter added during or after distillation and from color other than that imparted to it by distillation. And all fermented vinegar not distilled shall contain not less than two per cent., by weight, upon full evaporation (at the temperature of boiling water), of solids, contained in the fruit or grain from which said vinegar is fermented, and said vinegar shall

contain not less than two-and-a-half-tenths of one per cent. ash or mineral matter, the same being the product of the material from which acid vinegar is manufactured. And all vinegar shall be made wholly from the fruit or grain from which it purports to be or is represented to be made, and shall contain no foreign substance, and shall contain not less than four per cent., by weight, of absolute acetic acid.

(4200-52) SEC. 3. [**Injurious ingredients; branding.**] No person shall manufacture for sale, offer for sale, or have in his possession with intent to sell, any vinegar found upon proper test to contain any preparation of lead, copper, sulphuric or other mineral acids, or other ingredients injurious to health. And all packages containing vinegar shall be branded on the head of the cask, barrel or keg containing such vinegar, or if sold in other packages that each package be plainly marked with the name and residence of the manufacturer, together with brand required in section two (4200-51) hereof.

(4200-54) SEC. 4. [**Penalty.**] Whoever violates any of the provisions of this act shall, upon conviction, be fined not less than fifty dollars nor more than one hundred dollars, or imprisoned not less than thirty days nor more than one hundred days, or both, and shall be adjudged to pay, in addition, all necessary costs and expenses incurred in inspection and analyzing such vinegar.

[**Brands on casks of vinegar.**] Every person making or manufacturing cider vinegar, who is not a domestic manufacturer of cider or cider vinegar, shall brand on each head of the cask, barrel or keg containing such vinegar, the name and residence of the manufacturer, the date when same was manufactured, and the words "cider vinegar." And no vinegar shall be branded "fruit vinegar" unless the same be made wholly from apples, grapes, or other fruit.

[**Manufacturing farmer.**] Provided that nothing in this bill shall be construed to prevent any farmer from manufacturing for his own private use, or offering for sale, not to exceed twenty-five barrels in any one year, pure cider or other fruit vinegar, branding the same "domestic cider vinegar," with name and date of manufacturer, and when so branded, shall be sufficient guarantee of its purity.

(4200-55) SEC. 5. [**Penalties.**] Whoever violates any of the provisions of this act shall, upon conviction, be fined not less than fifty dollars, nor more than one hundred dollars or imprisoned not less than thirty days, nor more than one hundred days, or both, and shall be adjudged to pay in addition all necessary costs and expenses incurred in inspecting and analyzing such vinegar. And all vinegar not in accordance with this act shall be subject to forfeiture and spoliation.

(4200-62) SEC. 1. [**Maple sugar and syrup defined.**] That maple sugar, or pure maple sugar, and maple syrup, or pure maple syrup, shall be the unadulterated product produced by the evaporation of pure sap from the maple tree.

(4200-63) SEC. 2. [**Standard of weight of maple syrup; adulteration.**] The standard of weight of a gallon of maple syrup of 231 cubic inches in the state of Ohio, shall be eleven pounds. Any other substance mixed with maple sugar or maple syrup or any other substance purporting to be maple sugar or maple syrup shall be deemed to be an adulteration within the meaning of the laws of the state of Ohio, providing against the adulteration of food.

RUNNING AT LARGE.

SEC. 4201. [What animals shall not run at large; penalties against owner.] The owner or keeper of a stallion, jack, bull, boar, or buck, shall not allow the same to go or be at large, out of his own inclosure, under penalty of ten dollars for the first offense, and of twenty-five dollars for each and every subsequent offense, to be recovered by civil action, in the name of the state of Ohio, before a justice of [the] peace of the township in which such owner or keeper, or either of them may reside; and such penalty shall be for the benefit of, and, when collected paid into the common school fund of the township in which the suit is brought; but such suit shall be brought within sixty days after such animal is found to be at large.

SEC. 4202. [Certain animals not to run at large; penalty.] No person or corporation being the owner or having the charge of any horses, mules, cattle, sheep, goats, swine, dogs or geese shall suffer the same to run at large in any public road or highway, or in any street, lane or alley, or upon any uninclosed land or cause such animals to be herded, kept or detained for the purpose of grazing the same on premises other than those owned or occupied by the owner or keeper of such animals, except as hereinafter provided; and any person violating the provisions of this section shall forfeit and pay for every such violation, a penalty therefor, not less than one dollar, nor more than five dollars; continued violation after notice, or prosecution, shall be held to be an additional offense for each and every day of such continuance.

SEC. 4203. [County commissioners may grant permission for animals to run at large; duties of road supervisors as to animals running at large.] General permission may be granted by the Commissioners of any county for any animal named in the preceding section to run at large in their respective counties; in counties where there is no general permission, township trustees may grant special permits directed to individuals, and for particular animals described therein, revocable at the discretion of the township trustees upon three days' notice, in writing, to the owner of such animal; and such permission whether general or special shall terminate on the first Monday of March in each year; but no permit shall be granted for any swine to run at large; and in case any person shall permit any swine belonging to him, or being under his control, to run at large he shall thereby be deprived of the benefit of any permit issued to him, as to any domestic animals whatsoever, and also of the benefits of any general permit issued by the county commissioners, and be subject to all the fines and penalties hereinafter provided; and it is hereby made the duty of all road supervisors upon view or information to cause all swine found running at large upon roads within their respective districts to be impounded and such further proceedings had as required by other sections of this chapter, and if any such road supervisor shall fail or refuse to perform such duty he shall be fined not less than two, nor more than five dollars for each and every offense, to be collected and applied as provided in section *forty-two hundred and four* and the trustees of the township are hereby authorized and required to retain any unpaid costs or fines from any sum that may be due and unpaid to such supervisor for services rendered in his official capacity.

SEC. 4204. [How penalties collected, and disposition thereof.] All suits to recover the penalties provided for in section *forty-two hun-*

dred and two, shall be brought in the name of the state of Ohio, on complaint of a person feeling aggrieved, before a justice of the peace, or other court having jurisdiction where the offense is committed; the party offending shall, on conviction, pay the amount of penalties adjudged, with costs; and all money collected as penalties shall be paid into the treasury of the township where the offense was committed, for the use of common schools therein.

SEC. 4205. [Suit for penalty not to be commenced without notice.] No prosecution shall be commenced to recover the penalties named in section *forty-two hundred and two* until at least one day's notice has been given to the owner or person having charge of such animal, as the case may be, and it shall be a sufficient defense to such prosecution to show that such animal was at large without the knowledge of such owner or keeper, and without his fault.

SEC. 4206. [Owner of animal liable for damages.] The owner, or any person having in charge any animal described in section *forty-two hundred and two*, allowing the same to run at large in violation thereof, shall be liable for all damages done by such animal upon the premises of another, without reference to the fence which may inclose the premises; but nothing herein shall be so construed as to render an owner or keeper of an animal mentioned in section *forty-two hundred and two*, liable for damages arising to a railroad.

SEC. 4207. [Animal running at large may be treated as estray; penalty.] A person finding an animal mentioned in section *forty-two hundred and two*, at large, contrary to the provisions of this chapter may, and any constable of any township, or any supervisor of roads in any township, or marshal or constable of any city or village, on view or information, shall take up and confine the same, forthwith giving notice thereof to the owner, if known, and if not known, by posting notices describing such animals therein, in at least three public places within the township; and if the owner does not appear and claim his property, and pay all charges for taking up, advertising, and keeping the same, within ten days from the date of the notice, the animals may be proceeded with under the laws regulating estrays; the mere act of any such animal running at large in or upon any of the places mentioned in section *forty-two hundred and two*, shall be *prima facie* evidence that such animal is running at large contrary to the provisions thereof, but if it be proven that such animal escaped from the owner or keeper thereof, without his knowledge or fault, then it shall be given up to the owner or keeper, upon payment of a reasonable compensation for taking up and keeping the same. And if any constable, supervisor or marshal, above named, shall, wilfully neglect to perform any of the duties above required, he shall be fined not more than twenty-five dollars (\$25.00), or imprisoned not more than ten days or both.

SEC. 4208. [Fees for taking up animals.] The person or officer taking up any such animal shall be entitled to charge and receive from the owner the following fees in addition to those authorized by the law regulating estrays, to-wit: For taking up and advertising each animal of the horse or mule kind, one dollar; each head of neat cattle, seventy-five cents; each swine, fifty cents; each sheep, dog or goose, twenty-five cents; and also, reasonable pay for keeping the same; provided, that for the taking up of any single herd or flock, the fee shall not exceed five dollars, whenever the flock or herd belongs to one person.

SEC. 4209. [Pounds.] The trustees of any township may procure or construct an inclosure or pound, wherein animals taken up under the provisions of this chapter may be confined; and the trustees may appropriate from the township funds an amount not exceeding one hundred dollars for that purpose. If the trustees of any township fail to build or erect such pound or inclosure, any owner or lessee of land in the township where the stock is found running at large, contrary to law, may detain or keep the same in any field, pen or stable, which shall be the same in effect as though the stock were impounded in a pound erected by the township trustees, but no stock running at large, contrary to law, shall be taken up and confined in any private inclosure where township pounds have been provided according to law.

(4109-1) SEC. 1. [Pounds in incorporated villages.] The council of any incorporated village may procure or construct an inclosure or pound wherein animals taken up within the said incorporated village, under the provisions of section 4207 and 1692 of the Revised Statutes, may be confined, and like notices shall be given and like proceedings shall be had in such cases as are required by section 4207, Revised Statutes; and the council may appropriate from the general fund of such incorporated village an amount not exceeding one hundred dollars for said purpose.

(4209-3) SEC. 2. [Duties of pound-masters; release of impounded animals.] That any pound-master so appointed finding an animal mentioned in section 4202 of the Revised Statutes of Ohio, at large, contrary to the provisions of the chapter of which said section 4202 is a part, on view or information shall take up and confine the same within the pound under his charge, forthwith giving notice thereof to the owner of such animal, if known, and if not known, by posting a notice describing such animal therein at the gate of such pound, and if said owner does not appear and claim his property and pay all charges for taking up, advertising and keeping the same within ten (10) days from the date of said notice, such animal or animals so taken up and confined may be proceeded with under the laws regulating estrays; the mere act of any such animal running at large in or upon any of the places mentioned in said section 4202 shall be prima facie evidence that such animal is running at large contrary to the provisions thereof, but if it be proven that such animal escaped from the owner or keeper thereof, without his knowledge or fault, then it shall be given up to the owner or keeper thereof upon payment at the rate of fifty cents (\$.50) per day of twenty-four hours for keeping the same from the date of taking up until surrendered to the owner. And if any poundmaster so appointed shall take any animal named in section 4202 out of an inclosure where the same has been placed by the owner, or shall wilfully neglect to perform any of the duties above required, he shall, upon conviction, be fined not more than twenty-five dollars (\$25.00) or imprisoned not more than twenty (20) days or both.

(4209-4) SEC. 3. [Fees.] Any of said pound-masters taking up any such animal shall be entitled to charge and receive from the owner or keeper of such animal the fees prescribed by section 4208 of the Revised Statutes of Ohio.

PESTS.

SEC. 4210. [What cattle infected with disease shall not be brought into state.] No person shall bring into the state of Ohio any cattle infected with the disease commonly known as the "Texas or Spanish fever," or pleuro-pneumonia, rhinderpest, or other contagious diseases or any cattle liable to impart such fever or disease to other cattle; but this section shall not affect common carriers who are not the owners of cattle. Whoever violates the provisions of this section shall be liable to any person injured by bringing such cattle into the state in the amount of any loss occasioned thereby, in addition to other penalties provided by law.

For importing cattle infected with Spanish fever, see Sec. 7003.

SEC. 4211. [Presumptions in actions to recover damages for infection.] Whenever any Texas or Cherokee cattle, liable to impart disease, are brought into the state, and any such disease as Texas or Spanish fever makes its appearance within sixty days, and infects other cattle that have been on the same highway, common or pasture ground traveled over by such Texas or Cherokee cattle with such disease, such fact shall be deemed and taken in action to recover damages as prima facie evidence that such Texas or Cherokee cattle were infected with the disease known as the "Texas or Spanish fever," and that they imparted such disease; and the owner of such Texas or Cherokee cattle at the time they were brought into the state, and the owner of such cattle at the time the disease makes its appearance, shall be jointly and severally liable for any damages resulting from such disease.

(4211-1) SEC. 1. [Offering bounty for killing ground-hogs.] Any one killing an animal known as the wood chuck or ground-hog, between the first day of March and the first day of November in any one year, shall, on the presentation of the scalp of such animal to the clerk of the township wherein such animal was captured and killed, be entitled to a certificate to the amount of ten cents for each scalp so produced; provided, that the clerk of the township shall in no case issue such certificate, unless there is at the time of issuing the same, a fund in the township treasury out of which to pay the same, which fund shall have been set apart out of the general fund of the township, or shall have been raised by a levy for such purpose by the township trustees, and shall be known as the ground-hog fund, and the trustees of any township may, in their discretion, create such fund, which in no year shall exceed the sum of two hundred dollars, and any amount of such fund which shall remain unexpended upon the first day of December of each year, shall be credited to the general fund of the township.

(4211-2) SEC. 2. [How paid.] In any township in which there shall be to the credit of the ground-hog fund any money, yet unexpended, it shall be the duty of the clerk, upon the presentation of the scalp of such animal, to destroy the same and issue his certificate to the person entitled to the reward aforesaid, on the treasurer of said township for the amount due such person; the same to be paid out of the "ground-hog fund" of the township; provided, that in each township, no greater amount than two hundred dollars in any one year shall be expended for the purposes herein named; and the trustees shall allow the township clerk a reasonable compensation for the services herein required; provided, that no scalp shall be redeemed which shall have been taken from an animal captured or killed on the Sabbath day.

(4211-3) SEC. 1. [Bounty for the killing of English sparrows.] Every person being an inhabitant of this state, shall be entitled to receive a bounty of twenty cents per dozen for all sparrows, known as the English sparrow, killed, to be allowed and paid in the manner hereinafter provided.

(4211-4) SEC. 2. [Proof required of persons applying for such bounty.] Every person applying for such bounty, shall take the heads of such sparrows, in lots of not less than one dozen, to the clerk of the township, village or city, within which such sparrows shall have been killed, who shall thereupon decide upon such application, and if satisfied of the correctness of such claim, shall issue a certificate stating the amount of bounty to which such applicant is entitled, and shall deliver the same to such applicant, and shall destroy the heads of such sparrows; provided, that the clerk of the township, village or city shall in no case issue such certificate unless there is at the time of issuing the same a fund in the township, village or city treasury out of which to pay the same, which fund shall have been set apart out of the general fund of the township, village or city, or shall have been raised by a levy for such purposes by the township trustees, or by the councils of the village or city, and shall be known as the sparrow fund, and the township trustees of any township, or the councils of any village or city may, in their discretion, create such fund, which in no year, in any township or village shall exceed two hundred dollars, and in no city the sum of five hundred dollars; and any amount of such fund which shall remain unexpended upon the first day of March of each year may be credited to the general fund of the township, village or city.

(4211-5) SEC. 3. [How paid.] Such certificate may be presented by the claimant or his agent to the city treasurer or the treasurer of the township or village in which such sparrows may have been killed, who shall pay the same out of the fund provided for the payment of such certificates.

DISEASES.

(4211-6) SEC. 1. [Transportation of cholera-infected hogs.] From and after the passage of this act, it shall be unlawful for any person or persons owning or having charge of any hog or hogs infected with cholera, to transport the same within the borders of this state.

(4211-7) SEC. 2. [Liability of violator.] Any person or persons violating the provisions of this act, shall be liable for all damages resulting from the introduction of such disease thereby, to be recovered by any person so damaged, and shall also be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding five hundred dollars, or be imprisoned in the jail of the county not exceeding six months, or both.

(4211-8) SEC. 3. [Common carriers or employes not affected, etc.] This act shall not be construed so as to affect common carriers or their employes, and shall take effect and be in force from and after its passage.

(4211-9) SEC. 1. [Board of live stock commissioners.] The governor shall, with the advice and consent of the senate, appoint three persons, who shall constitute a board of live stock commissioners, who shall hold their office in the order in which they are named, the first for one year, the second for two years, and the third for three years, and

their successors in office shall be appointed for three years each. They shall meet as soon as practicable after their appointment, and after taking the oath of office, shall appoint from their number a president and secretary.

(4211-10) SEC. 2. [Duty as to extirpating diseases.] The board of commissioners are authorized to use all proper means to prevent the spread of dangerous and fatal diseases among domestic animals, and to provide for the extirpation of such diseases; and in the event of any such contagious or infectious disease breaking out in this state, it shall be the duty of all persons owning or having in charge animals infected with the same, to immediately notify said board of commissioners, or some member thereof, of the existence of such disease, and thereupon it shall be the duty of said board immediately to cause proper examination thereof to be made by a competent veterinarian; and if said disease shall be found to be a dangerously contagious or infectious malady, the board shall order the diseased animals, and such as have been exposed to the contagion, to be strictly quarantined in charge of such person as the board, or an authorized member thereof, shall designate, and to order any premises or farms where such disease exists, or has recently existed, to be put in quarantine, so that no domestic animal subject to such disease, be removed from or brought to, the premises or places so quarantined; and the board shall prescribe such regulations as they may deem necessary to prevent the contagion from being communicated in any way from the premises so quarantined.

(4211-11) SEC. 3. [Bodies of dead animals.] The bodies of all dead animals shall be buried or burned by the owners thereof, as provided by law.

See § 6923a.

(4211-12) SEC. 4. [An act to suppress dangerously contagious diseases of animals; expenses of quarantining such animals; duty of sheriffs and constables.] That any person having in his possession, or under his care, any animal which he knows, or has reason to believe, is affected with a dangerously contagious or infectious disease, and does not, without unnecessary delay, make known the same to said board, or to some member thereof, or to the sheriff or constable of the proper county, to be by him communicated to said board; or any person or corporation who shall bring into this state, or sell or dispose of any animal, knowing the same to be affected as aforesaid, or any animal having been exposed to such contagion, within three months of such exposure, or shall move the animal so diseased or exposed from the quarantine to which it was ordered by the board of commissioners, or shall move any animal to or from any district in this state declared to be infected with such contagious disease, or shall bring into this state any animal of the kind diseased from any district outside of the state that may at any time be legally declared to be affected with such disease, without the consent of said board, except under such conditions as are or may be prescribed by said board, shall, upon conviction of either of the aforesaid offenses, be fined in any sum not exceeding five hundred dollars. And all proper expense incurred in the quarantining of animals under the provisions of this act, shall be paid by the owners thereof, and if the same is refused, after demand made by order of the commissioners, an action may be brought to recover the same with costs of suit, which action may be in the name of the state of Ohio, for the use of the board of live stock

commissioners. It shall be the duty of all sheriffs and constables to execute within their several counties all lawful orders of the said commissioners.

(4211-13) SEC. 5. [Records of the board; their report; expenses; compensation, etc.] The board of commissioners shall keep a record of their acts and investigations of diseases of live stock, and report the same to the governor on the first Monday of November, annually, and at such other times as the governor may order; and such parts of said report as shall be of general interest to breeders of live stock may be transmitted to the department of agriculture, to be published with their proceedings. Said board shall receive for their services the sum of four dollars per day and necessary traveling expenses for each day any member is actually engaged in the investigation of reported cases of outbreaks of disease as herein provided, or in arranging for the quarantine of diseased animals, and other duties connected therewith; and when it becomes necessary for said board to employ any veterinarian, sheriff, constable, or such other persons as may be deemed essential to assist the commissioners in performing their duties, as set forth in this act, they are authorized to fix and certify their compensation, a properly itemized account of which shall be made out and certified by the board, and paid upon the order of the governor.

(4211-15) SEC. 15. [Proclamation prohibiting importation of diseased live stock.] Whenever the governor of the state of Ohio shall have good reason to believe that any dangerous, contagious or infectious disease has become epidemic in certain localities in other states, territories or counties, or that there are conditions which render domestic animals of such infected districts liable to convey such disease, he shall by proclamation prohibit the importation of any live stock of the kind diseased into the state, except under such regulations as may be prescribed by the state board of live stock commissioners and approved by the governor.

(4211-16) SEC. 2. [Appraisement and killing of diseased animals.] When in the opinion of the commissioners provided for by the act to which this is supplementary, it shall be necessary to prevent the further spread of any dangerous, contagious or infectious disease among the live stock of the state, to destroy animals affected with, or which have been exposed to any such disease, it shall determine what animals shall be killed, and shall appraise or cause the same to be appraised by disinterested citizens as hereinafter provided, and cause such animals to be killed, and their carcasses to be disposed of as in the judgment of the commission will best protect the health of the domestic animals of the locality; provided, that no animals shall be appraised, except cattle affected with contagious pleuro pneumonia, or cattle, sheep or swine affected with foot and mouth disease, or such as have been exposed thereto, nor shall any animal be slaughtered under the provisions of this act unless first examined by a competent veterinarian in the employ of the commission, and the disease with which it is affected or to which it has been exposed adjudged to be a dangerous and contagious malady.

(4211-17) SEC. 3. [Compensation for animals destroyed.] In case of destruction of any animal under the provisions of this act, the compensation to be made for the same by the state, shall be computed upon the basis of the actual value of the diseased animal, if any, at the

time of slaughter; for any animal that has been kept in the same building or enclosure two-thirds of such value, and in case [of] other animals destroyed for the extinction of such disease, the full value of the same without reference to any suspicion of contagion; provided, that no compensation shall be made to any person who may have brought animals into the state affected with such contagious disease, or from a district in which such contagious disease existed, or who may have wilfully concealed the existence of such disease among his stock or on his premises, or may [have] by wilful neglect or purposely contributed to the spread of such contagion, and in appraising animals to be slaughtered as herein provided, no allowance shall be made on account of such animals being thoroughbred, or pedigree stock.

(4211-18) SEC. 4. [Appropriation to pay claims; how made.] All claims against the state by owners of animals slaughtered under the provisions of this act, shall, when approved by the board of live stock commissioners, be reported by said commission to the governor, to be by him communicated to the legislature with the recommendation, if the matter is approved by him, that the proper appropriation be made to pay such claims.

WHEREAS, All cattle wintered in the states of Florida, South Carolina, North Carolina, Georgia, Alabama, Mississippi, Louisiana, Tennessee, Arkansas, Texas and the Indian Territory, are infected with a germ which renders them capable, except during the frost of winter, of infecting northern cattle with a malady commonly known as "Texas fever," while they show no manifestation of disease; therefore,

(4211-19) SEC. 1. [The driving of cattle from certain states forbidden during certain months; conveyance by railway forbidden, except.] During the months of March, April, May, June, July, August, September and October no cattle shall be permitted to be driven into this state from any of the above mentioned states or Indian territory, or that shall have been wintered therein, nor shall any person or company bring, or cause to be conveyed into this state by railway or otherwise, any such cattle under said conditions, except as specified in the next section of this act.

(4211-20) SEC. 2. [Unloading of certain cattle in certain months forbidden, except.] Any railroad or other transportation company conveying into or through this state, or any stock-yard company receiving such cattle during the months aforesaid will not be permitted to unload the same in this state for any other purpose than to be fed and watered or for immediate slaughter, and in yards and premises especially provided for that purpose, into which northern cattle will not be permitted to enter. And the location and arrangement of the said yards and premises and the disinfection of the cars and quarters used in the transportation of such cattle shall be governed by the rules and regulations prescribed by the board of live stock commissioners.

(4211-21) SEC. 3. [Penalty.] Any person or corporation that shall bring or cause to be brought or driven into this state, any cattle wintered in the states or territory above mentioned, or to be driven or conveyed otherwise than as herein specified, shall, upon conviction thereof, be fined in any sum not less than one hundred dollars, nor more than one thousand dollars, and shall, moreover, be liable for all damages that may be occasioned on account of other cattle being infected with said disease.

(4211-22) SEC. 4. [Duty of transportation companies; penalty for violation of such duty.] It shall be the duty of all railway and other transportation companies bringing into and unloading in this state cattle, otherwise than as specified in section *two* (4211-20) of this act, during the months above specified, to require a statement to be made in their shipping bills, showing in what state or territory the cattle shipped were wintered; and it shall be the duty of every railroad company bringing into this state cattle, which may unload such cattle for any other purpose than to be fed and watered as specified in section *two* (4211-20) of this act, to leave at the office of such company nearest the point where such cattle may be unloaded, a copy for public inspection of the statement above required, showing where the same were wintered; and any company or corporation neglecting to comply with the provisions of this section, shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars.

(4211-23) SEC. 5. [Prosecution for offenses hereunder.] Upon the request of the board of live stock commissioners it shall be the duty of the prosecuting attorney of any county in which the suit may be brought to begin and prosecute any action for the violation of the provisions of this act and the rules and regulations of the board of live stock commissioners. Proceedings against any railway company under this act may be had in any county in this state through which any portion of such company's road may pass, or in which its principal office may be situated; and process may be served by leaving a copy at the office of such company within such county.

(4211-24) SEC. 1. [Penalty for selling or failing to keep securely isolated horses, etc., affected with glanders.] Any person owning or having in his charge any horse, mule or ass that he knows or has reason to believe is affected with the disease known as glanders or farcy, or that has been adjudged to be so affected by the state board of live stock commissioners, upon a report made to said board by a competent veterinary surgeon, in their employ, after a careful examination of such animal, who shall sell or otherwise dispose of, or secrete the same, or shall fail to keep such animal securely isolated so that contact with other horses, mules or asses shall not be possible, shall, upon conviction of either of said offenses, be fined in any sum not exceeding five hundred dollars, and shall moreover, be liable for all damages sustained by reason of the same.

(4211-25) SEC. 2. [Appraisal and payment of compensation in case of destruction of such animals by order of live stock commission.] In case the live stock commissioners shall order the destruction of any animal affected with glanders or farcy in the chronic stage of the disease, which may be adjudged capable of rendering some service, the board may cause the animal to be appraised, and order such compensation to be paid out on the order of the live stock commissioners, on the warrants of the auditor of state out of any funds in the treasury to the credit of the live stock commission, as in the judgment of the commissioners may be just, not exceeding its cash value; provided the horse was not diseased when passed in possession of the owner.

(4211-26) SEC. 3. [Penalty for suffering sheep affected with scab to run at large or for selling same, knowing, etc.] Any person owning or having in charge any sheep affected with foot-rot or scab who shall suffer the same to run upon any highway, common or other uninclosed ground, or shall sell such sheep, knowing or having reason

to believe them to be diseased, without disclosing the fact to the purchaser, shall, upon conviction of either of said offenses, be fined in any sum not exceeding one hundred dollars, and be liable to parties injured for all damages sustained.

See § 6855 as to allowing diseased animals to run at large.

SEC. 4212. [Duties of carriers and owners of stock yards.] All railway companies and owners of steamboats used in conveying live stock and owners of stock yards and other premises that may be occupied by such stock, shall, immediately upon discovering any contagious disease among stock occupying such cars, boats, yards, or other premises, take all possible measures to prevent such diseased stock from communicating the contagion to other stock, and shall moreover cause all such cars, boats, yards, and premises to be thoroughly disinfected before the same shall be occupied by other stock. Every corporation and company, their officers and employes, or individuals violating the provisions of this section, shall pay a penalty not exceeding five hundred dollars, to be recovered in any court of competent jurisdiction, and shall also be liable to parties injured for all damages that may be occasioned thereby.

DOGS.

(4212-1) SEC. 1. [When dog to be considered property.] Any animal of the dog kind listed and valued for taxation as other [personal] property, and due return thereof made by the owner or harbinger to the assessor or county auditor and the per capita tax upon such animals in addition to the proper tax on any valuation which may have been placed on such animal by the owner or harbinger thereof shall have been paid when due, shall be considered as property and such animal shall have all the rights and privileges and be subject to the same restraints as are provided by law for other live stock; provided that no recovery shall be had for the malicious and unlawful killing of such animal, in excess of double the amount for which any such dog is listed for taxation; provided, further, that nothing in this section shall be so construed as to make it unlawful for any person to kill any animal of the dog kind that chases, worries, injures or kills any sheep, lamb, goat, kid, domestic fowl, animal or person; and provided, further, that if any person in attempting to kill such animal so running at large, fails to kill, and wounds the same, he shall not be liable to prosecution under Section 6951 which provides against cruelty to animals.

(4212-2) SEC. 2. [When dog may be killed at any time; owner liable for damages.] Any animal of the dog kind that chases, worries, injures or kills any sheep, lamb, goat, kid, domestic fowl, animal or person, may be killed by any person, at any time or place. And the owner, owners or harborers of any animal of the dog kind, that chases, worries, injures or kills any sheep, lamb, goat, kid, animal or person, shall be jointly and severally liable to any person so damaged to the full amount of the injury done; and the court or justice, before whom the recovery is had for any such injury shall declare the animal found to have occasioned the injury to be a common nuisance and order the defendant to kill or cause to be killed such animal within twenty-four hours after the rendition of the judgment; or the court or justice may order any constable or marshal or sheriff to kill such animal.

SEC. 4214. [Liability to owner of dog for killing or injury.] The owner of any such animal listed for taxation, killed or maliciously

injured contrary to law, or carried or enticed away from the premises of the owner or harbinger for the purpose of being killed or injured, may recover of the person so killing or injuring the same, as exemplary damages, any sum not exceeding that for which such animal stands returned for taxation.

As to the taxation of dogs, see §§ 2754, 2833, R. S.

SEC. 4215. [Statement of damages for sheep killed or injured by dogs; witnesses.] Any person damaged by the killing or injury of sheep by dog or dogs, may present a detailed account of the injury done, with damages claimed therefor, verified by affidavit at any regular meeting of the trustees of the township where the damage or injury occurred, and within six months thereafter, which account shall state the kind, grade, quality and value of the sheep so killed and nature and amount of the injury, and shall make it appear to the satisfaction of the trustees upon the parole testimony of at least two other persons who are freeholders of the neighborhood where the injury was done, that the damage claimed is just and reasonable; and also make it appear that such injury was not caused in whole or in part by any animal kept or harbored by him, or by an employe or tenant of the owner upon such owner's premises, and that he does not know whose animal committed such injury, or if known and such account reduced to judgment could not be collected on execution;

[Fees of witnesses; oath of claimant and witness.] And the witnesses in such cases, not exceeding two, shall be allowed fifty cents each and mileage as in other cases; the trustees are hereby authorized and empowered to administer oath or affirmation to any such claimant or witness;

[Employe or tenant.] Provided, however, that if the sheep killed or injured are in the care of an employe or tenant of the owner of the same, such affidavit may be made by such employe or tenant, and the testimony of such employe or tenant may be received in regard to all matters relating thereto to which such owner would be competent to testify.

[Hearing, allowance, indorsement, transmission and record of claims.] The trustees shall hear such claims in the order of their filing, and may allow the same or such parts thereof as they may deem right, and, if satisfied that such claim is correct and just, they shall endorse thereon the amount allowed and transmit the same with the testimony so taken, together with the fees due witnesses over their own official signatures to the county commissioners, in care of the county auditor: who shall enter upon a book to be kept for that purpose, in their order, each claim received;

[Examination and order for payment.] The county commissioners shall, at their next regular meeting, examine the same, and if found in whole or in part correct and just, order the payment thereof, or such parts as they may have found correct and just, to be paid out of the fund created by the per capita tax on dogs;

[Payment.] And such other claims as may have been allowed in whole or in part, may be paid at any regular quarterly session of such commissioners.

[When fund insufficient; transfer of excess.] And provided, that if such fund is insufficient to pay all such claims in full, they shall

be paid pro rata; and if, after paying all such claims, at the June session, there remain more than one thousand dollars of usch fund, the excess, or a part thereof, may be transferred to the school fund, the county agricultural society, the bridge fund or to the fund for the relief of indigent soldiers, at the discretion of the county commissioners;

[**Cuyahoga county.**] But in Cuyahoga county, so much of the excess as may be required may be appropriated to the payment of the amount authorized by the second section of the act relating to industrial schools or children's homes, passed April 24, 1877.

[**Lucas county.**] And provided, further, that in counties having therein a city of the third grade of the first class in which there exists a society "to prevent cruelty to animals," organized under chapter 12, title 2 of the Revised Statutes, the said excess shall be paid over to the treasurer of said society.

[**Blanks for accounts, affidavits and testimony.**] All accounts, affidavits and testimony shall be made upon blanks, the form of which shall be prepared by the secretary of state, and which blanks shall be furnished by the county commissioners.

SEC. 4215a. [**Allowance by county commissioners of damages for sheep killed by dogs.**] That any surplus of funds arising from the per capita assessment upon dogs, transferred to the school fund under section *four thousand two hundred and fifteen* in any county unless otherwise directed by law, shall be appointed [apportioned] to the different townships or cities in proportion to the amount of tax actually collected from such townships or cities, and said surplus, if any, shall be paid to the treasurers of the several townships or cities as the case may be, and the treasurers of the several townships or cities, shall pay on the order of the township clerk, or city auditor, or comptroller, to each sub-district or special school district therein in proportion to its enumeration of youth of school age, for the use of the school or schools of said sub-district or special school district, the amount found due the same from funds credited to the township or city from surplus dog tax.

HORSES.

(4221-7) SEC. 1. [**Fraudulent entry of horse in contest of speed.**] In order to encourage the breeding of, and improvement in trotting, running and pacing horses in the state of Ohio, it is hereby made unlawful for any person or persons, knowingly to enter or cause to be entered for competition, or to compete for any purse, prize, premium, stake or sweepstakes offered or given by any agricultural or other society, association, or person or persons in the state of Ohio, any horse, mare, gelding, colt or filly under an assumed name or out of its proper class where such prize, purse, premium, stake or sweepstake is to be decided by a contest of speed.

(4221-8) SEC. 2. [**Penalty.**] That any person or persons found guilty of a violation of Section 1 (4221-7) of this act shall, upon conviction thereof, be imprisoned in the Ohio penitentiary for a period of not less than one year nor more than three years.

(4221-9) SEC. 3. [**Change of name for purpose of entry.**] That the name of any horse, mare, gelding, colt or filly for the purpose

of entry for competition in any contest of speed, shall not be changed after once having contested for a prize, purse, premium, stake or sweepstakes, except as provided by the code of printed rules of the society or association under which the contest is advertised to be conducted.

(4221-10) SEC. 4. [**Class determined by performance.**] The class to which a horse belongs for the purpose of an entry in any such contest of speed shall be determined by the public performance of said horse in said former contest or trial of speed, as provided by the printed rules of the society or association under which the proposed contest is advertised to be conducted.

(4221-11) SEC. 5. [**Cheating by false pretense.**] Whoever, for the purpose of competing for purses or premiums, knowingly and designedly enters or drives any horse, gelding, mare, colt or filly that shall have been painted or disguised, or represents any other or different horse, gelding, mare, colt or filly from the one which is purported to be entered, or shall, knowingly and designedly, for the purpose of competing for purses or premiums, enter or drive a horse, gelding, mare, colt or filly in a class to which it does not properly belong, shall be deemed guilty of cheating by false pretense and shall be punished by fine and imprisonment as provided in Section 2 (4221-8) of this act.

(4221-12) SEC. 6. [**Penalty.**] Any person or persons knowingly misrepresenting or fraudulently concealing the public performance in any former contest or trial of speed, [of] any horse, gelding, mare, colt or filly which he or they propose to enter for a competition in any such contest, shall, upon conviction thereof, be liable to the same punishment as is provided in Section 2 (4221-8) of this act, whether he or they shall succeed in making said entry or not.

FENCES.

SEC. 4239. [**How expenses of making partition fences adjusted.**] The owner or lessee for three or more years, of land adjoining a fence, of whatsoever material constructed, in all respects such as a good husbandman ought to keep, erected by the owner, or lessee for one or more years, on the line of his land, who makes or causes to be made an inclosure adjoining such fence, so that such fence answers the purpose of inclosing his land, shall pay the owner of such fence already erected one-half the value of so much thereof as serves as a partition fence, to be adjudged by the township trustees of the township in which the fence is situate; and the amount so judged, if not paid, may be recovered by the owner of such fence with costs of suit; but nothing in this chapter contained, shall apply to the inclosure of lots in municipal corporations.

SEC. 4239a. [**Barbed wire partition fence; penalty.**] No person or corporation shall construct or cause to be constructed, in whole or in part a partition fence, from barbed wire, unless the written consent of the owner or lessee for three or more years of the premises be first obtained. Whoever constructs or causes to be constructed a barbed wire partition fence without the consent contemplated in this section, shall be fined not more than one hundred dollars nor less than ten dollars.

SEC. 4240. [**Who to keep partition fences in repair; live fences.**] The owners or lessees for one or more years of lands inclosed with fences,

shall keep up and maintain in good repair all partition fences between their own and the next adjoining inclosures, in equal shares, so long as both parties continue to occupy or improve the same. But no willow fence, or any other live fence except that known as the Osage orange or blackthorn hedge, shall be permitted on such partition except by mutual consent or agreement of the owners of the adjoining lands; and the refusal or neglect of either party to such partition fence to comply with this provision shall subject such defaulting party to the provisions and penalties named in sections 4242 and 4243 of the Revised Statutes.

(4240-1) SEC. 1. [Requiring the cutting of briars, thistles, etc., along partition fences.] It shall be the duty of owners of land, adjacent to any line or partion fence, when the enclosure, of two or more persons, is divided by such fence, and when the land is improved on both sides of the same, to keep all brush, briars, thistles, or other noxious weeds, cut in the fence corners, or along the line of partition fences, provided, however, that nothing in this section shall be construed to affect the planting of vines or trees for use.

(4240-2) SEC. 2. [Notice to land owner failing to cut noxious weeds, and duties of township trustees in the premises.] If the owner or tenant, occupying the same, neglects or refuses to cut or have cut, such brush, briars, thistles or other noxious weeds, as provided in the foregoing section, then any owner or occupant of land abutting on such line or partition fence, who may feel aggrieved thereby, may, after having given the owner or tenant occupying such land notice of his intentions, of not less than thirty days (and if such brush, briars, thistles, or other noxious weeds are not cut or removed at the expiration of said thirty days), notify the trustees of the township in which such land is situated, whose duty it shall be to at once repair upon the premises, when, if they become satisfied there is just cause of complaint, they shall proceed to cause such brush, briars, thistles, or other noxious weeds to be cut, in such manner as they may consider best, either by letting the work to the lowest bidder, or by entering into a private contract to have the same performed.

(4240-3) SEC. 3. [Cost of work; how collected and paid.] As soon as the work shall be completed to the satisfaction of the trustees, they shall certify to the auditor of the county, the amount of the cost of such labor, together with the expense thereto attached, with a correct description of the land upon which said labor has been performed, and the auditor shall place the same upon the duplicate, to be collected the same as other taxes are collected, and the county treasurer shall pay the amount when collected, to the township treasurer as other funds, specifying the same.

(4240-4) SEC. 4. [Anticipating such cost.] The township trustees may anticipate the collection and refunding the cost of said labor to the township treasurer, and at the time said labor is performed draw their order upon such treasurer for the amount, payable out of any township funds that may be in his hands.

(4240-5) SEC. 5. [Trustees' fees.] The township trustees shall be entitled to one dollar per day for their services under this act.

SEC. 4241. [When party entitled to remove his share of partition fence.] When the enclosure of two or more persons are divided

by a partition fence of any kind, and either of the parties thinks proper to vacate his part of such inclosure, or to make a lane or passage between such adjoining inclosures, such person may remove his share or part of such partition fence, on giving six months' notice in writing of such intention, to the party owning or occupying the adjoining inclosure, or to his agent if such party is not a resident of the county; provided, that the foregoing provisions of this section shall not be applicable to owners of narrow strips of land not more than two rods in width, between adjoining farms of other persons while used and occupied by such owners for the purposes of farm outlets, to and from public highways; in such cases the owners thereof unless otherwise provided for shall keep and maintain in good repair, one-half of such partition fence, on either side of such farm outlet, or private right of way.

SEC. 4242. [Duty and power of township trustees in respect to controversies about partition fences; assignment of fence to be constructed or kept in repair by each party; how made.] When any controversy arises about the rights of owners of adjoining lands, both of which are enclosed, in relation to building or maintaining partition fences, and their obligation to build and maintain the same in good repair, either party may apply to the trustees of the township in which such premises or fence are situate, who, on application, shall, after not less than ten days written notice to all parties interested in the title or possession of the premises, or the construction or repair of the fence, proceed to view the fence or premises, where the fence is to be built, and assign, in writing, to each party his equal share thereof, to be by him constructed or kept in repair so as to be in all respects a good and substantial fence; the assignment shall also specify the time within which such fence and each of its parts shall be constructed or repaired; and shall be binding upon the parties and all succeeding occupants of the premises for one year thereafter, and until a new assignment is made. Provided, however, that if the owner is a non-resident of the county, then the notices provided for in this section and section *four thousand two hundred and forty-three*, may be served on his authorized agent or the person occupying the premises, and at the same time they shall mail a notice to the owner if his post-office address is known.

SEC. 4242a. [Partition fence where division line in stream.] Where the division line of adjacent land owners is in a stream of water along which division line it is impractical to construct and maintain a partition fence, and where such partition fence is necessary to prevent domestic animals of one of said land owners from trespassing upon the land of the other, and where the trustees of any township have heretofore or may hereafter assign to each of said land owners his part or share of such fence to be constructed and kept in repair, as provided by section 4242 of the Revised Statutes, the part so assigned to each land owner shall be built and maintained upon his own premises along the bank of said stream, and the parts of the fence so assigned shall be joined together by each land owner constructing a fence or water gate from the end of said fence so assigned to him nearest to the end so assigned the other land owner to the division line in said stream of water; and for the purpose of determining the liability of one of said landowners by reason of the trespass of domestic animals upon the lands of the other, such fence shall be considered and held to be a partition fence.

SEC. 4243. [Building of partition fence and collection and payment of cost when either party fails to comply with assignment.] If

either party fail to comply with the assignment, the trustees may, upon the application of the aggrieved party, sell the contract to the lowest responsible bidder to furnish the labor and material and build such fence according to specifications to be prepared by the trustees after advertising the same for a period of ten days, by setting up posters in three public places in the township. As soon as he work shall be completed in conformity with the sale, and to the satisfaction of the trustees, they shall immediately certify to the auditor of the county the amount such fence sold for, adding the proportionate amount of cost and expenses of such sale, and of all former proceedings of the trustees and clerk, together with a correct description of each piece of land upon which the same is assessed, and the auditor shall place the same on the duplicate to be collected as other state and county taxes are collected, and the trustees shall at the same time certify the amount due each person, for building such fence, and also the amount due each trustee and clerk for their services rendered in such proceedings, and the auditor shall draw orders for the payment of such amounts out of the county treasury; but any person interested may pay his share of the purchase money and proportionate amount of costs and expenses aforesaid to the township clerk at any time before the same are charged on the tax duplicate, to be distributed by the clerk among the parties to which it belongs.

SEC. 4244. [When and how reassignment may be had.] At any time after the expiration of one year from the date of such assignment, any party interested in such partition fence who considers himself aggrieved by the proceedings of the trustees in making the assignment, may apply to the trustees for a re-examination and re-assignment; and the same notice shall be given and proceedings had as provided for in section *forty-two hundred and forty-two* and such re-assignment shall be recorded, and copies thereof made and served, and it shall have the same binding force, operation, and effect as the assignment in the said section provided for.

SEC. 4245. [Jurisdiction of trustees where partition fence on township line.] When a partition fence in controversy is on a township or county line, the trustees of the adjacent townships shall have concurrent jurisdiction and the trustees of either of such townships may be called to perform the duties in this chapter imposed in regard to partition fences; and either party may, if he think proper, call also the trustees of the other township, in which case they shall act jointly, but the record shall be made in both townships.

SEC. 4246. [Where suit to be brought relating to fence on township or county line.] If a partition fence, or an inclosure, or any part thereof, is on the line of a township, or on the line of or in two or more townships of the same or different counties, all suits prosecuted under the provisions of this chapter may be brought before a justice of the peace in the township in which the defendant resides, or if there be no justice residing therein or he is interested in the event of the suit, or stands in the relation of father, father-in-law, son, son-in-law, brother, brother-in-law, guardian, ward, uncle, nephew, or cousin to either of the parties, the action may be brought in either of such townships; and in such case, the justice before whom such action is brought shall issue process against the defendant, directed to any constable of the township in which such justice resides, which process the constable shall be authorized to serve and return, and the defendant shall be com-

pelled to answer thereto, and such other proceedings shall be had therein as if the defendant resided in the township where the action was commenced.

SEC. 4247. [Where suit to be brought when fence wholly within township.] When the fence or inclosure is situate wholly within one township, all suits brought under this chapter before a justice of the peace shall be brought in the township in which the defendant resides, unless the case comes within one of the exceptions specified in the next preceding section, in which case suit may be brought in any adjoining township of the same county, and process shall be issued, served, and returned, and further proceedings had thereon, as provided for in said section.

SEC. 4248. [Remedies provided not cumulative.] If a person commence proceedings under this chapter to obtain redress, as herein provided, and prosecute the same to final judgment, he shall be barred of his action at common law for the same injury; and if he sue at common law, and prosecute such suit to final judgment, he shall, in like manner, be barred of his remedy for the same injury under this chapter.

SEC. 4249. [Penalty against trustee for neglect.] A trustee who refuses or neglects to perform any duty imposed on him by law, may be fined in any sum not less than five nor more than fifty dollars, to be recovered by civil action, in the name of the state; and the amount recovered shall be paid into the township treasury for township purposes.

SEC. 4250. [How damage by trespassing animals, on account of failure to repair partition fence, recovered.] If a horse, mule, or ass, or any neat cattle, hog, sheep or goat injure or trespass upon the land or inclosure of any person bounded by a partition fence, in consequence of the failure or neglect of the other party to keep up and maintain in good repair his part or share of such partition fence, the person so failing or neglecting shall forfeit and pay to the person injured the amount of all damages sustained thereby, which shall be assessed under oath, by three judicious, disinterested men, residents of the county, to be appointed by a justice of the peace of the township in which the premises are situate; and if the same are not paid after demand therefor, the amount thereof may be recovered in an action before any court having competent jurisdiction, with costs of suits; and in all suits commenced under the provisions of this section, such assessment, reduced to writing, and subscribed by the persons making the same, shall be received as prima facie evidence of the real amount of damages sustained by the party aggrieved, reserving to the court before which the cause is tried the power of setting the same aside for irregularity, or other good cause, and the animal or animals so trespassing shall not be exempt from execution issued on a judgment rendered in any court, or before any officer having jurisdiction, for damages occasioned by such trespass.

SEC. 4251. [Liability of owner of trespassing animal for damages.] If any horse, mule, ass, neat cattle, hog, sheep, or goat, running at large, break into or enter any inclosure, other than inclosures of railroads, the owner of any such animal shall be liable to the owner or occupant of such inclosure for all damages occasioned thereby; and the animal so breaking into or entering any inclosure shall not be exempted from execution issued on a judgment rendered in any court,

or before an officer having jurisdiction, for damages occasioned by such trespass.

SEC. 4252. [How hedge fence regulated.] An owner or occupant of land bordering upon any public road or highway, except a street or alley in a municipal corporation, or through which any public road or highway passes, may set, plant, and cultivate a hedge or live fence, precisely on the line of the road or public highway, and place on the margin of such road a protection fence, not to occupy more than six feet of the margin or edge of the road; and such protection fence, when placed opposite any live fence or hedge actually set or planted, shall be permitted by the supervisors and all other persons, to remain for the term of seven years; but the trustees of any township may grant permission in writing, to the owner of any hedge or live fence, to continue such protection fence any length of time which they may deem necessary.

SEC. 4253. [Size of hedge fence restricted.] The owner of any hedge fence on a partition line, or along a public highway, shall not permit such fence to remain of a greater height or width than six feet, for a longer period than six months, or leave the cuttings from the same on the public highway for a greater length of time than ten days.

SEC. 4254. [Penalty for violation of the provisions with respect to hedge fence.] A person who violates the preceding section shall be liable to the person damaged in a sum not exceeding twenty cents per rod of such hedge fence; and if the hedge is along a public highway, he shall be liable to the trustees of the township in which it is situate, in a sum not exceeding fifteen cents per rod of such fence; but before judgment is rendered it shall appear, by affidavit, that the party complained against has had at least twenty days' notice before the beginning of the suit, from the party complaining, that such hedge is unlawful, and that unless cut to a proper height within twenty days suit will be commenced for such violation.

SEC. 4255. [Where actions with respect to hedge fence to be brought.] All actions under the two next preceding sections shall be brought upon the complaint of the person damaged, before a justice of the peace of the township in which the hedge is situate, or if the hedge is along a public highway, the complaint shall be made by the supervisor of the road in whose district the hedge is situate.

VETERINARIANS.

(4412-1) SEC. 1. [Examination of veterinarians.] All persons who now, or shall hereafter, practice veterinary medicine and surgery in the state of Ohio, and have not been engaged in such practice for at least three years prior to the passage of this act, (May 21, 1894), in the state of Ohio, shall be examined as to their qualifications by a state board of veterinary examiners, to be appointed as hereinafter provided.

(4412-2) SEC. 2. [Certificate.] Any one who successfully passes the examination before the state board of veterinary examiners shall receive from said board a certificate signed by the members thereof, which certificate shall state that the person to whom it is given has passed the prescribed examinations and is competent to practice veterinary medi-

cine and surgery. A copy of such certificate shall be recorded by the clerk of said board in a book kept for that purpose which shall be open to the public inspection.

(4412-3) SEC. 3. [**Veterinarians employed by state boards.**] Persons who have passed the requisite examinations and received a certificate from the state board of veterinary examiners, and those who have continuously practiced veterinary medicine and surgery for at least five years, and no others, shall be qualified and be entitled to be employed as veterinaries by the state board of agriculture, state live stock commission and state board of health.

(4412-4) SEC. 4. [**State board of examiners.**] The state board of veterinary examiners shall consist of five members. The secretary of the state board of agriculture and the secretary of the state board of health shall be ex officio members of said board. Three members thereof shall be appointed by the governor and confirmed by the senate for the terms respectively of two, four and six years, and every two years thereafter the governor shall appoint a member for the term of six years. Vacancies in said board shall be filled by appointment for the unexpired term. The members so appointed by the governor shall be graduates of reputable but of different veterinary schools or colleges, and men of superior learning, personal skill and good moral character.

(4412-5) SEC. 5. [**Meetings, etc.**] The board shall meet at least twice a year—in April and July—in the city of Columbus. At the first meeting the board shall organize by electing from its members a president, secretary and treasurer, who shall hold their offices for two years or until their successors have been elected and qualified. The secretary shall keep an accurate record of the business transacted and of the certificates issued as heretofore provided. He shall collect the fees to be paid by the applicants for examination and pay the same over to the treasurer and shall perform such other duties as the board may prescribe. He shall keep a correct account of all moneys received and disbursed.

(4412-6) SEC. 6. [**Compensation of members.**] The board each shall receive three dollars per day, while in session, and his actual traveling expenses, to be paid by the treasurer out of the fees paid by the candidates for examination.

(4412-7) SEC. 7. [**When certificate issued; eligibility of unsuccessful candidate.**] A certificate shall be issued only when the board is satisfied that the candidate examined is well qualified and entitled to a certificate. The candidate, if unsuccessful, shall not be eligible to another examination until the expiration of one year thereafter.

(4412-8) SEC. 8. [**Time and fee for examination.**] Candidates shall present themselves for examination at the regular meetings of the board and shall pay for each examination the sum of five dollars, which shall accompany their application in writing, and be paid to the secretary of the board previous to the regular meeting of the board. One-half of the five dollars shall be returned if the candidate fails in the examination or if a diploma is accepted in lieu of an examination.

(4412-9) SEC. 9. [**Acceptance of diploma in lieu of examination.**] The board may accept a properly issued diploma in lieu of an examination; but such a diploma shall be accepted only if it has been issued by a reputable veterinary school or college, that requires a course of study and gives instruction in all the various branches of veterinary science.

(4412-10) SEC. 10. [**Penalty; emergency.**] Whoever shall engage in the practice of veterinary medicine or surgery in violation of this act shall, for the first offense, be fined not less than ten dollars, nor more than twenty-five dollars, and for the second offense not less than fifty dollars nor more than one hundred dollars, or be imprisoned in the county jail not more than sixty days, or both. Provided, that nothing in this act shall be construed to prohibit any veterinary advice or service in cases of emergency if rendered by a person not entitled to practice under this act. Nor shall it apply to animal castration and dehorning of cattle.

WEIGHTS AND MEASURES.

SEC. 4428. [**Standards, those furnished by United States government; metric system.**] The standard weights and measures furnished the state of Ohio by the secretary of the treasury of the United States, under a resolution of congress, approved June fourteenth, one thousand eight hundred and thirty-six, shall be the legal standard of weights and measures throughout the state; but nothing in this chapter contained shall be construed to prevent the use of the weights and measures of the metric system, authorized by congress of the United States as the same appears in section *thirty-five hundred and sixty-nine* and *thirty-five hundred and seventy* of the Revised Statutes of the United States.

SEC. 4429. [**By what standard contracts construed.**] All contracts hereafter made within this state for work to be done, or for anything to be sold by weight or measure, shall be taken and construed according to the standards hereby adopted as the standards of this state.

SEC. 4430. [**Yard, the standard measure of length and surface; subdivisions of yard.**] The unit of standard measure of length and surface, from which all other measures of extension, whether they be lineal, superficial, or solid, shall be derived and ascertained is the standard yard, now in possession of the secretary of state, and furnished by the government of the United States. The yard shall be divided into three equal parts, called feet, and each foot into twelve equal parts, called inches. For the measure of cloths and other commodities commonly sold by the yard, it may be divided into halves, quarters, eights, and sixteenths.

SEC. 4431. [**Contents of a rod, pole, or perch; of a mile; of a chain.**] The rod, pole, or perch shall contain five and a half such yards; the mile, one thousand seven hundred and sixty such yards; the chain for measuring land shall be twenty-two yards long, and shall be divided into one hundred equal parts called links.

SEC. 4432. [**Contents of an acre.**] The acre for land measure shall be measured horizontally, and contain ten square chains, and shall be equivalent in area to a rectangle sixteen rods in length and ten in breadth; six hundred and forty such acres being contained in a square mile.

SEC. 4433. [**Contents of perch of mason work or stone.**] The perch of mason work or stone shall consist of twenty-five cubic feet.

SEC. 4434. [**Contents of a cord of fire-wood or tan-bark.**] The standard measure of a cord of fire-wood or tan-bark, shall be one hundred and twenty-eight cubic feet well stowed and packed.

SEC. 4435. [**Standard weights.**] The units or standards of weight from which all other weights shall be derived [and] ascertained shall be the standard avoirdupois and troy weights furnished this state by the United States government.

SEC. 4436. [**Definition of a pound and its subdivision; ton.**] The avoirdupois pound, which bears to the troy pound the ratio of seven thousand to five thousand seven hundred and sixty, shall be divided into sixteen equal parts called ounces; the hundred weight except of pig iron or iron ore shall consist of one hundred avoirdupois pounds, and twenty hundred weight shall constitute a ton; and the troy ounce shall be equal to the twelfth part of a troy pound.

SEC. 4437. [**Gallon the standard measure for liquids.**] The unit or standard measure of capacity for liquids from which all other measures of liquids shall be derived and ascertained, shall be the standard gallon, and its parts, furnished this state by the government of the United States.

SEC. 4438. [**Contents of a barrel.**] The barrel shall be equal to thirty-one and one-half gallons, and two barrels shall constitute a hog-head; and barrels for the purpose of containing apples, potatoes, onions or any other kind of fruit, produce or vegetables, shall be made of staves of seasoned timber, twenty-eight and one-half inches in length with cut heads of seventeen and one-eighth inches in diameter and shall measure at the bulge not less than sixty-six inches in circumference, outside measure.

SEC. 4438a. [**Branding.**] Such barrel shall be known as the "standard barrel," and on the outside of one or more of the staves of each and every such barrel there shall be stamped or branded the words—"state of Ohio standard," and the name of the cooper or manufacturer of such barrel and the name of the city or town the nearest to which the cooper-shop or place of business of such manufacturer is located.

SEC. 4439. [**Half-bushel the standard measure for substances not being liquids.**] The unit or standard measure of capacity for substances not being liquids, from which all other measures of such substances shall be derived and ascertained, shall be the standard half bushel furnished this state by the government of the United States, the interior diameter of which is thirteen inches and thirty-nine fortieths of an inch, and the depth is seven inches and one twenty-fourth of an inch.

(4439-1) SEC. 1. [**Unlawful to use other than standard half-bushel in testing milling weight, etc.**] It shall be unlawful for any person, commission-merchant, miller, dealer, grain-inspector, corporation, company, firm, or association, either by himself, itself, officer, agent, or employe, when purchasing or receiving in barter or exchange for flour or otherwise, from the original producer, his agent or employe, to use for the purpose of testing or determining the weight, grade, milling or market value of wheat, any measure other than the standard half-bushel furnished this state by the United States; and the use of any fractional part of said standard half-bushel measures for such purpose will be a violation of this section.

(4439-2) SEC. 2. [**Penalty; disposition of fines.**] Any person, commission-merchant, miller, dealer, grain-inspector, corporation, company, firm or association, or any person acting as officer, agent or employe,

found guilty of a violation of section 1 of this act, (4439-1) shall be fined not less than twenty-five dollars nor more than one hundred dollars or imprisoned in the county jail not more than thirty days, or both, at the discretion of the court. Fines collected for violation of this act shall be paid into the county treasury to the credit of the county fund.

(4439-3) SEC. 3. [Duty of prosecuting attorney; fee.] It shall be the duty of the prosecuting attorneys to see that this act is enforced in their respective counties; and for each conviction of violation thereof they shall be entitled to a fee of twenty dollars, to be paid out of the county funds upon the allowance of the commissioners of the county.

SEC. 4440. [Sub-divisions of half bushel.] The peck, half-peck, quarter-peck, quart, and pint measure for measuring commodities which are not liquids, shall be derived from the half bushel by dividing that and each successive measure by two.

SEC. 4441. [Heaped measure.] Articles usually sold by heaped measure shall be heaped up in a conical form as high as the articles to be measured will admit.

SEC. 4442. [How dry commodities measured.] Measures for measuring dry commodities not usually heaped shall be struck with a straight stick, with the edges rounded; and all commodities, not liquids, when sold by the gallon or less, shall be sold by dry measure.

(4442-1) SEC. 1. [Legal measures for small fruits; penalty.] The measure used in the selling of or vending berries and all other small fruits shall be the standard dry measure bushel and fractions thereof, and any person vending or selling such fruits and using a measure other than the standard dry measure, shall be fined not less than ten nor more than fifty dollars.

SEC. 4443. [Standard weight of bushel.] A bushel of the respective articles hereinafter mentioned shall mean the amount of weight, avoirdupois, in this section specified, viz.:

- Of wheat, sixty pounds;
- Of rye, fifty-six pounds;
- Of oats, thirty-two pounds;
- Of clover seed, sixty pounds;
- Of timothy seed, forty-five pounds;
- Of hemp seed, forty-four pounds;
- Of millet seed, fifty pounds;
- Of buckwheat, fifty pounds;
- Of beans, sixty pounds;
- Of peas, sixty pounds;
- Of hominy, sixty pounds;
- Of Irish potatoes, sixty pounds;
- Of sweet potatoes, fifty pounds;
- Of onions, fifty-five pounds;
- Of dried peaches, thirty-three pounds;
- Of dried apples, twenty-four pounds;
- Of flax seed, fifty-six pounds;
- Of barley, forty-eight pounds;
- Of malt, thirty-four pounds;
- Of Hungarian grass seed, fifty pounds;
- Of lime, seventy pounds;
- Of coke, forty pounds;

Of bituminous coal, eighty pounds;
Of cannel coal, seventy pounds;
Of corn, shelled, fifty-six pounds;
Of corn in the ear, sixty-eight pounds;
Of pop-corn in the ear, forty-two pounds;
Of tomatoes, fifty-six pounds;
Of apples, fifty pounds;
Of peaches, forty-eight pounds;
Of turnips, sixty pounds;
Of carrots, fifty pounds;
Of beets, fifty-six pounds.

SEC. 4444. [Contents of bushel for measuring stone coal and lime.] The standard bushel of stone coal, coke, or unslacked lime, shall contain twenty-six hundred and eighty-eight cubic inches; and the lawful measure for measuring such articles shall contain two bushels, and be of the following interior dimensions: twenty-four inches diameter at the top, twenty inches at the bottom, and fourteen and one-tenth inches deep.

SEC. 4444a. [Standard of measurement for bushel of charcoal.] The standard of measurement for a bushel of charcoal shall be twenty-seven hundred and forty-eight (2748) cubic inches.

SEC. 4445. [When coal may be sold by weight and when by measurement.] Where facilities can be had, all sales of coal shall be by weight; and two thousand pounds avoirdupois shall constitute a ton thereof; but where coal cannot be weighed it may be sold by measurement.

SEC. 4446. [Liability of person selling coal in violation of provisions.] Whoever sells stone coal in violation of the provisions of this chapter shall be liable to the person, to whom the coal is sold and delivered in treble damages, to be collected in a civil action before any court of competent jurisdiction; if the defendant in such action does not reside in the county where the mine is located, service may be had upon him by copy of the summons left at his place of business; and any judgment recovered in such case shall be a lien upon all property of the defendant in the county from the day of service; but this section shall not apply to any person or corporation mining or selling less than fifteen thousand bushels of coal annually.

TIME.

(4446-1) SEC. 1. [Making part of first Tuesday after first Monday in November a legal part holiday.] The first Tuesday after the first Monday in November of each year, from and between the hours of twelve o'clock noon and two o'clock p. m., shall be, for election purposes only, a legal part holiday. And no employe who is an elector shall be compelled or required to perform any labor between said hours, nor shall any employer or his or its officers or agents discharge any such employe because he fails or refuses to labor between said hours or require or order any such employe to accompany him to the voting place of such employe, and any person violating any of the provisions of this act shall upon conviction be fined not more than twenty-five dollars.

(4446-2) SEC. 1. [**Labor Day.**] The first Monday in September of each and every year shall be known as labor day, and for all purposes whatever considered as the first day of the week.

Acts of amusement may be indulged in on labor day though prohibited on Sunday, for the title of this act calls it a holiday; but a judgment rendered on that day is absolutely void: *Joseph Speidel Grocery Co. v. Armstrong*, 8 C. C., 489; 1 O. D., 534.

(4446-3) SEC. 1. [**Central standard time.**] The standard of time throughout this state shall be that of the ninetieth meridian of longitude west from Greenwich, by which all courts, banks and public offices, and all legal or official proceedings shall be hereafter regulated. Whenever, by the laws of this state, or by any law, rule, order or process of any authority, created by or pursuant to the laws of this state, any act is required to be performed, at or within any prescribed time, such act shall be performed according to the standard of time of the ninetieth meridian of longitude west from Greenwich, known as central standard time.

(4446-4) SEC. 1. [**Timepiece in or upon public building to keep central standard time.**] Wherever there is a clock or other timepiece in or upon a public building within this state, the same being maintained at the public expense, it shall be the duty of the board of county commissioners, board of education, or other persons having control and charge of such building, to have said clock or other timepiece set and run according to the standard of time established by the act passed March 22, 1893, entitled "An act to establish a uniform system of keeping time throughout the state of Ohio."

(4446-7) SEC. 1. [**Ohio agricultural experiment station.**] That the board of control of the Ohio agricultural experiment station immediately on the taking effect of this act, shall appoint a competent person, or persons, who shall, under the direction of the board, perform the duties hereinafter provided.

(4446-8) SEC. 2. [**Board to cause to be exterminated dangerous insects and plant diseases.**] It shall be the duty of the board, either in person or through their assistants, to seek out and cause to be exterminated the San José scale and other dangerous insects, and tree, shrub, vine, or plant diseases. Black knot and peach yellows are hereby declared to be dangerous within the meaning of this act, and trees, shrubs, vines, or plants affected with either of these diseases, shall be subject to its provisions. The mention of San José scale, peach yellows and black knot in this section shall not be held to exclude other insects or diseases which may be found to be dangerous, from the provisions of this act.

[**Annual examination of nurseries.**] Said board in person, or through their assistants, shall examine once in each year, not later than August 15, all nurseries in the state of Ohio as to whether they are infested with San José scale or other dangerous insects, or infected with dangerously contagious tree, vine, shrub, or plant disease;

[**Certificate and fee therefor.**] And if upon inspection, such nurseries appear to be free from such insects or diseases, the board shall, upon the receipt of \$10.00, give each owner of such nursery or nurseries, a certificate to the facts, provided that it shall require but one day or part of one day to make such inspection, and for each additional day or frac-

tion thereof required to complete the inspection, \$5.00 shall be charged therefor, and collected before the certificate is granted. In addition to the above fee nurserymen must furnish transportation to and from railway station, and facilities for reaching their growing stock, to such person or assistants selected by the board to make said inspection.

[Life of certificate; filing thereof.] This certificate shall be void after August 15, of the year following. A duplicate of each certificate, together with a statement of amount received therefor, shall be filed by said person or assistants with the secretary of the board, within ten days of its issue, and neglect to file such duplicate of certificate and statement shall be treated as a misdemeanor.

[Treatment of affected nursery stock.] If any dangerously injurious insects or infectious diseases are found on the premises of any nursery, or nursery stock, the board may order and enforce such treatment of said nursery stock, as they may deem sufficient in addition to a thorough inspection before granting a certificate, and the same per diem, shall be charged for over-seeing treatment as for nursery inspection.

[Duty of person shipping nursery stock.] Whenever a nurseryman or any other person shall ship or deliver within this state, except for scientific purposes, trees, shrubs, plants or other nursery stock, he shall place upon each car load, box, bale or package a copy of a certificate, the original of which is signed by a state or government inspector, stating that stock has been inspected and has been found apparently free from dangerous insects and dangerously contagious tree, shrub, vine and plant diseases.

[Illegal use of certificate.] The illegal use of said certificate by changing, defacing or placing it on uninspected stock, or using the same after date of expiration or revocation, shall render the owner or shipper liable to the penalty prescribed for a violation of this act. No person growing for sale any trees, shrubs, vines, or plants, shall deliver the same without applying to the board for the certificate provided for in this act. Provided, however, that existing certificates, issued by the entomologist of the Ohio agricultural experiment station, shall be held to be valid until June 1, 1900.

(4446-9) SEC. 3. **[Examination of orchards, gardens, etc.]** It shall further be the duty of said board through their assistants to cause the examination of all orchards, gardens, and other premises, either public or private, which they shall have reason to suppose to be infested or infected with any dangerously injurious insects or infectious diseases, liable to spread or to be conveyed to other premises, and for this purpose, said board and their assistants are authorized, during reasonable business hours, to enter into or upon any farm, orchard, nursery, garden, storehouse or other building or place used for growing, storing, packing or sale of nursery and other horticultural products.

[Treatment of infected property.] If said board or their assistants shall find on inspection as aforesaid that any nursery, orchard, garden, or other property or place is infested or infected with such dangerously injurious [insects] or infectious diseases liable to spread or to be conveyed to other premises, to the serious injury of the property thereon, the same shall be declared a public nuisance, and they shall notify, in writing, the owner or persons in charge of such infested or

infected property, and shall direct him, within a time and in a manner prescribed in such notice, to use such measures as shall prevent the conveyance or spread of such insects or diseases to the property of others and such infested or infected property must not be removed from the premises after the owner or person in charge of the same shall have been notified as aforesaid, without the written permission of said board or their assistants.

[Duty of board upon failure of owner to disinfect premises.]

If the person so notified shall refuse or neglect to treat and disinfect said premises or property in the manner and within the time prescribed, it shall be the duty of the board to cause such premises or property to be so treated, and they shall certify to the owner or person in charge of such premises one-half of the cost of the treatment. If said sum is not paid to them within sixty days thereafter, the same may be recovered, together with the cost of action, before any court in the state having competent jurisdiction.

[Destruction of infected trees, etc.] Any tree, plant, shrub, etc., which may in the judgment of the board or their assistants, be so badly infested, or infected, as to render expense of treatment unjustifiable, shall be declared a public nuisance and may be destroyed by them or their assistants without liability for compensation to the owner thereof.

[Appeal.] Right of appeal from the decision or requirements of the assistants may be made to the said board, within three days after notice of such decision or requirements has been served, and the decision of the board shall be final.

(4446-10) SEC. 4. **[As to plants shipped into this state.]** Every package of trees, shrubs, vines or plants shipped into this state, from any other state, territory, country or province, shall be plainly labeled on the outside with the names of the consignor, and consignee, and a certificate showing that the contents have been inspected by a state or government officer, and that the trees, shrubs, vines or plants therein contained appear to be free from all dangerous insects and dangerously infectious diseases. If any trees, shrubs, vines, or plants are shipped into this state without such certificate plainly fixed on the outside of the package, box or car containing the same, the facts must be reported within twenty-four hours to the said board by the railroad, express or steamboat company, or by other person or persons carrying the same, and it shall be unlawful to deliver any such property until it has been examined by the board or their assistants and by them certified to be apparently free from dangerous insects or dangerously contagious diseases. Any agent or any common carrier, or persons carrying such property as aforesaid, who shall fail to give such notice as hereby required, shall be deemed guilty of a violation of this act. When nursery stock is shipped into this state accompanied by a certificate as herein provided, it shall be held prima facie evidence of the facts therein stated. But the board by themselves or their assistants, when they have reason to believe that any such stock is infested or infected as heretofore described shall be authorized to inspect the same. In case such stock is found to be infested or infected by any of the aforesaid insects or plant diseases, such stock shall be held subject to order of shipper not to exceed ten days before being declared a public nuisance and destroyed. All expenses incurred by the board or their assistants, in carrying out the provisions of this act shall be paid out of the funds appropriated by this act.

(4446-11) SEC. 5. [Penalty for violation of this act.] Any person violating or neglecting to carry out the provisions of this act, or offering any hindrance to the carrying out of this act shall be adjudged guilty of a misdemeanor, and upon conviction before any justice of the peace, shall be fined not less than ten dollars and not more than one hundred dollars for each and every offense, together with all the costs of prosecution, and shall stand committed until the same is paid. It shall be the duty of the county prosecuting attorney to prosecute all violations of this act and all amounts so recovered shall be paid over to the state treasury.

(4446-12) SEC. 6. [Annual report of board to governor.] The board shall make an annual report to the governor of the state, a copy of which shall be sent to the Ohio state horticultural society at its annual meetings, showing the number of nurseries inspected, the number of certificates issued, the number of trees treated or disinfected by them or their assistants, the kinds and amount of property destroyed by them in pursuance of this act and such other facts concerning the operation of their office, under this act, as the said board may deem necessary.

(4446-13) SEC. 7. [Act does not apply to greenhouses.] The provisions of this act shall not apply to florist's greenhouse plants, bulbs, flowers and cuttings, commonly known as greenhouse stock.

(4446-14) SEC. 8. [Disposition of moneys received.] The said assistants shall pay over to said board of control, all funds coming into their hands under the provisions of section 2, of this act, with an itemized statement of the sources whence received, which moneys shall be used by said board to aid in carrying into effect the provisions of this act, and the amount so received shall be stated in the annual report of said board.

[Expenses of assistants.] The said assistants shall also make to said board an itemized statement of their expenses and the amounts paid for assistants employed in prosecuting the work under this act, which, when certified by said board, shall be paid out of the state treasury upon the warrant of the auditor of state.

(4446-15) SEC. 9. [Appropriation for use of board.] There is hereby appropriated to the said board of control for the purpose of carrying out the provision of this act the sum of fifteen thousand (\$15,000) dollars for the years of 1900 and 1901, or so much thereof as may be necessary. The auditor of state is hereby authorized to draw his warrants upon the state treasurer against the sum herein appropriated upon the presentation of proper vouchers and the state treasurer shall pay the same out of any funds in the public treasury, not otherwise appropriated.

FERTILIZERS.

SEC. 4446a. [How package containing commercial fertilizer to be marked.] Any person or company who shall offer, sell or expose for sale in this state, any commercial fertilizer, shall affix to every package, in a conspicuous place on the outside thereof, a plainly printed certificate stating the number of net pounds in the package sold or offered for sale, the name or trade mark under which the article is sold, the name of the manufacturer and the place of manufacture, and a chemical

analysis stating the percentage of nitrogen, or its equivalent in ammonia, in an available form, of potash soluble in water, and of phosphoric acid, in an available form (soluble or reverted) as well as the total phosphoric acid.

As to penalty, see § 4446f. Criminal penalty for violating these sections, see § 7002.

SEC. 4446b. [Person offering same for sale to deposit sample with Secretary State Board of Agriculture.] Before any commercial fertilizer is sold or offered for sale, the manufacturer, importer, or party who causes it to be sold or offered for sale within the state of Ohio, shall file with the secretary of the Ohio state board of agriculture, a certified copy of the certificate referred to in section *one* [4446a] of this act, and shall deposit with said secretary, a sealed glass jar, containing not less than one pound of the fertilizer, accompanied with an affidavit that it is a fair average sample.

As to penalty, see § 4446f. Criminal penalty for violating these sections, see § 7002.

SEC. 4446c. [Manufacturer, importer, or agent to pay license.] The manufacturer, importer or agent of any commercial fertilizer, shall pay, annually, on or before the first day of May, a license fee of twenty dollars *on each brand*, for the privilege of selling or offering for sale within the state, said fee to be paid to the secretary of the Ohio state board of agriculture; provided, that whenever the manufacturer or importer shall have paid the license fee herein required, for any person acting as agent for such manufacturer or importer, such agent shall not be required to pay the fee named in this section.

As to penalty, see § 4446f. Criminal penalty for violating these sections, see § 7002.

SEC. 4446d. [Analysis to be made by Secretary State Board of Agriculture.] All analyses of commercial fertilizers sold within the state shall be made by or under the direction of the secretary of the Ohio state board of agriculture, and paid for out of the funds arising from license fees, as provided for in section three [4446c.] At least one analysis of each fertilizer sold shall be annually made.

SEC. 4446e. [Secretary to publish, annually, report of analyses made and fees received.] Said secretary shall publish annually, a correct report of all analyses made and certificates filed, together with a statement of moneys received on account of license fees and expended for analyses, and any surplus arising from license permits shall be placed to the credit of the agricultural fund.

SEC. 4446f. [Persons selling without complying with foregoing provisions, how punished.] Any person or party who shall offer or expose for sale, or sell, any commercial fertilizer without complying with the provisions of sections 4446a, 4446b and 4446c of the Revised Statutes, or shall permit an analysis to be attached to any package of such fertilizer, stating that it contains a larger percentage of any one or more of the constituents named in said section 4446a than it really does contain, shall be subject to a penalty of not less than two hundred dollars for the first offense, and not less than five hundred dollars for every subsequent offense, to be recovered in a civil action, and the offender, in all cases, shall also be liable for damages sustained by the purchasers of such fertilizers; provided, however, that a deficiency of one per cent. of

the nitrogen, potash or phosphoric acid claimed to be contained, shall not be considered as evidence of fraudulent intent.

Criminal penalty also provided, see § 7002.

SEC. 4446g. [Where suits to recover penalties may be brought.] Suit may be brought for the recovery of penalties under the provisions of this act in the court of common pleas of the county where the fertilizer was offered for sale, or sold, or where it was manufactured; and all penalties so recovered, shall be paid into the state treasury to the credit of the general revenue fund.

Criminal penalty also provided, see § 7002.

SEC. 4446h. [Secretary of State Board of Agriculture may select samples to be analyzed.] The Secretary of the Ohio State board of agriculture, or any person by him deputized, is hereby empowered to select from any package of commercial fertilizer exposed for sale in any county in Ohio, a quantity not exceeding two pounds, which quantity shall be for analysis to compare with sample deposited with said secretary, as provided for in section two [4446b] of this act, and with the printed certificate found on the given package found on sale.

SEC. 4446i. [All suits under this act to be brought by Secretary State Board of Agriculture.] All suits for the recovery of fines under the provisions of this act, shall be brought by the secretary of the Ohio state board of agriculture, in the name of the state of Ohio.

COUNTY DITCHES.

SEC. 4447. [Ditches and water courses; county commissioners may construct, improve, etc., when.] The commissioners of any county at any regular or called session may, in the manner provided in this chapter, when the same is necessary to drain any lots, lands, public or corporate road or railroad, and will be conducive to public health, convenience or welfare, cause to be located, and constructed, straightened, widened, altered, deepened, boxed or tiled, any ditch, drain or watercourse, or box or tile any portion thereof or cause the channel of all or any part of any river, creek or run, within such county to be improved by straightening, widening, deepening or changing the same, or by removing from adjacent lands any timber, brush, trees or other substance liable to form obstruction therein.

SEC. 4448. [Meaning of words "ditch" and "according to benefits" as used herein.] The word "ditch" as used in this chapter shall be held to include a drain or watercourse. The petition for any such improvement shall be held to include any side, lateral, spur or branch ditch, drain or watercourse necessary to secure the object of the improvement, whether the same is mentioned therein or not; but no improvement shall be located unless a sufficient outlet is provided. The words "according to the benefits" used in this chapter in directing boards of county commissioners to assess lands for ditches and in directing engineers to report assessments for the same shall not be held to authorize any assessments for benefits conferred upon lands by nature nor the right of easement of the owners of superincumbent lands to pass the water therefrom through natural watercourses.

[Commissioners may change terminus.] And the commissioners may change either terminus of said ditch before its final location if the object of the improvement will be better accomplished thereby.

SEC. 4449. [When the ditch benefits a road.] When the improvement will drain the whole or a part of any public or corporate road, or a railroad, or will so benefit any such road that the traveled track or road-bed thereof will be improved by its construction, there shall be apportioned to the county, if the road is a state, county, or free turnpike road, or to the township, if a township road, or to the corporation, if a corporate road or railroad, a proper share of the costs and expenses thereof, as hereinafter provided.

SEC. 4450. [Application for county ditch; bond.] Application for any such improvement shall be made to the commissioners of the county, signed by one or more owners of lots or lands which will be drained or benefited thereby, or shall be made by the street commissioner or supervisor of the road district in which the same is required to be done; and the trustees of any original surveyed township owning land granted by congress for the support of common schools, or the infirmity directors of any county, may make such application and file the petition and bond provided for in this chapter.

(4450-1) [Montgomery county commissioners authorized to protect the public against dangerous waters.] The commissioners of any county containing a city of the second grade, of the second class, are hereby authorized: in any case where the action of water results in injury to the general public, [or,] in any vicinity or community, threatens the safety of any public road or bridge, or the security or convenience of public travel, the county commissioners may, of their own motion, without the filing of a petition as required by section *four thousand four hundred and fifty*, inaugurate proceedings for the establishment of, or the straightening, or improving of a county ditch, and establish, improve, or straighten the same, in accordance with the provisions of title *six*, chapter *one*, of the Revised Statutes of Ohio, or take such other action to control the flowage and discharge of such water as may be necessary to prevent such public injury.

SEC. 4451. [Petition, what to contain, and bond.] The petition shall be filed with the county auditor and shall set forth the necessity and benefits of the improvement and describe the beginning, route and termini thereof. It shall also contain the names of all persons and corporations either public or private, who in the opinion of the petitioner or petitioners are in any way affected or benefited thereby, and [there] shall be filed therewith a bond, subject to the approval of said auditor, payable to the state of Ohio, with at least two sufficient sureties, in not less than two hundred dollars, conditioned for the payment of all costs if the prayer of the petition be not granted or be dismissed for any cause. Should the names of any person or corporation, either public or private, who are in any way affected by the proposed improvement, be omitted from the petition, it shall be the duty of the commissioners, when they discover that such omission has been made, to supply such names, and cause notice to be served as herein provided.

SEC. 4451a. [Notice of filing of petition; day for hearing; notice.] Said auditor shall thereupon give notice to the commissioners of the filing of said petition, together with a copy thereof. He shall fix a day

for the hearing of the same—not more than thirty days from the date of said notice. He shall prepare and deliver to said petitioners, or any one of them, a notice in writing, directed to the lot or landowners and to the corporations either public or private affected by said improvement, setting forth the substance, pendency and prayer of such petition, a copy of which notice shall be served upon each lot or land owner or left at his or her usual place of residence, and upon an officer or agent of each public or private corporation having its place of business in the county, at least fifteen days before the day set for hearing, and the person who serves such notice shall make return on the notice, under oath, of the time and manner of service and file the same with said auditor on or before that day. Said auditor shall, at the same time, give a like notice to each non-resident lot or landowner by publication in a newspaper, printed and of general circulation in the county, at least two weeks before the day set for hearing, which notice shall be verified by affidavit of the printer, or other person knowing the fact, and filed with said auditor on or before that day, and no further notice of said petition or the proceedings had under the same shall thereafter be required.

SEC. 4452. [Hearings by commissioners.] Said commissioners shall meet at the place of beginning of said ditch as described in the petition on the day so fixed, as aforesaid, and hear any and all proof offered by any of the parties affected by said improvement, and other persons competent to testify; and shall go over and along the line of said improvement, and by actual view of the said ditch and the premises along and adjacent thereto and to be drained or benefited thereby, determine the necessity thereof, and may adjourn from time to time and to such place as the necessity of the work may require; and in case said commissioners find for said improvement, they shall fix a day for the hearing of application for any appropriations of land taken for said improvement and damages said parties affected by said improvement or any of them may sustain thereby, and for the approval of the report of the county surveyor as hereinafter provided for.

SEC. 4453. [When the commissioners find against the improvement.] If the commissioners find against the improvement, they shall dismiss the petition and proceedings at the cost of the petitioners, and they shall cause an itemized bill of all the costs to be made up by the auditor for their examination and approval, which shall include the per diem of the county surveyor, together with all costs necessarily made, except fees of the auditor and compensation of the commissioners.

SEC. 4454. [Finding for the improvement; survey and plat.] If the commissioners find for the improvement, they shall cause to be entered on their journal an order directing the county surveyor to go upon the line described in the petition, or as changed by them in accordance with section forty-four hundred and eighty-nine, and survey and level the same, and set a stake at every hundred feet, numbering down stream, note the intersections of lines and boundaries of lands, townships and county lines, landmarks, bench-marks and road-crossings, and make a report, profile and plat of the same, and estimate the number of cubic yards of earth or other substance to be removed, and the cost per cubic yard for each working section as hereinafter provided, and of each section of one hundred feet.

SEC. 4455. [Engineer must report an assessment, etc., of cost of ditches.] The commissioners shall, also by their order, direct the county surveyor or engineer to make and return a schedule of all the lots and lands, and public or corporate roads or railroads that will be benefited, with an apportionment of the cost of location, and the labor of constructing the improvement, in money, according to the benefits which will result to each, and in apportioning the costs of such improvement the benefits to any lots or lands by diking the same in whole or in part shall be considered with other benefits, and a specification of the manner in which the improvement shall be made and completed, the number of flood-gates, waterways, farm crossings and bridges necessary, including kinds and dimensions thereof, and all county and township lines and railway crossings.

SEC. 4456. [What the plat shall show.] The plat provided for in section forty-four hundred and fifty-four shall be drawn upon a scale sufficiently large to represent all the meanderings of the proposed improvement, and shall distinctly show the boundary line of each lot or tract of land, and of each road or railroad, to be benefited thereby, the name of the owner of each lot or tract of land as the same appears upon the tax duplicate at the time, the authority or company having in charge or owning or controlling each public or corporate road or railroad, the distance in feet through each tract or parcel of land, together with such other matters as the county surveyor deems material; the profile shall show the surface, the grade line and the gradient fixed, and the county surveyor shall make and file with his report an itemized bill of all costs made in the proper discharge of his duties under this and the preceding two sections, and shall file his report with the county auditor within thirty days after making the survey and level.

SEC. 4459. [Commissioners may change apportionment.] If the commissioners find that the apportionment, reported by the county surveyor, is unfair and unjust, and ought not to be confirmed, they shall so amend it as to make it fair and just, in proportion to benefits, and if necessary, in their opinion, they may adjourn the further hearing not exceeding twenty days, unless for good cause, further time is necessary, to a day to be fixed by them and go upon the premises, and view the same and apportion the entire cost of location, and construction or any part thereof, as may seem just and proper, but if parties, not included in the county surveyor's apportionment, or [are] found to be benefited, and are assessed by the commissioners, such parties shall be notified as provided in section four thousand four hundred and fifty-seven, and the commissioners shall, on the day fixed in said notice, again meet at the auditor's office and determine the apportionment.

SEC. 4459a. [Apportionment of assessment by auditor in case of subdivision, etc., of lands.] If at any time after the determination of the apportionment as provided for by section *four thousand four hundred fifty-nine*, any lot of land upon which such assessment is made be subdivided or any part thereof be sold and transferred upon the duplicates, it shall be the duty of the auditor at the time he makes such transfer to apportion the amount of the assessment between the owners of such lot or lands pro rata, according to the number of feet or acres thereof, that each may own, and certify the same to the treasurer, whose duty it shall be to collect such assessment from each of such owners as so certified.

SEC. 4459b. [Re-apportionment by county commissioners.] If at any time after the apportionment by the auditor as provided for by section *four thousand four hundred and fifty-nine* (a), any person interested therein may apply to the commissioners for a reapportionment thereof at any regular, special or called session of the commissioners, whose duty it shall be to notify all parties interested of the time and place at which they will meet and determine such apportionment, at least ten days before such meeting, and apportion the same as they may deem just and proper; the provisions of this act shall apply to lands now assessed as aforesaid, and transferred upon the tax duplicate.

SEC. 4460. [Application for compensation and damages, or for alteration of line.] At any time on or before the day set for hearing, as provided in section four thousand four hundred and fifty-two, any person or corporation whose lands are taken or affected in any way by such improvement may make application to said commissioners in writing for compensation or damages, and they, or any of them, may make an application in writing for a change or alteration of the line of the ditch through their premises, and a failure to make such application shall be deemed and held to be a waiver of all rights thereto.

SEC. 4461. [Commissioners to fix compensation and damages; how computed.] The commissioners shall upon actual view of the premises fix and allow such compensation for lands appropriated as they may deem just and equitable, and assess such damages as will in their judgment accrue from the construction of the improvement, to each person or corporation making application therefor as provided in section four thousand four hundred and sixty, and without such application, to each idiot, insane person, or minor owning lands taken or affected by the improvement. But such compensation shall be computed without deduction for benefits to any property of such person or corporation; and they may on the day set for hearing, at the time of the view of the premises provided for in this section, take into consideration the application for the change or alterations as provided for in section four thousand four hundred and sixty, and if they find that such change or alteration will be equally beneficial, they may order the county surveyor to go upon the line of the improvement and survey said change or alteration;

[Expenses, how defrayed.] And all expenses attending the making said alteration and change, with the increased cost of construction, if any, shall be charged to the party or parties benefited thereby, which shall be collected and paid by them as other assessments.

[When compensation paid by county or jointly.] When the allowance for compensation and damages is fixed and determined as provided in this section, the commissioners shall consider and determine according to their best knowledge and judgment the proportionate benefits to accrue from the construction of the proposed improvement. If they shall find that the public health, convenience or welfare will be promoted by said improvement, and that the same is of sufficient importance to the public cause the damages and compensations which have been assessed to be paid out of the county treasury, they shall order the same to be so paid, or they may order a portion thereof to be paid by the county and the remainder by the benefited landowners, as they may deem just and equitable.

[**By landowners.**] But if in their opinion such improvement is not of sufficient importance to the public to cause such damages and compensation, or any part thereof to be paid by the county, they shall fix and determine the proportionate amount thereof which should be paid by the several landowners benefited by the improvement.

[**Auditor to issue warrant; assessment.**] And in either case the commissioners shall direct the auditor to issue an order on the county treasurer to each of the several complainants to whom compensation or damages was allowed for the amount due, and to enter on the ditch duplicate the amounts assessed against the several benefited landowners for the payment of such compensation and damages, payable in the same ratio and manner as other assessments, and to be collected as other taxes.

[**How apportioned.**] In the assessment for the payment of compensation and damages, whether the whole or a part thereof be ordered paid by the benefited landowners, the commissioners shall apportion the same on all the lots and lands, and public or corporate roads or railroads that will be benefited.

[**Aggrieved person; notice of appeal.**] Provided, however, that if any person or corporation aggrieved by any final order or judgment of the commissioners shall at the final hearing before them, or within such time as may be provided by law, file a written notice of an intention to appeal therefrom, no further proceedings shall be had and no payments shall be made as herein provided until said proceedings on appeal shall be finally disposed of and determined.

SEC. 4462. [**Exceptions before commissioners in proceedings to establish a county ditch.**] A person or corporation, party to the proceeding, may file exceptions to the finding of the commissioners that the improvement is necessary or will be conducive to the public health, convenience or welfare, and that the line described is the best route, or to the apportionment, or to any claim for compensation or damages, at any time before the time set for the final hearing of the report and apportionment. The commissioners may hear testimony and examine witnesses upon all the questions made by the exceptions, and for that purpose may compel the attendance of the witnesses by subpoena, which the auditor shall issue on demand, and their decision on the exceptions shall be entered on the journal, and if they sustain the exception, the cost of the hearing thereon shall be paid out of the county treasury, and if they overrule the same, such cost shall be taxed against the person or corporation filing the exceptions.

SEC. 4463. [**Who may appeal to the probate court, and how appeal perfected.**] Any person or corporation aggrieved thereby may appeal from any final order, or judgment of the commissioners made in the proceeding and entered upon their journal determining either of the following matters, viz:

1. Whether said ditch will be conducive to the public health, convenience or welfare.
2. Whether the route thereof is practicable.
3. The compensation for land appropriated.
4. The damage claimed to property affected by the improvement.

And the appellant shall file with the commissioners, at the final hearing before them, a notice, in writing, of an intention so to do, and specifying therein the matter appealed from; the commissioners shall fix the amount of the bond to be given by the appellant, and cause an entry thereof, and of the notice, to be made upon their journal; the party appealing shall, within ten days thereafter, file with the auditor a bond, in the amount so fixed, with at least two sufficient sureties, to be approved by the auditor, conditioned to pay all the costs made on the appeal in case the appellant fail to sustain the same, or the appeal be dismissed for any cause; and the auditor shall make a complete transcript of the proceedings had before the commissioners, and certify the same, together with all the original papers filed in this office, and transmit them to the probate judge of the county within twenty days from the day of the final hearing.

SEC. 4464. [Hearing of preliminary questions in probate court.] The probate judge shall file the transcript and the original papers, and docket the case, and the appellant shall be plaintiff therein, and the county commissioners and petitioners defendants, and the case shall be so styled, and thereupon he shall fix a day not exceeding five days thereafter for the hearing of all preliminary motions, and the examination of the papers so filed; on the day so fixed, all preliminary motions shall be heard and determined, as well as all questions arising upon the record, and if he find that the proceedings are irregular in substance, or that the appeal has not been perfected according to law, he shall dismiss the appeal at the cost of the appellant, and certify such dismissal with his findings thereon back to the commissioners; but the judge may, in his discretion, order and allow the correction of any technical defect, error or omission in such proceedings.

SEC. 4465. [When jury to be drawn, and venire.] If the probate judge find that the appeal is perfected, he shall thereupon fix a day, not more than ten days from that date, for the trial of the case as appealed by jury and he shall immediately notify the clerk of the court of common pleas and the sheriff of the county, to meet at the clerk's office, and the clerk and the sheriff shall proceed at once, in the clerk's office, to draw from the jury-box the names of sixteen jurors; and the clerk shall make a list of the names so drawn, in the order in which they were drawn, and certify the same to the probate judge, who shall issue a venire, commanding them to appear on the day set for trial, at the hour of eight o'clock A. M., and deliver the same to the sheriff, who shall serve the same within five days thereafter and return the same on or before the day set for trial.

SEC. 4466. [How panel to be filled.] On the trial the probate judge shall take the list of jurymen as furnished by the clerk, and call each name in the order in which it appears on the list, until twelve answer, when each shall be required to answer as to his qualifications as a juror; if any juror be challenged for cause, and be excused by the court, the next on the list shall be called, until the panel is full, when the plaintiffs shall have two and the defendants two peremptory challenges; and if the panel be not filled by the jurymen whose names appear on the list, the sheriff shall fill the panel from among the bystanders who have the proper qualifications.

SEC. 4467. [How jury to be sworn.] The probate judge shall administer to the jurors an oath, faithfully, impartially, and to the best of their ability, and from actual view of the premises along the whole route of the improvement, to examine and determine the particular matters appealed from, and to render a true verdict according to the facts appearing to them from actual view of the premises, and the evidence, under the charge of the court.

SEC. 4468. [View by and trial to the jury.] The sheriff, or his deputy, together with the surveyor or engineer who surveyed, leveled, apportioned and platted the improvement, may accompany the jury, and point out its route; no other person shall be permitted to interfere in any way with the jurors in the discharge of their duty; and after the jury has fully examined the premises, and returned to court, either party may be heard, in person or by counsel, and may offer evidence to the jury, under the direction of the court, upon any matter given it specially in charge.

SEC. 4469. [Form of the verdict.] The jury shall find and return a verdict determining the matter or matters appealed from, being one or more of the following propositions, viz:

1. Whether said ditch will be conducive to the public health, convenience, or welfare.
2. Whether the route thereof is practicable.
3. The compensation due each appellant for land appropriated.
4. The damages due each appellant for property affected by the improvement.

The jury shall return their verdict in writing, signed by the jurors; as to said first and second propositions, it shall be necessary for only eight jurors to agree; as to the third and fourth, all must agree, and the jury may be polled as in other cases.

SEC. 4470. [Transcript to be sent to county commissioners.] The probate judge shall receive the verdict of the jury, and make a record thereof, together with all the proceedings before him, and shall thereupon tax the costs in favor of the prevailing party, and against the losing party; if more than one matter is appealed from, and a party prevail as to the one, and loses as to another, the court shall determine how much of the costs such party shall pay, but the costs on motions, continuances, and the like, shall be taxed and paid as the court may direct. If there are several parties, upon the side taxed with costs, the court shall apportion the costs equitably between them. Said judge shall, immediately after the trial, make a transcript thereof, certify and transmit the same, together with all the papers in the case, with the bill of costs made in the probate court, to the auditor of the county, who shall thereupon notify the commissioners to meet at the auditor's office within five days from the date of the notice to determine the matters growing out of the appeal and verdict.

SEC. 4472. [Costs when jury find for improvement.] If the jury find that the improvement is necessary, and the same will be conducive to the public health, convenience or welfare, and is practicable, the commissioners shall apportion the compensation and damages as directed in section (4461) *forty-four hundred and sixty-one*. They shall also assess and apportion the costs as directed by the probate court, and order the auditor to place the same on the duplicate to be collected as other taxes, and may in addition thereto, sue upon the bond given for

the payment of costs, and execution may be sued out of the probate court for the collection of any costs taxed against any party, as is provided in section *forty-four hundred and seventy*. Any costs taxed against the commissioners shall be paid out of the general county ditch fund.

SEC. 4473. [**Costs when probate court confirms assessment.**] If by the final decision in the probate court, any claimant of compensation and damages do not obtain a greater sum than was allowed and awarded to him by the order of the commissioners from which he appealed, he shall pay all the costs created by his appeal so far as the court can ascertain the same. And the commissioners shall assess and apportion the compensation and damages found by the jury, as directed in section (4461) *forty-four hundred and sixty-one*, and the commissioners shall assess and apportion the costs as directed by the probate court, which shall be collected and paid as directed and provided in section *forty-four hundred and seventy-two*.

SEC. 4474. [**Several appeals may be tried together.**] If more than one party appeal, the probate judge shall order the cases to be consolidated and tried together, and the rights of each party as to compensation or damages shall be separately determined by the jury in its verdict.

SEC. 4475. [**When and how commissioners to sell out work.**] In cases where appeals have been taken after the transcript of the proceedings before the probate judge, and all other papers in the case are returned to the auditor's office, the commissioners shall cause such entry to be made on their journal as may be necessary to give effect to the verdict, and findings of the jury, and in such cases and in cases where no appeals have been taken, they shall fix a time for the sale of the construction of the improvement at public outcry in sections not less than one hundred feet nor more than two thousand five hundred feet in length, and shall cause notice to be given of the time and place of the sale, and direct the county surveyor to attend at the time and place of sale to superintend and conduct the same, and shall receive all bids for the construction of the improvement, and make contracts with the lowest responsible bidders, and take good and sufficient bonds for the labor of the construction of the improvement, conditioned for the faithful performance of the contract so made, and for the completion of the work within time fixed in the contract in a sum not less than double the estimated value of the part bid off, and contracted to be performed by each, and said county surveyor shall furnish each contractor with specifications of the part bid off by him.

SEC. 4475a. [**Sale of work when cost is estimated at \$500 or more per mile.**] That when the estimated cost of construction of a ditch or ditch improvement shall be five hundred dollars or more per mile, and a petition shall be filed with the board of commissioners, signed by persons who are tax payers and who are assessed for the construction of said ditch or ditch improvement, representing two-thirds ($\frac{2}{3}$) of the amount of the estimated cost of the construction of said ditch or ditch improvement, the commissioners may advertise and sell the same as an entirety, or in one or more sections of not less than five hundred feet, but in all other respects they shall be governed by the provisions of said section 4475.

(4475-1) [**Providing for inspection of drain tile.**] The county surveyor shall be authorized to receive bids for drain tile or ditch pipe,

generally, at the same time and place as the balance of the ditch improvement. Said county surveyor shall, on or before thirty days after delivery, count and inspect such tile or pipe, and for such that are first class, merchantable, good tile or pipes, and in every particular complying with the contract and specification, he shall issue his certificate showing the acceptance of the same. The auditor shall, upon presentation of such certificate to him, draw his warrant on the treasurer of the county for the full amount, and the county treasurer shall pay the same out of any fund in the treasury applicable to such purpose.

SEC. 4476. [The sale, bonds of bidders, etc.; contract and bonds filed with auditor; liability, etc.] No bid shall be entertained which exceeds the estimated cost of construction; the county surveyor shall sell, first, the job or labor of construction of the working section of the outlet or mouth of the improvement, and fix a day when the job shall be completed, not exceeding in any case, one hundred and fifty days from the day of sale, and shall then sell each remaining working section in its order, up stream, and require the labor on each to be completed within a time so fixed that will, as nearly as practicable secure an outlet for the water as each section is completed, but the commissioners may, if the construction of such work will be facilitated thereby, authorize the sale or construction of such work, or either, to be made and performed in a different order and time from that hereinbefore specified. The county surveyor shall make contracts and take bonds as aforesaid and report his doings to the commissioners within five days from the date of sale, and return the contracts and bonds to the auditor, who shall file and carefully preserve the same; the contracts and bonds shall be examined and approved or disapproved by the commissioners, who shall cause an entry of their decision to be made on their journal, and the contractors to be notified of the approval or disapproval of the contracts and bonds; and the contractor for each job shall be liable, on his bond so given, for all delays after the expiration of the time named therein for the completion of the job, and for the payment of all damages which accrue by reason of the failure to complete the job within the time required in the contract therefor, and for the payment of all labor and material and for all debts incurred in the performance of this contract. All claims under this act shall be filed with the county surveyor before the expiration of the time for the completion of such contract.

SEC. 4477. [County ditches; supervision of work and payment of contractors.] The work shall be done under the supervision of the county surveyor and when a part, not less than one-fourth of the portion thereof included in any contract is completed in accordance with the specifications, he shall give to the contractor a certificate thereof, showing the proportional amounts which the contractor is entitled to be paid by the terms of his contract; and the auditor shall, upon the presentation of such certificate to him, draw his warrant on the treasurer for not more than seventy-five per cent. of the amount, and the treasurer shall pay the same out of any funds in the treasury applicable to such purposes; or if the commissioners have determined to issue bonds for the construction of such work, they may, if the contractor consent, pay in bonds, but proportioned amounts shall not be certified or paid unless the whole job amounts to more than one thousand cubic yards. When the whole contract is completed, the entire price may be paid in the manner aforesaid.

SEC. 4478. [County ditch; when contract for same not completed; proceedings in case of damages.] Any job not completed

within the time fixed in the contract and bond may be reestimated by the county surveyor, and resold by him to the lowest possible bidder, or he may complete it at the expense of the contractor and bondsmen, but such jobs shall not be resold for a sum greater than such estimate or reestimate, nor a second time to the same party; a contract and bond shall be entered into as hereinbefore provided, but the commissioners may, for good cause, give further time to any contractor, not exceeding one hundred and twenty days; the county surveyor shall fix a time for the completion of the work resold not exceeding one hundred and twenty days from the date of the bond. A person or corporation who has sustained damages in consequence of the non-performance of such work may bring suit for damages in any court of competent jurisdiction, against any contractor failing to perform his contract, or upon the bond of such contractor, and recover damages, as provided by law in other cases; and no contractor shall be prosecuted on his bond until the section below has been completed.

SEC. 4479. [~~Commissioners to make assessments on benefited lands.~~] When the working sections of the improvement are let, as hereinbefore provided, and the costs and expenses of location and construction, and all compensation and damages are ascertained, the commissioners shall meet and determine at what time and in what number of assessments they will require the same to be paid, and order that the assessments, as made by them, be placed on the duplicate accordingly; against all the lots or lands, or corporate roads or railroads assessed; they shall also determine whether they will issue the bonds of the county to raise the money necessary to pay such costs and expenses, and if they so determine, the bonds may be issued for a term of years, not exceeding twenty, at a rate of interest not exceeding six per centum per annum, payable semi-annually; and they shall cause an entry to be made upon their journal, setting forth their finding and determination under this section.

SEC. 4480. [Assessment for county ditches; how collected; issue of bonds to the amount of delinquencies.] When the commissioners make an assessment they shall cause an entry to be made, directing the auditor to make and furnish to the treasurer of the county a special duplicate with the assessment arranged thereon; as required by their order, and the auditor shall retain a copy thereof in his office, and all assessments shall be collected and accounted for by the treasurer as taxes; provided, that in cases when the assessments remain unpaid for one year after the same is placed upon the special duplicate, then, and in that case, to-wit, unless otherwise ordered by the county commissioners, the same shall be placed on the general duplicate for collection, together with a penalty of not less than six per cent. annually as county ditch taxes, and the amount of delinquent tax thus placed on the general duplicate shall be charged respectively to the several ditches on account of which such assessments have been made as a transfer from the county ditch fund. And the commissioners are hereby authorized to issue county ditch bonds not exceeding the amount of such delinquencies, after each semi-annual settlement between the auditor and treasurer for a term of years not exceeding three, at a rate of interest not exceeding six per cent., payable semi-annually, and for the payment of which, both principal and interest, the faith of the county shall be pledged, and the money arising from the sale of such bonds shall be charged to the county ditch fund, and the commissioners, in their annual report to the court of common pleas, shall fully

set forth the amount of tax transferred and bonds sold, as provided in this section.

SEC. 4481. [Assessments when county bonds are to be issued.] If the commissioners determine to issue bonds of the county for the money necessary to meet the expense of construction of any ditch, they shall make an assessment upon all the lots, lands, public or corporate, roads or railroads, benefited by the improvement in proportion to the apportionment hereinbefore provided for, sufficient to pay the costs of location and the first year's interest, and including the fees of the surveyor or engineer made after locating, in superintending the construction of the improvement, and order the same to be placed upon the duplicate for collection; and they shall, thereafter, make such assessments as may be required to raise the money for the prompt payment of such bonds.

SEC. 4482. [The form of such bonds.] The county commissioners shall issue such bonds of the county in amounts as determined by them, payable out of the funds arising from such assessments, and bearing interest as hereinbefore provided; said bonds shall be signed by the county commissioners and countersigned by the county auditor, who shall affix his seal thereto; such bonds shall not be sold for less than their par value, and the money arising from such sale shall be used for no other purpose than the construction and expense of said improvement.

SEC. 4483. [A municipal corporation may present a petition.] The council of a municipal corporation may, by resolution, authorize the mayor to present a petition, signed by him officially, and a bond, to the county commissioners, to locate and construct a ditch described in the resolution, or such council may authorize the mayor to sign officially a petition and bond for a ditch, to be presented by parties interested whose lands are without the limits of the corporation, whenever the improvement will be conducive to the public health, convenience, or welfare, of the whole or any portion of the inhabitants of the corporation; in such case the commissioners shall count the municipal corporation as an individual petitioner, and may direct the surveyor or engineer to locate the improvement in accordance with the petition, whether wholly within or wholly without, or partly within and partly without, the limits of the corporation; and the surveyor or engineer, in making his schedule of lots and lands benefited, may enumerate such lots and lands within or without the corporate limits as are especially benefited, and also the municipal corporation for benefits to the health and welfare of its inhabitants.

SEC. 4484. [The whole or a part of a municipality may be considered a single tract.] When the improvement equally drains or otherwise benefits the whole of the territory within the limits of a municipal corporation, or any part thereof, the surveyor or engineer, or the commissioners, or the jury, if a jury be called, may consider and treat such territory as a single parcel of land; and any sum apportioned thereto shall be apportioned by the county auditor to the lots or lands included therein, according to the valuation thereof for taxation.

SEC. 4485. [Notice to municipal authorities, and proceedings thereafter.] If the proposed improvement passes through or into a municipal corporation the mayor of which has not signed the petition therefor as provided in the preceding section, the mayor shall be notified of the pendency of the petition in the same manner and at the same time that the commissioners are required by section *forty-four hundred and*

fifty-two to be notified; the mayor shall notify the council of the pendency of the petition, at its next regular meeting, or, if necessary, call a special meeting of the council for that purpose; and thereupon the council shall appoint a committee of its members, or the engineer of the corporation, or both, to meet the commissioners, at the time and place of their meeting and view, and confer with them in regard to the improvement.

SEC. 4487. [Penalties against officers for neglect of duty.] If an engineer or auditor, or a commissioner or probate judge, neglect or refuse to perform any duty imposed upon him by the provisions of this chapter, he shall forfeit and pay a fine of twenty-five dollars for every such neglect, to be recovered before any officer having competent jurisdiction, in the name of the state, for the benefit of the common schools of the county, at the suit of any person aggrieved thereby.

SEC. 4488. [Application when proposed ditch in more than one county.] When a ditch or improvement is proposed, which will require a location in more than one county, application shall be made to the commissioners of each of said counties, and the surveyor or engineer shall make a report for each county; application for damages shall be made, and appeals from the finding of the commissioners, in joint session, locating and establishing such ditch, and from the assessment of damages or compensation, shall be taken to the probate court of the county in which the greatest length of such ditch or improvement is located; and a majority of the commissioners of each county, when in joint session, shall be competent to locate and establish such ditch or improvement; but no commissioner shall serve in any case in which he is personally interested; and any two commissioners may form a quorum for the transaction of business under this chapter, of their respective counties; provided, further, that when any two or more commissioners of any county are personally interested in any improvement upon which, or in the location and establishment of which, they are called upon to act, the auditor, probate judge and recorder of said county shall appoint a suitable person to act in the place of each commissioner so interested, and their acts shall have the same force and effect in such cases as though they were commissioners of said county for which they are appointed to act, and the persons so appointed shall receive the same compensation as the county commissioners for like services.

SEC. 4488a. [Joint county ditches; apportionment of cost.] If the commissioners in joint session find in favor of the proposed improvement, and are unable afterwards to agree as to the proportion of the costs of location and constructing the improvement, which shall be assessed in each of the counties, respectively, the board of commissioners of either county may petition the court of common pleas of their county for the appointment of three disinterested freeholders, not residents of either of said counties who shall within thirty days thereafter, after being duly sworn and upon actual view of said improvement, estimate and report to said court the amount which should be charged to the land in each county interested in said improvement respectively. The commissioners making the application shall be plaintiffs, and the commissioners of the other counties shall be defendants. The court wherein such petition is first filed shall have exclusive jurisdiction. Either of the parties may, within ten days after the filing of said report, file exceptions thereto, and the court shall confirm, modify or set aside said report and appoint other freeholders, as justice may require. Costs, including allowance to said

freeholders shall be charged to the parties as the court may determine. After final determination the clerk of said court shall send a transcript of said proceedings duly certified to the commissioners of each county, who shall make the apportionment of costs of location and construction as in this chapter provided, giving to the property in each county the amount so determined in the court proceeding, including costs.

SEC. 4489. [When a change of route authorized.] The commissioners, if they find the route proposed is not such as best to effect the object sought, or that the proposed drainage can be effected as well in connection with a ditch necessary for the improvement of public highways already established, or such as may be thereafter required, shall proceed to establish the route; if the route proposed is upon a line or subdivision of sections where a public road may be required, and in all cases in which the route proposed is along highways already established, the commissioners shall locate the improvement at a sufficient distance from the center of such highways to admit of a good road along such central line; the earth taken from the ditch shall be so placed upon the roadways as to form a turnpike, and no part of such earth shall be placed nearer to the ditch than two feet; and the commissioners, in locating ditches, shall in all cases, so far as practicable, avoid running the same diagonally across sections or parts of sections.

SEC. 4490. [The collection of taxes or assessments not to be enjoined.] The collection of taxes or assessments, levied or ordered to be levied, to pay for the location or construction of any ditch, shall not be perpetually enjoined, nor declared absolutely void, in consequence of any error committed by the surveyor or engineer, the county auditor, or the county commissioners, in the location or establishment thereof; nor by reason of any error or informality appearing on the record of the proceedings to locate or establish the same; nor by reason of any error committed by the surveyor or engineer, the county auditor, or county commissioners, in respect to the letting of uncompleted work, or the levy of any tax assessment for the labor and expense of construction of any uncompleted portion, section, or allotment of any such ditch.

SEC. 4491. [How far proceedings may be declared void.] The court in which any proceeding is brought to recover any tax or assessment paid, or to declare void the proceedings to locate or establish any ditch, or to enjoin any tax or assessment levied or ordered to be levied to pay for the labor and expense aforesaid, shall, if there is manifest error in the proceedings, allow the plaintiff in the action to show that he has been injured thereby, and may, on application of either party, appoint such person or persons to examine the premises, or to survey the same, or both, as may be deemed necessary; the court in which any such proceedings are begun shall allow parol proof that said improvement is necessary and will be conducive to the public health, convenience, or welfare, and that any steps required by law for any improvement have been substantially complied with notwithstanding the record required to be kept by any board or officer; and without finding error, the court may correct any gross injustice in the apportionment, made by the commissioners; the court shall, on final hearing, make such order in the premises as shall be just and equitable, and may order that such tax or assessment remain on the duplicate for collection, or order the same to be levied, or may perpetually enjoin the same, or any part thereof, or, if the same has been paid under protest, may order the whole or such part thereof, as is just and

equitable, to be refunded; and the cost of such proceeding shall be apportioned among the parties, or paid out of the county treasury, as justice requires.

SEC. 4492. [An old ditch may be repaired in the same proceeding.] The county commissioners may hear and determine, at the same time, and under the same petition the necessity of locating any new ditch, or a ditch partly old and partly new, or of deepening, widening, straightening, or altering any old ditch, as the necessity of the case requires, and shall cause such entry to be made on their journal as in their judgment is required; all estimates, either by the surveyor or engineer, or by the commissioners, shall be made in the manner provided in this chapter; no assessment shall be made to any lands upon any principle other than that of benefits derived, and in proportion thereto in deepening, widening, straightening, or altering any ditch, and no lands lying below shall be assessed for the benefit of lands lying above; but all assessments shall be made in proportion to the benefits derived.

SEC. 4493. [When township trustees may apply for ditch.] The trustees of any township, may on written application signed by twelve or more resident land owners of the township, if, in their opinion, the interest of the township demands it, cause the petition and bond hereinbefore provided for to be filed on behalf of the township; in such case the proceedings before the commissioners and probate court shall be the same in every respect, and the duties of the auditor, and of the surveyor or engineer, shall be the same, and be discharged in the same manner as if the petition and bond were filed by a private party; and every act necessary to secure the location, establishment, and construction of any new improvement, or in the deepening, widening, straightening, cleaning out, alteration, or vacation of any ditch, may be performed by order of the commissioners, on such petition and bond.

SEC. 4494. [Commissioners shall require surveyor or engineer to give bond.] The commissioners shall require each surveyor or engineer appointed by them under the provisions of this chapter, to enter into a good and sufficient bond, covering all the ditches upon which he may be appointed, with surety to be approved by them, conditional for the faithful performance of his duties, in a sum to be fixed by the commissioners; and an action may be brought on such bond by any person aggrieved by a failure of the surveyor or engineer to do his duty in the name of such party, and recovery may be had for his use and benefit; but if the county surveyor shall be appointed by the commissioners, under the provisions of this chapter, he shall be liable upon his official bond for the faithful performance of his duties, and an action may be brought on such bond as aforesaid.

SEC. 4495. [Commissioners may require any bridge or culvert to be enlarged.] The commissioners of any county, at any regular or called session, may in the manner provided in this chapter, so far as applicable when the same is necessary to the public health, convenience or welfare, cause to be located, constructed, deepened, widened or enlarged any bridge or culvert, made necessary by the crossing of any ditch, drain, watercourse or stream of water, by any railroad, turnpike, plank road, or other road of any corporation, at the expense of said corporation, and the necessity for making any improvement herein provided for, may be heard and determined at the same time and under the same petition as provided for in section 4447 of this chapter.

[Dimensions of improvement determined by commissioners; corporation affected to make same.] If the commissioners find for the improvement, they shall, by an order entered on their journal, determine the dimensions of said improvement and that said improvement shall be made by the corporation affected thereby, within three months from the making of such order according to the plans and specifications, and of such materials, as the board may approve and select;

[Failure of corporation to make improvement.] Provided, that if said corporation shall not within ten days from the date of such order, in writing, elect to make said improvement as ordered, such fact shall be taken as a refusal to do the same, and thereupon, the county commissioners shall at once by an order duly entered upon their journal, specify the materials to be used in the construction of said improvement, and directing the county surveyor, or an engineer, to make suitable surveys and to prepare plans and specifications for the making of said improvement so ordered, which shall be filed with the county auditor within twenty days from the making of such order, who shall thereupon fix a date for a hearing thereon.

[Exceptions to plans and specifications, etc.] At any time on or before the day set for said hearing said corporation may, in writing, file exceptions to said plans and specifications, or ask for any change or alteration thereof, and of the materials out of which the same is ordered to be constructed, which may be granted or refused by said commissioners as may seem just and proper.

[Letting of improvement; costs assessed against corporation.] Upon the approval of such plans and specifications as made, or as may be changed at said hearing, the commissioners shall, at once, proceed to fix a time for the letting of said improvement by bids as provided in section 4475 of this chapter, and as soon as said improvement is completed assess said corporation with the cost of constructing and letting the same, and such assessment shall be a lien upon the property of the corporation, and be collected as other taxes, or they may order the same to be collected from such corporation by an action at law, as they deem proper. Such corporations shall be served as in other cases.

SEC. 4499. [The commissioners may vacate a ditch.] The commissioners may, on the proper petition and bond being filed, and the same notice being given as is required in cases of the location of a ditch, declare any ditch, whether located by the county commissioners, or by the trustees of a township, vacated and abandoned, and its location and establishment to be held for naught, if, in their judgment, the same has ceased to be of public utility, and the public health, convenience, or welfare no longer demands the maintenance thereof; but private rights of persons acquired by reason of the location and establishment of such ditch shall not to be interfered with nor in any way impaired thereby.

SEC. 4500. [When a ditch becomes a public water-course.] When a ditch has been established and constructed for the public health, convenience, or welfare, either by private agreement between two or more individuals, whose real property has been affected thereby, or by a board of township trustees, or [by] a board of county commissioners, and such ditch has been used for the purpose of drainage of private lands or public highways for seven years or more, without obstruction or interruption, the same shall be, and hereby is declared to be a public

water-course, notwithstanding errors, defects, or irregularities in the location, establishment, or construction of the same, and such public water-course shall, in all respects, be considered and treated as a natural water-course, and the public shall have and possess, in and to such public water-course, the same rights and privileges which pertain and relate to natural water-courses.

SEC. 4501. [**General levy for ditch fund; proceedings when compensation or damages are awarded; auditor to draw warrant on county treasurer for amount of award.**] The commissioners shall, annually if necessary, at their March session, levy upon the grand duplicate of the county tax not to exceed five-tenths of one mill on the dollar, sufficient to pay for the location and construction of such portions of the respective ditches located by them, or by the commissioners, of two or more counties as may be apportioned to the county, and they shall pay out of any fund applicable to such purposes, any sum assessed upon land owned by the county. In all proceedings which have been, or shall be commenced under this chapter, wherein compensation and damages, or either, has been or shall be awarded by the commissioners, under section *forty-four hundred and sixty-one*, or by a jury on appeal to the probate court, an amount of the county general ditch improvement fund, in the county treasury, sufficient to satisfy the same, shall be set apart and held as a deposit of money to secure and be subject to the payment of the same; and if in any such case there shall be an insufficient amount of such ditch improvement fund unappropriated in the treasury for such security and payment, then an amount of the general revenue fund in the county treasury, equal to such deficiency, together with such unappropriated residue of said ditch improvement fund, if any, shall be set apart and held for said purposes; and the commissioners shall, before the property for which compensation and damages has been awarded, shall have been actually taken and occupied for the purpose of its appropriation, order the auditor on demand of the corporation or person entitled thereto, to draw his warrant on the county treasury for the amount of such award, stating therein on what fund it is drawn, and deliver the same to the party so entitled, which shall be paid out of the county treasury; and all sums so paid shall be apportioned, assessed and reimbursed to said funds from the collection of assessments for compensation and damages as provided in sections *four thousand four hundred and seventy-nine*, and *four thousand four hundred and eighty*, of the Revised Statutes. And said original section *four thousand five hundred and one* is hereby repealed.

SEC. 4501a. [**Duties of commissioners when awards are made.**] When all compensation and damages are ascertained, the commissioners shall meet and determine whether they will issue the bonds of the county to raise the money necessary to pay such compensation and damages, or any part thereof, and if so determined, the bonds shall be issued for a term of years, and at a rate of interest, as provided for the issuing of bonds, [in] section *four thousand four hundred and seventy-nine*, which bonds shall not be sold below their par value.

SEC. 4501b. [**Bonds, how paid.**] The bonds provided for in this act, together with interest thereon, shall be paid as they respectively fall due, out of the county general ditch improvement fund.

SEC. 4502. [**Township levy for ditch purposes.**] The trustees of any township to which is apportioned by the county commissioners,

under the provisions of this chapter, any portion of the expenses of the construction of any ditch improvement, shall, annually, levy upon the grand duplicate of the township a tax, sufficient, in their judgment, to pay such apportionment, but not to exceed five-tenths of one mill on the dollar, and certify the same to the county auditor on or before the fifteenth day of May.

SEC. 4503. [When board of education may levy to pay assessment.] The board of education of any district interested in land granted by congress for the support of common schools, unless such lands have been permanently leased, and of any district owning or holding other land for school purposes, shall, when an assessment is made upon such land, or any part thereof, under the provisions of this chapter, pay such assessment out of the contingent fund of the district, and may, if necessary for that purpose, increase the levy for such fund otherwise authorized by law.

SEC. 4504. [Auditor to make a record of ditch proceedings.] The auditor shall make, in a suitable book to be provided for that purpose at the expense of the county, a complete record of each ditch improvement made in his county under the provisions of this chapter, which shall include the petition, bond, reports of the surveyor or engineer, and all journal entries made, together with all plats and other papers necessary to show a complete history of all that is done in each case up to and including the final order made by the board.

SEC. 4505. [Auditor to keep ditch accounts.] The commissioners of any county wherein a ditch improvement is ordered, whether the same is the construction of a new ditch, or the deepening, widening, straightening, or alteration of an old ditch, shall provide a suitable book in which to keep the ditch accounts of the county; the auditor shall open therein an account with each improvement, in the name by which the same is known, and charge all assessments and credit all payments made in the case; the money collected on each improvement shall constitute a special fund; and the provisions of this section shall apply in cases of ditches located by the commissioners of more than one county in joint session.

SEC. 4506. [Fees and costs.] The following fees shall be allowed for services actually rendered under the provisions of this chapter:

The county commissioners, each, three dollars per day.

The county auditor, for filing each paper belonging in the case, three cents; for recording each hundred words, three figures to count as one word, excluding calculations not necessarily included in the record, six cents; for each copy, including certificate, when necessarily a part of the copy, and for all notices, six cents for each hundred words, three figures to count as one word, but he shall receive no fees for printed notices; for each warrant drawn on the county treasurer, and for each certificate, three cents; for each tabular statement furnished the printer, six cents per hundred words, three figures to count as one word; and for each copy of specifications furnished, six cents per hundred words, three figures to count as one word, to be paid by the party demanding the same.

The probate judge, for docketing each case, for each party, five cents; for issue of venire, with seal, fifty cents; for each subpoena with only one name, five cents, and three cents for each additional name therein; for each journal entry, six cents per hundred words, and for copies duly certified, including seal, six cents per hundred words; for

swearing each witness, five cents; certifying each witness, three cents, and entering attendance of each witness, three cents; for swearing jury, fifteen cents, taking affidavits, fifteen cents; for filing each paper originally filed in probate court, and including transcript, three cents; for issuing transcript of proceedings in probate court, six cents per hundred words, including certificate and seal; for certifying fees to auditor, three cents for each person named, including jurors; and for all items not herein specified, the same fees as are allowed by law for like services in other cases.

The sheriff, for serving and returning each summons, when only one defendant is named therein, thirty-five cents, and for each additional name twenty cents; for copy of summons, duly certified, forty-five cents; for serving and returning subpœna, fifteen cents for each person named therein; for serving and returning venire for jury, traveling fees included, to be paid by the county, four dollars, and for calling each talesman to fill the panel fifteen cents; for each day's attendance with the jury on the line of the ditch, three dollars, and for all other services required to be rendered by him the same fees as are allowed by law for like services in other cases.

The jurors shall each receive, for each day's attendance, one dollar and fifty cents, and ten cents per mile from his place of residence to the county seat.

The person appointed by the commissioners to examine and report as to the cleaning out of a ditch shall receive two dollars per day for each day actually employed therein, and in the examination of work performed.

Witnesses, duly subpœnaed and in attendance, either before the commissioners, the auditor, or the probate court and jury, for each day's attendance, seventy-five cents, each, and five cents per mile from place of residence to county seat.

The surveyor or engineer, four dollars per day for the time actually employed on the work designated for him to do.

Each chairman, axman, and rodman, one dollar and twenty-five cents per day for the time actually employed.

All other hands necessary to the prompt execution of the work of locating the improvement, one dollar and twenty-five cents per day each.

For printing, fifty cents per square for actual printed matter, for the first insertion, and twenty-five cents per square for each insertion thereafter, nonpareil estimate.

SEC. 4507. [How the same to be paid.] All fees under this chapter shall be paid out of the county treasury as soon as the bill of items thereof is examined and allowed by the commissioners, and the auditor shall issue orders therefor on such allowance; and for all amounts so paid, except to the commissioners, auditor, and probate judge, the commissioners shall order the general county fund to be re-imbursed for the money raised for the respective improvements.

SEC. 4508. [County ditch improvement fund created.] There shall be and is hereby constituted a county general ditch improvement fund, to consist of taxes collected on county and township levies, and all balances remaining unexpended of special ditch improvement funds, arising from excess of assessments made on ditch improvements after the expenses thereof have been fully paid.

SEC. 4509. [Penalties for obstructing ditches; duty of county commissioners.] Whoever obstructs any ditch, or refuses or neglects

to remove any obstruction heretofore by such person or persons placed in any ditch, or being the owner of any lands through which any ditch passes, obstructs, or permits such ditch to become obstructed, or diverts the water from its proper channel, shall forfeit and pay to the county in which such ditch is situated, the sum of twenty-five dollars, to be recovered before any justice of the peace or other court having jurisdiction of the matter, in the name of the state of Ohio for the use of said county, which action may be instituted and prosecuted by the commissioners of such county, or any citizen thereof, or by any person whose lands shall [have] been assessed for the construction of such ditch, and shall also be liable for all damages that may accrue to any person, persons or corporation by reason of such obstruction, and each day that such obstruction shall be permitted to remain in such ditch after the person or persons who placed the same therein shall have had ten days' notice to remove the same, either by the county commissioners of said county, the engineer in charge of said ditch, or by any person whose lands have been assessed for the construction or improvement of such ditch, shall constitute a separate offense under this section, and subject such offender to a penalty of twenty-five dollars for each such offense, to be recovered in the manner hereinabove provided. And on failure of such person or persons to remove such obstructions forthwith upon being notified as aforesaid, it shall be the duty of the board of county commissioners of such county forthwith to cause such obstructions to be removed, and charge the expense thereof to such person or persons, and collect the same from such person or persons by action in the name of said board of county commissioners.

SEC. 4510. [When county commissioners may cause ditch, etc., to be altered or repaired; expense of, how apportioned.] The county commissioners on application of one or more freeholders actually benefited, shall have power in case the township trustees refuse to act as provided for in section *four thousand five hundred and fifty-two* of the Revised Statutes of Ohio, as amended February 10, 1883 (O. L., vol. 80, page 15), to cause any ditch or ditches, or any part or parts thereof, located and constructed under any law or laws, or any part of any creek, river or run that has been straightened, widened, deepened, or changed, under the provisions of this act, to be altered, deepened, widened, enlarged, repaired, boxed or tiled; and the same proceedings shall be had, so far as applicable, as is or would be required in the location or construction of the same by said commissioners. And in all cases the expenses thereof shall be apportioned in the same manner as is provided in the original construction of the improvement by them ordered to be made; and the provisions of this chapter shall apply to ditch improvement petitioned for, located or in process of construction at the time the same takes effect.

DITCH IN MORE THAN ONE COUNTY.

See also § 4488.

[**SEC.] 4510-1.** [**SEC. 1.]** [Duty of commissioners as to certain ditches.] In all cases where the commissioners of any county in this state shall cause to be constructed or enlarged, or cleaned, or repaired, any ditch, drain or watercourse, the water from which flows into an adjoining county or into or finds an outlet in any ditch, drain or watercourse constructed or being constructed in an adjoining county, and in all cases where the commissioners of any county in this state shall cause to be constructed, enlarged, cleaned out or repaired, any ditch, drain or

watercourse, which is or may be an outlet for any ditch, drain or watercourse, of lands of an upper county, or which, by reason of any proposed improvement thereof, will provide better drainage or a more sufficient outlet for any [ditch] drain or watercourse, or lands of an upper county, and in all cases where the commissioners of any county in this state find it necessary to construct, or enlarge, or widen, or deepen, or clean out, any ditch, drain or watercourse of a lower county in order to secure a sufficient and proper outlet for a proposed ditch, drain or watercourse of an upper county, the commissioners of such upper county shall pay the commissioners of such lower county such sum as may be agreed upon by the commissioners of both counties, for the use and benefit of such outlet, which sum the commissioners of said upper county shall apportion to the lands in their county, for whose benefit said ditch was, or is constructed, but before any work shall be begun in the construction, enlarging, cleaning out, or repairing of any ditch, drain, or watercourse in either of said counties, the amount to be paid by the commissioners of the said upper county to the commissioners of said lower county for the use and benefit or burden of such outlet, shall be wholly agreed upon or determined, the sum which the commissioners of said upper county shall pay to the commissioners of said lower county shall be determined at a joint meeting of the commissioners of the said upper and lower counties, upon the line, or proposed line of said ditch, drain or watercourse, and the refusal of a majority of the board of commissioners of either of said counties to agree, or failure by them to meet, act, or take part in a meeting with the commissioners of the other county, upon ten days' notice by the commissioners of either of the said counties upon the commissioners of the other county, to determine what sum the commissioners of said upper county should pay the commissioners of said lower county, shall be prima facie evidence of their failure to agree or pay, and ditches, drains or watercourses which provide drainage, or when constructed will provide drainage for lands in more than one county, may be constructed, enlarged, cleaned out or repaired, as provided in this act, and the laws prescribed for constructing, enlarging, cleaning out or repairing single county ditches, drains or watercourses.

See also § 4488.

[SEC.] 4510-2. [SEC. 2.] [Proceedings on failure to agree or pay.] On failure to agree or pay, as provided in the preceding section, the commissioners of either of said counties may commence in the probate court of either of said counties within twenty days of the meeting mentioned in the preceding paragraph, their action against the commissioners so failing to agree or refusing to pay, setting forth the fact that proceedings have been begun for any such improvement, and the reason why the commissioners of the upper county should pay to the commissioners of a lower county, a compensation for such outlet, or proposed outlet, and the failure to agree or pay, as provided in the preceding paragraph, and praying for the relief herein(after) provided for. Said probate court, before whom said action is commenced, shall, within ten days after the filing of a petition setting forth the above facts, issue a summons directed to the sheriff of the other of said counties, who shall be commanded therein to notify the president of the board of commissioners of said other county, that an action has been commenced in accordance with section 2, 4510-2, of this act. Said summons shall contain a copy of the petition, and the time and place of hearing, be served

and returned as in other cases, and such service shall be not less than ten days before the day of hearing. Proceedings after service and return shall be the same as in other similar cases, before probate court.

(4510-3) SEC. 3. [Further proceedings on failure to agree or pay.] The court being satisfied of the existence of proceedings for any such improvement, and the failure to agree or pay as aforesaid, shall appoint two disinterested freeholders, not residents or owners of real property, of either of said counties, and immediately notify the probate court of the other county interested in said ditch or ditch improvement, who shall, in like manner, appoint two other freeholders not residents or owners of real property in either county, and notify the court in which such proceedings were commenced, giving names and postoffice address of those appointed, and the said court in which proceedings were commenced shall, within ten days thereafter, notify said four persons thus appointed, giving them full and explicit instructions, and the time and place of meeting, who shall, within thirty days thereafter, upon actual view of the outlet ditch, or of the territory to be drained by any such proposed improvement, and of the ditch or ditches in the upper county, and of the land to be drained in the upper county, whose waters flow into said outlet, or which will flow into any such proposed outlet or proposed improvement thereof, estimate and report to the court the amount which should justly be paid by said upper county to said lower county for the use and benefit of said outlet ditch, or for any improvement thereof, which order of appointment, together with full and explicit instructions to said appointees, shall be entered on the journal of said court, and a copy thereof sent forthwith by the clerk to each of said appointees. Provided, that if said board of four freeholders shall not be able to agree upon the amount to be paid by said upper county to said lower county, then they shall call to their assistance one other freeholder who shall not be a resident or owner of real property of either of said counties, and the said five freeholders shall forthwith proceed to determine the amount of damages the said upper county shall pay to the said lower county, and report the same as herein provided.

(4510-4) SEC. 4. [Abandonment by commissioners of upper county.] The commissioners of the upper county referred to in section three [§(4510-3)] of this act, may abandon any such proposed improvement, if in their judgment the benefits to be derived from said proposed improvement are not of sufficient value to warrant the expenditure of money required for the construction of said proposed improvement together with the damages assessed under section three [§(4510-3)] of this act.

(4510-5) SEC. 5. [Compensation of commission.] The court shall fix the compensation of the appointees aforesaid, which compensation shall be taxed as costs in the case, and shall be paid out of the treasury of the county against whose commissioners the costs are adjudged.

(4510-6) SEC. 6. [Expense; how apportioned.] The court shall order the commissioners of the upper county to apportion and assess the amount mentioned in said report, together with entire expense of these proceedings, to the land in said county, in the same ratio as the expense of constructing said ditch or ditches in said upper county was apportioned and assessed; and the court shall further order said commissioners to cause the sums so apportioned to the respective tracts of land in said upper county to be placed on the special duplicate of said

county against such lands for collection. If proposed improvement be abandoned the court shall order the commissioners of said upper county to pay the costs of proceedings under section three [§(4510-3)] of this act, said cost to be apportioned and placed on the special duplicate, in same manner that cost of improvement would have been apportioned and placed on the special duplicate, provided nothing herein contained shall be construed to affect any existing litigation.

(4510-7) SEC. 7. [Collection by treasurer.] The treasurer of said county shall collect said sum as other taxes are collected, and pay the same to the treasurer of the said adjoining county, upon the warrant of the auditor of said county.

(4510-8) SEC. 8. [Outlet may be enlarged when necessary.] The funds so paid shall be used in the enlargement of said outlet ditch, if an enlargement thereof be necessary on account of the additional water emptied into it from the upper county, or for the construction of an outlet ditch in the lower county if none exists.

(4510-9) SEC. 9. [Duty of township trustees.] Whenever the trustees of any township shall construct a ditch which empties its water onto an adjoining county, or into any ditch, drain or watercourse constructed therein, the same agreement hereinbefore provided for between the commissioners of counties may be made and carried out, by and between the commissioners of such adjoining county and said trustees, and on failure to make or carry out such agreement, the commissioners of the county upon or into which said water is emptied, may commence and maintain the same proceedings against said trustees as are hereinbefore provided for between the commissioners of adjoining counties; and the funds to be paid by such trustees to the lower county shall be assessed by said trustees and collected in the manner now prescribed by law for collecting assessments for constructing township ditches.

(4510-10) SEC. 10. [Cleaning and repairing.] All proceedings for the construction, cleaning out, repairing or enlarging either of said ditches, in either the upper or lower counties, whether or not the same have been originally constructed as joint ditches or whether or not the ditch to be constructed might be a joint ditch, may be commenced and conducted in the manner prescribed by this act and the law prescribed for single county ditches; but in addition to the manner of procedure prescribed in this act for the construction, enlarging, cleaning out or repairing of any ditch, which furnishes or may furnish drainage for more than one county, proceedings shall be commenced and conducted in the manner prescribed by law for the construction of joint ditches, whenever a majority of each board of commissioners of such counties shall so agree; but in all cases where such commissioners do not agree or determine to proceed under the laws for the construction of joint ditches, and the board of commissioners of said lower county unanimously agree that such improvement is necessary or will be conducive to the public health, convenience or welfare, and the line described in [is] the best route, then all such proceedings in reference thereto, shall be conducted as provided by this act and the laws for single county ditches. Such proceedings to be conducted by the commissioners of said lower county.

(4510-11) [Cleaning, repairing or enlarging joint county ditch; how cost of apportioned.] When a ditch needs to be cleaned out, repaired or enlarged which has been located in more than one county,

any owner of any lot or tract of land which was assessed for its construction, may make a statement to the county commissioners, of either of said counties, in writing, setting forth such necessity, and the commissioners shall forthwith appoint a disinterested freeholder of the county or an engineer, to examine the ditch, whose compensation shall be as in other cases, and who shall be sworn to go upon the line thereof and carefully make such examination, and make an estimate of the amount of work to be done and the amount of money required therefor, and fix the portion thereof that the owner of each lot or tract of land, and each corporation, county or township assessed for the construction of the ditch or that may be benefited by such cleaning out, repairing or enlarging of the ditch, should be assessed for such improvement; and such assessment shall be made according to benefits, unless the necessity for the improvement arose from the acts or neglect of any landowner or corporation, in which case such act or neglect shall be considered. Such freeholder, or engineer shall return his estimate and assessments to the aforesaid commissioners in writing, whereupon said commissioners shall notify the commissioners of any other county interested in said action, and furnish to them a copy of said estimate and assessments, and it shall be the duty of the commissioners of the said counties to appoint a day for hearing the same in joint session, and direct a like notice to be given to all land and lot owners and corporations affected thereby, as is provided in case of the apportionment in the construction of a like ditch when they may make such changes therein as they may deem right and proper. They shall enter upon their journals the assessments as approved by them, and the auditors of the said counties shall place the same upon the duplicate against the lands upon which they are assessed, to be collected as other taxes; the work to be done shall be advertised, sold and let and the contracts thereof performed as provided in the construction of a like ditch, and the contractor shall be paid by the warrant of the proper auditor on the county treasurer out of the assessments so made, and paid upon certificate of such freeholder or engineer, that he has performed his contract; but if, at the presentation of any certificate, all the assessments have not been paid, payment shall be made thereon pro rata.

UNDER-GROUND DRAIN.

(4510-12) SEC. 1. [Outlet for underground drain.] When ever it becomes necessary to enter upon the lands of another to secure an outlet to an under-ground drain or ditch, the person so entering upon the lands of another shall be required to continue said under-ground drain to such place for an outlet as shall not damage said lands by the water emptying upon the same.

(4510-13) SEC. 2. [Payment of costs according to benefits.] That whenever such under-ground drain becomes a benefit to the owner of such lands through which it passes, he may be required to pay a reasonable share of the cost of drain upon said premises, and be permitted to use the same as an outlet for such drains as he may see fit to make.

(4510-14) SEC. 3. [Township trustees to locate drain when property-owners can not agree.] That when the parties or owners of land to be thus drained, fail to agree as to location of under-ground drain, and the amount to be paid by each, the trustees of said township or townships shall locate said under-ground drain, specify size and quality

of tile or other material to be used; specify the depth at which the same shall be placed; apportion the expense of constructing the same among the parties interested; see that such under-ground drain is properly completed; provided, if the trustees deem it best, they may proceed under existing laws for the construction of township ditches, to perform the duties required of them by this act, and upon the failure or refusal of either party to pay the amount of said expense as determined by such trustees, the other party may bring action therefor before any justice of the peace of said township, and pursue the same to judgment and execution.

(4510-15) SEC. 4. [**Damages to crops.**] That in the construction of such under-ground drain upon the lands of another, the person so entering to construct the same shall be liable for all damages to crops.

(4510-16) SEC. 5. [**Ditches along public highways shall be kept open.**] That ditches and water-courses upon the public highways into which such under-ground drains empty, shall be kept open by the supervisor of such public highways, to a depth sufficient for the proper drainage of such highways.

SINK-HOLES AND FISSURES.

(4510-18) SEC. 1. [**Sink-holes, etc., may be opened, etc.**] The commissioners of any county and the trustees of any township may, as hereinafter provided, at any regular or called session of their respective boards, cause to be opened, enlarged, widened, altered, deepened and walled up and protected, any sink-hole or fissure, break or opening in the earth or rock thereof, situate in their respective county or township, that may be used as the outlet from any ditch, drain or water-course, whether such ditch, drain or water-course was located and constructed according to law, or otherwise, when the same is necessary to drain any lots, lands, public or corporate road or railroad, and is or will be conducive to the public health, convenience or welfare.

(4510-19) SEC. 2. [**Application for; how made.**] Application for any such improvement shall be made to the commissioners of the county or to the trustees of the township, in writing, signed by one or more owners of lots or lands drained by such ditch, drain or water-course, into such sink-hole, fissure, break or opening in the earth or rock thereof, and shall be filed with the auditor of the county if to the commissioners, and with the township clerk if to the trustees, and shall set forth the necessity of the improvement and describe the location of the sink-hole, fissure, break or opening in the earth or rock thereof, sought to be improved, and the route of the ditch, drain or water-course there terminating and emptying therein; and there shall be filed therewith a bond payable to the state, with at least two sufficient sureties, in not less than one hundred dollars, conditioned for the payment of all costs, if the prayer of the petition be not granted, or be dismissed for cause.

(4510-20) SEC. 3. [**Commissioners or trustees to determine whether improvement necessary.**] If the bond be approved by the auditor or clerk, as the case may be, he shall immediately deliver a copy of the petition to the commissioners or trustees, as the case may be, who shall thereupon take to their assistance a competent surveyor or engineer, if in their opinion his services are necessary, and at once proceed

to view the line of such ditch, drain or water-course, and the sink-hole, fissure, break or opening in the earth or rock thereof, sought to be improved, and determine by actual view whether the improvement is necessary or will be conducive to the public health, convenience or welfare; and they shall report their finding in writing, and the auditor or clerk, as the case may be, shall enter the same on their journal.

(4510-21) SEC. 4. [Proceedings if finding for or against; report, estimate, and plat to be filed by engineer.] If the finding be against the improvement, they shall dismiss the petition and proceedings at the costs of the petitioners; but if they find for the improvement they shall cause to be entered on their journal an order directing the county surveyor or engineer to go to the sink-hole, fissure, break or opening in the earth or rock thereof, sought to be improved, and survey and level the same, and also survey and level the ditch, drain or water-course draining therein, and make a report, profile and plat of the same, and estimate the number of cubic yards of earth or other substance to be removed, and the costs per cubic yard, and the costs of walling up any excavation that may, in his opinion, be necessary to make; and they shall also, by their order, direct the surveyor or engineer to make and return a schedule of all lots and lands and public and private and corporate roads or railroads, the surface waters of which flow and drain into such ditch, drain or water-course, and are carried thereby to said sink-hole, fissure, break or opening in the earth or the rock thereof, and an estimate of the percentage of the costs and expense of making said improvement that should be assessed to each owner of land and public and private corporation and county and township by reason of the flow of water as aforesaid, of the whole amount of the costs and expense necessary to make said improvement, and such surveyor or engineer shall file said plat, profile and estimates and report with the auditor or clerk, as the case may be, within twenty days of the date of said order.

(4510-22) SEC. 5. [Auditor or clerk to fix day for hearing, and give notice of; notice to non-resident by publication.] Upon the filing of the report of the surveyor or engineer, the auditor or clerk, as the case may be, shall, without delay, fix a day for the hearing of the same; he shall prepare and deliver to the petitioners, or any one of them, a notice in writing, directed to the resident lot or landowners, and the authorities of municipal or private corporations affected by the improvement, setting forth the pendency, substance and prayer of the petition, together with a tabular statement of the percentage of the whole costs and expenses that should be assessed to each owner of land and public and private corporation, as reported by the surveyor or engineer, a copy of which notice shall be served upon each lot or land owner, and upon an officer or agent of such private corporation, and upon each member of the board of commissioners or trustees of townships, at least eight days before the day set for such hearing, and the person who makes such service, shall return the same to the auditor or clerk, on or before the day set for hearing, and return his doings thereunder, under oath, and the auditor or clerk, as the case may be, shall at the same time give like notice to each non-resident of the county, lot or landowner, by publication in a newspaper printed and of general circulation in the county, for at least two consecutive weeks before the day set for the hearing, which notice shall be verified by the affidavit of the printer

or other person knowing the fact, and filed with the auditor or clerk, as the case may be, on or before that day.

(4510-23) SEC. 6. [**Public or corporate road to be assessed if benefited.**] When the improvement will benefit any public or corporate road, or if the water from any such road will drain therein, there shall be assessed to the county, if a county road, state road or free turn-pike, to the township of [if] a township road, or to a corporation if a corporate road or railroad, a proper share and percentage of the whole costs and expense thereof.

(4510-24) SEC. 7. [**Meeting for hearing; proceedings.**] The county commissioners, in case the proceeding is before the commissioners, shall meet at the auditor's office on the day fixed for the hearing by the auditor, and in case the proceeding be before the township trustees, then said trustees shall meet at the office of the township clerk on the day fixed for the hearing by the clerk, and shall first determine whether the required notice has been given; if they find that due notice has not been given, they shall continue the hearing to a day to be fixed by them and order the notices to be served as hereinbefore provided, and when they find that due notice has been given, they shall examine the report of the surveyor or engineer and the apportionment by him made, and if it is in all respects fair and just, they shall approve and confirm the same.

(4510-25) SEC. 8. [**Report of engineer may be amended; may adjourn hearing.**] If the commissioners or trustees, as the case may be, find that the apportionment reported by the surveyor or engineer is unfair and unjust and ought not to be confirmed, they shall so order and amend it as to make it fair and just; and if in their opinion it is necessary, they may adjourn the further hearing not exceeding twenty days, to a day to be fixed by them, and go upon the premises and, by actual view, apportion the entire costs of location and excavation and construction or any part thereof, as may seem just and proper, and on the day so fixed they shall again meet and determine the apportionment.

(4510-26) SEC. 9. [**Assessments according to benefits.**] All lots and lands and public and private roads and railroads shall be assessed in accordance with benefits, and if the surface water from the same flow into such sink-hole, fissure, break or opening in the earth, or the rock thereof, through any ditch, drain or water-course or natural channel, the same shall be considered benefited by such improvement, and shall be assessed therefor.

(4510-27) SEC. 10. [**Compensation and damages.**] Application for compensation and damages may be made, and if made in proceedings before the commissioners, like proceedings shall be had thereon as are had in proceedings before them in the location and establishment of ditches, drains and water-courses, and shall be governed by the laws then in force governing such proceedings, and if made in proceedings before the township trustees, like proceedings shall be had thereon as are had in proceedings before them in the location and establishment of ditches, drains and water-courses, and shall be governed by the laws then in force governing such proceedings.

(4510-28) SEC. 11. [**Proceedings in case of appeal; public sale of work; contracts and bonds.**] In cases where appeals have been taken after the transcript of the proceedings before the probate judge,

and all other papers in the case are returned to the auditor's office or clerk's office, as the case may be, the commissioners or trustees, as the case may be, shall cause such entry to be made on their journal as may be necessary to give effect to the verdict and findings of the jury, and as such cases and in cases where no appeals have been taken, they shall fix a time for the sale of the construction and excavation of the improvement and walling up the same at public outcry, and shall cause notice to be given of the time and place of sale, and direct the surveyor or engineer, or other competent person, to attend at the time and place of sale to superintend, and conduct the same, who shall receive all bids and make contract with the lowest responsible bidder, and take good and sufficient bonds for the labor of constructing and excavating the improvement; all contracts to be let by the cubic yard for excavating, and by the perch for masonry, and no contract shall be entertained which exceeds the estimated value as reported by the surveyor or engineer; and the person so conducting said sale shall immediately deliver all bonds and contracts taken by him to the auditor or clerk, as the case may be, which contracts and bonds shall first be approved by the commissioners or trustees, as the case may be, before they become binding upon them; and the contractor shall be liable on his bond so given for all delays after the expiration of the time named therein for the completion of his job, and for all the payment of all damages which accrue by reason of the failure to complete the job within the time required by the contract therefor.

(4510-29) SEC. 12. [Work; how done and paid for.] The work shall be done under the supervision of a competent surveyor or engineer, who shall give to the contractor a certificate therefor when completed, showing the amount which the contractor is entitled to be paid by the terms of his contract, and the auditor or clerk, as the case may be, shall, upon presentation of said certificate, draw his warrant upon the treasurer of the county, if the proceedings were before the commissioners, and upon the treasurer of the township, if before the trustees, for the amount, and the treasurer shall pay the same out of any funds in the treasury applicable to such purpose.

(4510-30) SEC. 13. [Proceedings when contract not complied with.] A job not completed within the time fixed in the contract and bond may be re-estimated by the surveyor or engineer and resold by him to the lowest responsible bidder, or he may complete it at the expense of the contractor and his bondsmen, but such job shall not be resold for a greater sum than such estimate or re-estimate, nor a second time to the same party; a contract and bond shall be entered into as hereinbefore provided, but the commissioners or trustees, as the case may be, may, for good cause, give further time to the contractor, not exceeding sixty days; the surveyor or engineer shall fix the time for the completion of the work resold, not exceeding sixty days from date of bonds. A person or corporation who has sustained damages in consequence of such work, may bring suit for such damages in any court of competent jurisdiction against any contractor failing to perform his contract, and recover damages as provided by law in other cases.

(4510-31) SEC. 14. [Compensation and damages; how assessed; bonds.] When the work is let as hereinbefore provided, and the costs and expenses of location and construction and excavation and all compensation and damages are ascertained, the commissioners or

trustees, as the case may be, shall meet and determine at what time and in what number of assessments they will require the same to be paid, and order that the assessments so made by them be placed by the auditor of the county on the duplicate accordingly against all lots or lands or corporate roads or railroads assessed; they shall also determine whether they shall issue bonds of the county or township, as the case may be, to raise the money necessary to pay such costs and expenses, and, if they so determine, they may issue such bonds, and the same shall be issued for a term of years, not exceeding ten, at a rate of interest not exceeding six per centum per annum, payable semi-annually, and they shall cause an entry to be made on their journal, setting forth their finding and determination under this section.

(4510-32) SEC. 15. [Tax; how collected and accounted for.]

When the commissioners or trustees, as the case may be, make an assessment, they shall cause an entry to be made on their journal, a certified copy of which they shall at once deliver to the auditor of the county, directing him to make and furnish to the treasurer of the county a special duplicate with the assessments arranged thereon, as required by their order, and the auditor shall retain a copy thereof in his office, and all assessments shall be collected and accounted for by the treasurer as taxes; provided, that if the same are not paid in one year they shall be placed upon the general duplicate for collection as delinquent taxes. All collections of money made by the county treasurer on account of assessments made by township trustees, shall be paid by him to the treasurer of the township on demand.

(4510-33) SEC. 16. [Levy not void for error.] The collection of taxes or assessments levied or assessed, or ordered to be levied or assessed, to pay for the expenses of any improvement provided for in this act, shall not be perpetually enjoined or declared absolutely void in consequence of any error committed by the engineer or surveyor, or county treasurer or township treasurer, in the proceedings in this act, authorized for by reason of any error or merely technical informality appearing in the petition or record of the proceedings, or by reason of any want of notice hereinbefore provided for.

(4510-34) SEC. 17. [When bonds issue, assessment for costs and interest must be made; form of bond.] If the commissioners or trustees, as the case may be, determine to issue the bonds of the county or township, as the case may be, for the necessary money to meet the expenses of the construction of any improvement herein authorized and provided for, they shall make an assessment upon all lots, lands, public or corporate roads or railroads benefited by the improvement, or the surface waters of which flow and drain into such sink-hole, fissure, break or opening in the earth or rock thereof, in proportion to the apportionment herein provided for, sufficient to pay all the costs and first-year interest, and including the fees of the surveyor or engineer, made after location, in superintending the construction of the improvement, and order the same placed on the duplicate for collection as hereinbefore provided, and they shall thereafter make such assessments as may be required to raise the money for the prompt payment of such bonds. All bonds issued by the commissioners shall be signed by them and countersigned by the auditor, who shall affix his seal thereto, and all bonds issued by the trustees shall be signed by them and countersigned by the township clerk, and no bond shall be sold for less than its par value;

and the money arising therefrom shall be used for no other purpose than the construction and expense of said improvement.

(4510-35) SEC. 18. [Proceedings when ditch, drain, etc., is situated in more than one county.] If the ditch, drain or water-course, the outlet of which is such sink-hole, fissure, break or opening in the earth or rock thereof, is situated in more than one county, the application shall be made to the commissioners of each of such counties, and the surveyors or engineers of each county shall make a report for each county. A majority of the commissioners of each county, when in joint session, shall be competent to find in favor of or against said improvement, and to do anything authorized by this act, but no commissioner or trustee shall serve in any case in which he is personally interested, and any two commissioners or any two trustees, as the case may be, may form a quorum for the transaction of business under this act for their respective county or township.

(4510-36) SEC. 19. [Penalty for failure to perform duty.] If an engineer, or auditor, clerk, trustee, or commissioner or probate judge neglect or refuse to perform any duty imposed upon him by the provisions of this act, he shall forfeit and pay a fine of twenty-five dollars for every such neglect, to be recovered before any officer having jurisdiction, in the name of the state, for the benefit of the common schools of the county, at the suit of the party aggrieved thereby.

(4510-37) SEC. 20. [May provide for cleaning ditch, drain, or water-course.] The commissioners of the county or the trustees of the township, as the case may be, may hear and determine under the same petition, the necessity of cleaning out any ditch, drain or water-course, the outlet of which is such sink-hole, fissure, break or opening in the earth or rock thereof, sought to be improved, as the necessity of the case requires, and shall order such entry to be made in their journal as in their judgment is required. All estimates, either by the surveyor or engineer, or commissioners or trustees, shall be made in the manner provided in this act.

(4510-38) SEC. 21. [Fees for services, etc.] The fees for services rendered by county or township officers under this act shall be the same as those allowed by statute for like services in ditch cases, and the auditor or clerk, as the case may be, shall keep a complete record, in a journal to be provided for that purpose, of all proceedings under this act before their respective board of commissioners or trustees.

JOINT COUNTY DITCHES BETWEEN COUNTIES OF OHIO AND THOSE OF
OTHER BORDERING STATES.

(4510-39) SEC. 1. [Joint inter-state county ditches; petition; bond; notice from official of other state; order for consultation and meeting to view line.] Whenever the commissioners of any county of this state shall find on file with the auditor of the county, a petition, or copy of one, signed by one or more landowners, whose lands would be assessed for the construction of the improvement prayed for, setting forth the necessity of the location, deepening or widening of any ditch, drain or water-course, for the reasons that the same will be of benefit to the public health, welfare or convenience, and describing the point of beginning, route and terminus thereof, together with a bond, with two sureties, approved by the county auditor, in the amount of two-

hundred (\$200) dollars, payable to the state of Ohio, for the use of said counties, on the conditions that the petitioners, or their bondsmen, shall pay all costs incurred by said county, by reason of the view of said route petitioned for, if the prayer of said petition is not granted; and also, in addition to said petition and bond, a notice from the proper official of the county of an adjoining state, through which the route of said improvement as described in said petition would pass, setting forth that the proper papers are filed, and that the proper board of that county is in readiness to act conjointly with them in the location, deepening or widening of said ditch, drain or water-course, they are hereby authorized and empowered to instruct the auditor of their county to consult with the proper official of the county or counties so desiring to act jointly, and to fix upon a time when and where they shall meet the proper board of said county, and with them proceed to view the line of said route prayed for.

(4510-40) SEC. 2. [Notice by county auditor.] It shall be the duty of the county auditor, on the filing of any petition and bond as aforesaid, to notify in writing, of the filing of said petition and bond, the proper official of the county of the adjoining state, and the auditor of any county of Ohio in which land is situated which will be affected by the prayer of said petition, a copy of each of which shall be attached thereto.

(4510-41) SEC. 3. [Meeting and organization of joint board.] Having received notice by the county auditor of said time and place of meeting, the commissioners shall proceed at the time stated to place of meeting agreed upon, and if they find a majority of each proper board present, they shall decide that they have a quorum present, and shall form themselves into a joint board for the purpose before them, by electing one of their number as president, and another as clerk; provided, that the president and clerk shall not both be selected from the board representing the same state.

(4510-42) SEC. 4. [Vote of Ohio members.] Without regard to number of each board present, the members from Ohio shall have the casting of one-half ($\frac{1}{2}$) of all votes on all questions, which vote shall be represented equally by the different members present of the board or boards from Ohio.

(4510-43) SEC. 5. [Adjournment for lack of quorum.] If the board of the different counties of the state, or a quorum of the board of each county affected, fail to meet, they shall adjourn until such time as they shall receive notice, as provided in sections one (1) and two (2) [§§(4510—39), (—40)] of this act.

(4510-44) SEC. 6. [View of route petitioned for; finding for the improvement; locating on another route; branch ditches; finding against the improvement.] Having resolved themselves into a joint-board, with the board or boards of other states, as provided for in section three [§(4510—41)] of this act, and having found that a petition and bond conditioned, as required by law has been filed, they shall proceed to view the route petitioned for; and if they find the improvement so prayed for is necessary, and will be conducive to public health, welfare or convenience, and that the route prayed for is the best one to accomplish the desired relief, they shall proceed to locate the ditch, or order the widening or deepening of the ditch, drain or water-course in substantial conformity

with the prayer of said petition. But if, in their opinion, the route described is not the best, they shall proceed to locate the improvement on the route best adapted to secure the relief desired, with the best contingent results; and may locate all the necessary branch ditches; but if they find against the location, deepening or widening of said improvement, no further proceedings shall be had under this petition, after said report, and the costs shall be collected of the petitioners and their bondsmen.

(4510-45) SEC. 7. [Power of joint-board to locate.] The joint-board shall have authority to locate that part in Ohio of the main ditch, or any of its tributaries, which will lie partially in both states, or which will drain lands of both states.

(4510-46) SEC. 8. [Employment of engineer to determine proper route.] If the joint-board find it necessary to employ an engineer to determine the proper route on which the ditch or its branches should be located, they are authorized to do so; provided, that no engineer shall be employed by the joint-board until the said board have determined that such improvement is necessary for the public welfare, health or convenience.

(4510-47) SEC. 9. [Capacity of improvement.] The joint-board shall have power to determine upon the necessary capacity of the part of said improvement located in the state of Ohio.

(4510-48) SEC. 10. [Adjournments.] In their view of route and deliberations over the same, the members of Ohio of the joint-board may adjourn from time to time, not exceeding in the aggregate sixty (60) days.

(4510-49) SEC. 11. [Report of finding and proceedings.] The clerk of the joint-board shall make out a full report of their proceedings and findings, signed by himself and the president of the joint-board, which shall be read before the said board. A copy of this report shall be sent to the county auditor of each county affected in Ohio, and to the proper officer of each county affected in the other state.

(4510-50) SEC. 12. [Engineers to locate ditch.] After the adjournment of the joint-board, if their report is in favor of the location, the members of said board from Ohio shall proceed to select a competent engineer, to meet one to be appointed by the proper authorities of the other said state joining with them in the proceedings.

(4510-51) SEC. 13. [Bond.] It shall be the duty of the engineer so appointed to file a bond, with the auditor of each county in Ohio, affected by said improvement, in the sum of one thousand (\$1,000) dollars, with two approved sureties to the same, conditioned to the faithful performance of his duties as said engineer.

(4510-52) SEC. 14. [Staking improvement; grade megs and bench-marks.] The said engineer shall proceed, with the duly appointed engineer from the adjoining state joining in the matter, to definitely mark out the line of said improvement by setting a stake at every one hundred (100) lineal feet, on the line of ditch and its branches. Each stake shall be numbered, beginning at head of ditch at "O," and numbering consecutively to outlet. Grade megs shall be set at or opposite such numbered stake, from which all measurements shall be based and permanent bench marks shall be established, on or near line of said ditch, at a distance not greater than two thousand (2,000) lineal feet. At each angle a stake shall be set, and witnessed by two permanent witnesses.

(4510-53) SEC. 15. [Plat and profile; schedules; list of lands affected by improvement; estimate of cost; apportionment of costs.] The[y] shall, on all the line of improvement within this state, take all the levels and notes necessary to, and shall make a plat and profile of all said line; which plat shall show the entire line of said ditch, with all angles accurately located, together with all fence, line, road or rail crossings, together with all lands or lots affected by this improvement, properly and accurately located thereon. The profile shall show the surface of grade megs, the depth of old ditch or stream, and depth of proposed improvement at each stake throughout, and the grade or fall of the bottom of proposed improvement. The report shall also include schedules, showing necessary widths, top and bottom, and depth at each stake, together with the number of cubic yards in each one hundred lineal feet of ditch, and also the total number of cubic yards so to be excavated throughout the entire line of said ditch. The report shall also state the number of acres of land in each state adjudged by them to be affected by the improvement and benefited thereby, with a list thereof, showing description and ownership as shown on tax duplicate, together with their estimate of cost per cubic yard for work, and their estimate of total cost of construction of that part of ditch situated in each state, together with an estimate of total cost of location. They shall also in their report make an apportionment, as they think fair and just, of the costs of location and construction between the two states.

(4510-54) SEC. 16. [Copy of engineers' report.] A copy of the said report of the engineers, embracing all the matters described within and duly certified to by each, shall be sent to the proper official of each county affected in each state.

(4510-55) SEC. 17. [Duty of auditor on receipt of report.] On the receipt of the report of the engineers as aforesaid, the auditor shall notify (the joint board) of the receipt of said report as in the case of filing of petition and bond, but need not send a copy of the report received. And shall proceed as provided for in sections one and two [§§(4510-39), (—40)] of this act, to fix upon a time and place for the meeting of the joint-board. After which he shall notify the commissioners of the reception of said report and the time and place of meeting.

(4510-56) SEC. 18. [Rules governing board.] The joint-board on assembling, shall be governed by the same rules as provided elsewhere in this act. And they may call to their assistance the engineers who located the improvement.

(4510-57) SEC. 19. [Amendment or approval of report; copy of report; called meetings.] They shall approve, or amend and approve, of the reports so filed by the engineers. And the report so approved by them, shall be a final division of the estimated costs of construction, and the entire costs of location between the states. They shall send a copy of their report, duly certified to by the president and clerk of the board, to the proper official of each county affected in the other state, and to the county auditor of each county affected in Ohio. Their adjournment shall be subject to a call of the majority of the members of either state, notice of which shall be given as provided for in preceding section.

(4510-58) SEC. 20. [Power to enter upon lands.] The proper authorities in the adjoining state, joining with the counties in Ohio, are

hereby authorized and granted the privilege of entering upon lands or causing the same to be done in this state, along any portion of said located ditch or its tributaries, to perform any work which may be assigned them to do by the joint-board when in session, as provided for in this act.

(4510-59) SEC. 21. [Division of costs among lands affected.] The commissioners of the county or counties in Ohio affected by such improvement, shall proceed to order some competent engineer to make a division of said costs of location and construction so apportioned to Ohio, among the lands so affected as named in the list of lands affected, submitted by report of engineers of joint-board.

(4510-60) SEC. 22. [Further proceedings; assessment of lands not contained in engineers' report.] The further proceedings shall be in conformity with the existing statutes for the location of county or joint county ditches taken at this stage of the proceedings. The commissioners, at their hearing on the apportionment made, as provided in section *twenty* [§(4510-58)] of this act, shall have authority to assess any other lands not mentioned in first report of engineers, provided for in section *sixteen* [§(4510-54)] of this act, as they may deem to be benefited thereby; provided, that the owners of said lands shall have due notice thereof.

(4510-61) SEC. 23. [Work beyond state limits.] The commissioners of any county or counties in this state, in which are located lands affected and charged for the improvement or construction of any ditch, drain, or watercourse, under the provisions of this act, are instructed to cause to be performed any work which may be assigned to them outside of the limits of this state, in the same manner as under the existing statutes for similar duties; provided, that the necessary privilege to do so has been granted by the state legislature of the state where said lands are located through which the said work is to be constructed.

(4510-62) SEC. 24. [Fees.] The fees of all officials and assistants under this act, shall be the same as for like services in county ditch work.

(4510-63) SEC. 25. [Claims for compensation, damages, etc.] All claims for compensation and damages shall be filed with the county auditor on or before the day of hearing on the apportionment. And all such claims allowed, together with costs of location actually incurred, shall be paid out of the county fund.

JOINT INTERSTATE COUNTY DITCHES.

(4510-64) SEC. 1. [Joint interstate county ditches; commissioners may enter into agreement for construction.] The commissioners of any county in this state, when a petition is filed with the auditor of the county praying for the location or improvement of any ditch, drain or watercourse in such county, the waters from which flow into or through an adjoining county in another state, are of the opinion that the outlet for such proposed improvement is insufficient, may, and they are hereby authorized to enter into an agreement with the commissioners or other proper officials of such adjoining county, for the construction or improvement of the outlet for such ditch, drain or watercourse by such lower county, and the payment by such upper county to the lower county of such sum of money as may be agreed upon between said commissioners and the proper officials of the lower county for the construc-

tion or improvement of such outlet, which amount shall be payable into the treasury of such lower county upon the completion of the improvement of the outlet as agreed upon;

[**Assessments.**] And the commissioners of such upper county shall assess upon the lots, and lands, and public or corporate roads, or railroads, in their county benefited by such improvement, the costs of the location and construction of the same in their county, together with the sum of money agreed to be paid to such lower county for the improvement of the outlet therefor,

[**Bonds.**] And whenever in such case the commissioners of such upper county shall deem it expedient so to do, they may issue bonds of such county to raise the money necessary to pay such costs and expenses, including the amount agreed to be paid to such lower county, in the manner provided by section 4479 of the Revised Statutes of Ohio.

(4510-65) SEC. 2. [**Improvement of outlet of ditch, etc., in this state; agreement by commissioners.**] Whenever the commissioners or other proper officials of a county in another state, adjoining a county in this state, shall desire to have the outlet for water flowing in any ditch, drain or watercourse from such upper adjoining county into or through a lower county in this state enlarged or improved, it shall be lawful for the commissioners of such lower county in this state to enter into an agreement with the commissioners or other proper officials of such upper adjoining county for the improvement of such outlet by such lower county, and the payment to such lower county for the benefit of such improvement, by such upper county, of such sum of money as may be agreed upon between said commissioners and the proper officials of such upper county, and in making their assessments upon the lots, and lands, and public or corporate roads, or railroads, in such lower county benefited thereby, the commissioners shall take into account the amount to be paid for the benefit of such improvement by such upper county.

(4510-66) SEC. 3. [**Terms of agreement set forth on commissioners' journal.**] In all cases when the commissioners of any county in this state shall enter into an agreement with the commissioners or other proper officials of an adjoining county in another state, under the provisions of either of the two preceding sections, they shall cause an entry to be placed upon their journal setting forth fully and particularly the terms of such agreement, both as to the extent and nature of the outlet to be constructed or improved, and the time within which the same is to be completed, and the amount to be paid by the upper county to the lower county for the improvement of such outlet, and the time and manner of payment of the same;

[**When general provisions govern.**] And in all other matters pertaining to the location and construction of such improvement not herein expressly provided for the said commissioners shall be governed by the provisions of law providing for the location and construction of county ditches.

TOWNSHIP DITCHES.

SEC. 4511. [Township trustees may establish ditches.] The trustees of any township may, whenever, in their opinion, the same will be conducive to the public health, convenience or welfare, cause to be established, located and constructed, as hereinafter provided, any ditch within such township, and for that purpose may cross a railroad, turnpike road, or do any other thing necessary or proper to promote said purpose.

SEC. 4512. [Meaning of the words "ditch" and "according to benefits" in this chapter.] The word "ditch" when used in this chapter shall be held to include a drain or watercourse, and the petition for any such improvement shall be held to include any side, lateral, spur or branch ditch, drain or watercourse necessary to be constructed to secure the object of the improvement, whether the same is mentioned therein or not; and this chapter shall extend to and include the straightening of streams and watercourses. The words "according to the benefits" when used in this chapter, in directing township trustees to assess land for ditches and in directing engineers to report assessments for the same shall not be held to authorize any assessments for benefits conferred by nature, nor the right of easement of owners of superincumbent lands to pass the waters therefrom through natural watercourses.

SEC. 4513. [The trustees may buy blanks.] If the trustees of any township have occasion to exercise the power conferred upon them by this chapter, they shall authorize the clerk of such township to purchase a sufficient number of printed blanks for all petitions, notices, certificates, statements and bonds, which are necessary to be filed or given, and one ditch journal, to be paid for out of the township fund; but nothing in this section shall be taken to prevent the use of written petitions, bonds, certificates, notices or other papers provided for in this chapter.

SEC. 4514. [Petition for a ditch, and proceedings thereon.] Before the trustees take any action towards locating or establishing any ditch, there shall be filed with the township clerk a petition from one or more persons owning lands adjacent to the line of the proposed ditch, setting forth the necessity of the same, with a substantial description of the proposed starting point, route, and terminus, and a bond with good and sufficient sureties to the acceptance of the clerk, conditioned to pay all expenses incurred if the trustees refuse to grant the prayer of the petition; and the township clerk shall give notice to the trustees of the filing and pendency of the petition, and the trustees shall immediately designate a time and place when and where they will meet to hear the petition and complete their proceedings thereunder.

SEC. 4514a. [Joint township ditches; application; surveyor's report.] When a ditch or improvement is proposed, which will require a location in more than one township, application shall be made to the trustees of each of said townships, and the surveyor shall make a report for each township.

[Compensation and damages; appeals.] Application for compensation and damages shall be made to the joint board of trustees when in joint session, and appeals from the finding of the trustees when in joint session, locating and establishing such ditch, and from the assessment

of compensation or damages shall be taken to the probate court of the county in the same manner as appeals are now allowed, and if said ditch or improvement is located in more than one county then such appeal shall be taken to the probate court of the county in which the greatest length of such ditch or improvement is located.

[**Notice; joint session of trustees.**] And upon the filing of such petition the township clerk shall give notice to the trustees of all the townships through which said ditch passes, fixing a time and place where and when such trustees shall meet in joint session, and the trustees of such townships shall meet in joint session at the time and place so fixed, and a majority of the trustees of each township, when in joint session, shall be competent to locate and establish such ditch or improvement, but no trustee shall serve in any case in which he is personally interested, and all laws in force as to the location and establishment of township ditches shall apply to the proceedings had by and before said joint board;

[**Clerk of joint board and duties.**] Provided further, that the said joint board when in session at their first meeting upon said ditch shall select one of the clerks of such townships to act as clerk of such joint board, who shall keep the record of all proceedings had by said joint board upon said ditch or improvement.

[**Laws applicable to joint township ditches.**] And, provided further, that any and all laws now in force, or that may be hereafter enacted providing for the cleaning out of township ditches, shall be applicable to joint township ditches located and established under this act.

[**Cleaning out of ditch; trustees to examine report.**] And the trustees, when in joint session at their first meeting held after a statement in writing for the cleaning out has been filed, shall appoint one of their number from each township through which such joint ditch is established and located to examine and report as to the necessity of cleaning out such joint ditch, and said trustees so appointed shall file their report with the clerk of such joint board, and thereupon such proceedings shall be had as is authorized by law for the cleaning out of township ditches.

SEC. 4515. [**Notice to land-owners of filing the petition.**] Upon the filing of such petition and bond the clerk shall prepare the necessary number of notices for the petitioner, who shall cause one such notice to be given to the owner of each tract of land sought to be affected by the proceeding; the notice shall state substantially the prayer of the petition, and the time and place, when and where the same will be for hearing by the trustees; and if any person, owning lands sought to be affected by the proceeding, be a non-resident of the county, the same notice shall be sent to him by mail, if such residence be known by the clerk, otherwise it shall be published for two consecutive weeks, in some newspaper published or of general circulation in the county.

SEC. 4516. [**When action may be brought on bond.**] If the persons giving bond fail or refuse to pay the costs and expenses when the township trustees refuse to grant the prayer of the petition, the trustees may bring suit before any justice of the peace in the township upon the bond, and collect all costs and expenses, with costs of prosecution, and pay out the same in conformity with the estimates made in the case, and the ditch journal containing the record of their proceedings, or a certified copy therefrom, shall be prima facie evidence of such indebtedness.

SEC. 4517. [Proceeding does not abate by death of party.] The death of a party in interest shall not work an abatement of the proceedings, but the trustees, being notified, shall order the notice provided in section *forty-five hundred and fifteen* to be given to the person succeeding to the right of such deceased party.

SEC. 4518. [Application for compensation and damages.] Any person claiming compensation for lands appropriated for the purpose of constructing any such ditch, shall make his application in writing therefor to the clerk of the township, on or before the day appointed for hearing the petition, which application shall be laid by the clerk before the trustees; or, if the trustees should establish the ditch, or a portion thereof, on a line different from that specifically prescribed in the petition, so that the same shall pass through tracts of land not described or contemplated by the petition; the owner of such land may make his application in writing for compensation, at any time before the order of the trustees establishing and locating the ditch is entered upon the township record; and on failure to make such application in either case, such owner shall be deemed and held to have waived his right to compensation.

The land-owner is entitled to full compensation for the land appropriated, and to the damages to his other lands from which the appropriation is made. He is not entitled, as a part of the compensation, to the value of a strip on each side of the ditch, not actually appropriated; nor can he have, as part of his damages, the cost of constructing such portion of the ditch as the trustees apportion to him to construct: *Miller v. Weber*, 1 C. C. 130.

SEC. 4519. [When preliminary steps have not been taken.] On the day set for hearing the petition, if it appear to the trustees that any person who may be interested in the ditch has not been notified as required by this chapter, or that any requisite preliminary steps have not been taken, they shall adjourn to some future time, not exceeding twenty days, and order such notice to be given, or such preliminary steps to be taken; and a majority of the trustees shall be competent to perform any of the requirements of this chapter.

SEC. 4520. [Township ditches; duties of trustees; proceedings when they find in favor of ditch.] If the trustees find that the bond has been filed and notice given, they shall proceed to hear and determine the petition, and shall view the premises along the proposed route, and if they find such ditch to be necessary, and that it will be conducive to the public health, convenience, or general welfare, shall proceed to locate and establish the same in substantial conformity with the route described in the petition, or as near thereto as in their opinion would best answer the purpose; and the trustees may take to their assistance an engineer to locate, level and measure the course of such ditch, and such other assistance as they need; and may adjourn from day to day, to complete their report and finding, and when their finding is in favor of such ditch and their report filed with the township clerk, they shall fix a day of hearing, within ten days thereafter at the clerk's office in said township, and then and there determine the complaints of any persons affected by reason of the location and construction of said ditch.

SEC. 4521. [Township ditches; how compensation and damages awarded.] The trustees shall at the same time examine into and determine all applications made to them for compensation, and shall specify the several amounts, by whom and to whom to be paid, and the time of payment, and no order for the opening or sale of any ditch or any part

thereof located and established under this chapter shall be made until the full amount of compensation for land appropriated shall have been paid; and the trustees shall pay such compensation out of the general township fund and apportion the aggregate amount thereof equitably upon the lands benefitted by said ditch, and the same shall be a lien on said lands, the same as other taxes, and apportionment shall be certified by the clerk to the county auditor within forty days from such payment, and placed upon the duplicate against the lands so assessed, and collected in the same manner as taxes are collected, and when collected shall be paid over to the township entitled thereto, to reimburse said general township fund, provided that any landowner may pay the amount assessed against his lands to the township treasurer at any time before the same is certified to the county auditor.

As to compensation for injury to crops by constructing underground drain, see § (4510—15).

SEC. 4522. [More than one channel may be established.] If it become necessary, by reason of islands or otherwise, in the establishment of a ditch, to construct more than one channel or branch for the flow or discharge of water, in order to accomplish the ends and purposes for which a ditch may be established and constructed, the same may be done in one proceeding and under one petition and the trustees are authorized to make all necessary and proper orders to effectually accomplish the same.

SEC. 4523. [May order riprapping to be done.] If it be found necessary to protect any ditch, constructed or to be constructed, from being washed out by high water, freshets, or otherwise, that any portion of the same shall be riprapped or otherwise protected by stone or timber, the trustees, in their final order, may direct such additional work to be done, particularly describing its kind and character, and the particular places, and the sections on which the same shall be done, and by whom.

SEC. 4524. [Boxing or tiling of township ditches.] At the hearing of the petition, if any person, or persons, owning or controlling lands through which the ditch will pass, make a written request to the trustees for a box, or tile ditch through their lands, the trustees shall, if they deem the same practicable and equally beneficial, grant their request, and order that all, or any portion of such ditch may be boxed or tiled, specifying the size of the boxes or tile to be used, and the depth they shall be placed under the ground; and all expenses incurred, whether such ditch be in whole or in part a box or tile ditch, shall be apportioned according to benefits derived, as provided in section *four thousand five hundred and twenty-six* of the Revised Statutes.

SEC. 4525. [When and how route may be changed.] At the hearing of the petition, if any person interested in the location of such ditch make a written request to change the route of the ditch, for his own special interest and convenience, the trustees may so change the route, if a good and sufficient ditch can be had; but in all cases where such change would increase the amount of work to open the ditch, the whole of the increased amount of work shall be apportioned to the persons making such request, in addition to their proper share of the balance of the ditch.

SEC. 4526. [Ditch to be divided into sections.] The trustees, in locating and establishing a ditch, shall divide the same into suitable sections, not less in number than the number of owners of the land through which the same may be located, and apportion the sections equitably to the parties benefited, according to the benefits derived therefrom, and shall prescribe the time within which the work shall be completed, and by whom done, and order that each working section, beginning at the mouth of the ditch, shall be completed at least two days earlier than the one next above it; and the day upon which the trustees conclude their proceedings on the petition, shall be deemed the date of their decision thereon.

SEC. 4527. [Fees of officers and others.] The following fees shall be considered lawful allowances for locating and establishing ditches under this chapter: Township trustees, one dollar and fifty cents per day each; township clerk, for recording proceedings of trustees, ten cents per hundred words; for apportioning cost of locating and recording the same, twenty-five cents; for each notice or statement, ten cents per hundred words; chainmen and axmen, each one dollar per day; engineer, four dollars per day for locating, and three dollars per day for making plat, profile and specifications.

SEC. 4528. [Report of trustees to clerk.] Within five days after their decision on the petition, the trustees shall make a full and complete report of their proceedings had thereon to the township clerk, and they shall designate therein the amount of costs made in locating such ditch, and shall prescribe the time when such costs shall be paid, together with the width, depth, and flare of the ditch determined upon.

SEC. 4529. [Duties of the clerk thereon.] The clerk shall record the report in the ditch journal of the township, and apportion the payment of the costs of location to the parties interested in such ditch, in the same manner as is herein provided for the apportionment of the labor of construction; and the clerk shall prepare for the use of each person having costs to pay and labor to perform, a brief statement in writing, or by printed blank filled out, describing the apportionment of such ditch, together with the length, depth, width, and flare of the same, the amount of costs assessed against such person, when to be paid, and by what time work must be completed.

SEC. 4530. [Time to complete work may be extended.] The trustees, at the expiration of the time specified for the completion of such work, may, if they deem it necessary and proper, extend the time for the completion of the same to a time not exceeding four months from the time previously specified, and the clerk shall record such extension of time on the ditch journal.

SEC. 4531. [Flood-gates may be ordered.] When the trustees have located and established any such ditch, they may, if they deem it necessary, make an order requiring flood-gates or water-ways to be erected along the line thereof at all places where the owners of land along such ditch may desire to build or place any fence over the same; and the trustees may prescribe in their order the length, height, and kind of flood-gates or water-ways to be erected at all such fence crossings, and the persons owning the land upon which the same may be erected shall thereafter keep the same in good repair.

SEC. 4532. [How obstructions may be removed.] If any owner drive, or permits stakes to be driven, in the channel of such ditch, or in any other manner obstruct the ditch at any such fence crossing or other part of such ditch, and permit such obstructions to remain after ten days' notice in writing by the trustees, the trustees shall sell out the work of removing such obstructions and hindrances to the lowest responsible bidder, after giving ten days' notice of the time and place of such sale, and the time within which the work is to be performed, by posting up written notices or hand-bills in three or more of the most public places in the township; and when such sale is made the trustees shall take sufficient security for the performance of the work, and after the sale the proceedings to collect the amount necessary to pay the purchaser for the work shall be the same as are provided in section *forty-five hundred and forty-seven*.

SEC. 4533. [Appeals to the probate court.] Any person interested in the location of such ditch or in the amount of compensation and damages determined upon by the trustees, may take an appeal from the proceedings of the trustees to the probate court of the county, by giving written notice thereof to the clerk of such township within eight days after the decision of the trustees, and by filing with the clerk a bond, with two or more sufficient sureties, conditioned for the payment of all costs made upon such appeal in case the decision of the trustees shall be sustained in the probate court; which bond shall be made to the acceptance of the township clerk and the probate judge of such county, indorsed on the same, and filed by the probate judge with the other papers in the case; and such clerk shall thereupon, at the request of each person so appealing, his agent or attorney, make and deliver to each such person, his agent or attorney, a full and complete certified transcript of the proceedings had in the case, which shall be filed with the probate judge of such county within ten days from the filing of such bond.

SEC. 4534. [Consolidation of separate appeals, etc.] When two or more persons have taken an appeal, according to the preceding section, the probate judge shall order the consolidation of such cases, and the rights of all parties interested shall be determined by the jury in the one case thus consolidated, and any one of the appellants may give the notice required in the preceding section; and the probate judge, upon the filing of such bond and transcript, shall issue a notice and deliver the same to the appellants, returnable on a day therein named not beyond fifteen days, which shall specify the time of meeting of the parties before the court, for the purpose of hearing and determining all preliminary questions pertaining to the case.

SEC. 4535. [Notice to land-owners.] The appellants shall serve the notice by copy on all persons interested in the location of the ditch residing within the county, and if any person so interested reside out of the county, or can not be served by a copy of the notice, the appellants shall cause such notice to be published for three consecutive weeks in some newspaper of general circulation in the county, and proof of such publication shall be filed in the probate court together with proof of the service of such notice on all persons interested as aforesaid, at least three days before the time fixed for impaneling the jury.

SEC. 4536. [Hearing of preliminary matters on appeal.] At the time specified in the notice, the probate judge shall hear and determine

all preliminary questions pertaining to the case, and if he find that the appeal has not been perfected according to this chapter, he shall dismiss the appeal at the cost of the appellant, and certify such dismissal to the trustees of the township, who shall thereupon proceed as if no appeal had been taken; but the judge may, in his discretion, order and allow the correction of any technical defect, error, or omission in making such appeal.

SEC. 4537. [Trial to jury on appeal.] If the judge find the preliminary proceedings for appeal in substantial conformity with the provisions of this chapter, he shall select a jury of twelve disinterested freeholders of the county, not resident of such township, who shall constitute a jury for such case, and shall issue, over his hand and seal of office, a notice of such selection, directed to the sheriff of such county, returnable on a day therein named not beyond forty days, which notice shall specify the time of meeting of the jury in the court; if any of the jurors fail to attend, or for good cause be excused from serving, or be set aside on account of a challenge, the panel shall be filled with talesmen as in jury cases in the courts of common pleas; the plaintiffs shall be entitled to two and the defendants two peremptory challenges, and may make any number of challenges for the causes for which challenges are allowed in the court of common pleas; and in respect to challenges, the appellants shall be considered one party, and the petitioners as the other, and the jury shall be sworn to try all the claims which are represented by the appellants, if there be more than one.

SEC. 4538. [The jury may view premises.] The jury shall then, under the care of the sheriff or deputy sheriff, and with such person or persons as the court may appoint to show them the premises, and before any testimony shall be given, except the plat and field notes of the ditch, if there be any, and the title papers of the claimants, if produced, which in that case they shall take with them, proceed to examine the ditch, as established or ordered, and the property of the several claimants taken therefor, or alleged to be injured thereby, and after making such examination, shall return to the court at the time the court shall have appointed, whereupon the trial before the jury shall proceed in the same manner as other jury trials in said court.

SEC. 4539. [The form of the verdict.] The jury shall render a verdict in writing, and shall find therein: first, whether it will be conducive to the public health, convenience, or welfare, to cause the proposed ditch to be established or located; second, the amount of compensation due each person claiming compensation in case of the location of the same which shall be computed without deduction for benefits to any property of such person; third, the amount of damages resulting to all parties claiming the same; and the judge is authorized to adjourn the proceedings in the premises from time to time, as circumstances may require.

SEC. 4540. [Proceedings on return of the verdict.] Upon the return of the jury, the judge shall make a record of all the proceedings had in the case before him, and shall also make such order as to the payment of compensation for land used, or damages sustained, as the jury shall report; and shall also tax such costs in the proceeding, as are provided by law in similar cases; and issue execution therefor.

SEC. 4541. [Fees and costs, and to whom taxed.] If the report of the jury be not in favor of the appellant, all costs made on such pro-

ceedings in the court shall be taxed to and paid by such appellant, and collected as judgments at law in other cases; but if two or more persons have appealed, and the report of the jury be favorable to some of the appellants, and against the other appellants, the judge shall apportion the costs equitably among all the appellants, except those in whose favor the report of the jury is made; and the jurors shall be allowed one dollar and fifty cents per day each, together with mileage from their respective residences to the probate court, at the rate of five cents per mile.

SEC. 4542. [Judge to make transcript, and trustees to meet.] The probate judge shall make a transcript of all the proceedings had before him in the case, and transmit the same, together with all the files and papers in the case to the clerk of the township; and the township clerk shall notify the trustees to meet at his office, at a time to be fixed by him, and within five days from the date of the notice, to determine the matters growing out of the appeal and verdict, and to secure the construction of the ditch in the manner provided in this chapter when no appeal is taken.

SEC. 4543. [How trustees to proceed if no appeal.] As soon as an appeal shall be perfected from the decision of the township trustees, all further proceedings before them on the petition shall be stayed; but if no appeal be taken, the trustees, upon the expiration of the time specified by them for the opening of the ditch, shall immediately proceed to inspect the same; and if any section or part of a section, has not been completed, the trustees shall accept a bond with sufficient surety from the person having such unfinished work to perform, conditioned for the faithful completion of such work, within such time as the trustees shall specify in the bond; but if any such person, having unfinished work at the time of inspection as aforesaid, fail or refuse to give bond for the completion of the same, the trustees shall immediately proceed to sell such unfinished work by such sections to the lowest bidders, by setting up written or printed notices of such sale in at least three of the most public places in such township, for at least ten days before the day of sale, specifying the time when such work shall be completed; and the trustees shall take such bond or other security for the performance of such work as they may deem proper.

SEC. 4544. [At what price work may be sold.] Before the work of constructing such ditch shall be sold by the township trustees, they shall make a fair and impartial estimate of the cost of the work, which estimate shall be entered upon the ditch journal, and the work shall not be sold for a sum exceeding such estimate; and the fees and allowances in all such proceedings, and the apportioning and assessing of such costs and expenses, shall be the same as in the original location and establishment of the ditch, to be paid by the person whose section of such ditch shall be sold, and collected and paid out as provided in section *forty-five hundred and forty-seven*.

SEC. 4545. [Actions on bonds and re-sales of work.] If a person giving bond in either case, or in both cases, for the completion of such unfinished work, fail to comply with the conditions of the bond within ten days after the time specified in the bond for the completion thereof, he shall be held liable on the bond to pay all costs and expenses incurred, and shall pay all damages and costs of prosecution arising in consequence thereof; and the township trustees shall immediately bring:

suit in the name of the township, before any court having competent jurisdiction, against such person, for all costs and expenses resulting from the non-performance of such work ; and the journal containing the record of their proceedings, or a certified copy therefrom, shall be prima facie evidence of such indebtedness ; and the trustees shall immediately proceed to sell or re-sell, as the case may be, such unfinished section, in the same manner as if no previous bond on previous sale had been taken ; and if the purchaser also fail to complete such work, the trustees shall again enter suit as provided for in this section, and also again re-sell in conformity with this chapter, until the work shall be completed ; but the same work shall not be sold more than once to the same person.

SEC. 4546. [Any person injured may have action.] A person who has sustained damage in consequence of the non-performance of such work, may bring suit before any justice of the peace of the township where the damage has been sustained, against the person in default, and collect damages, with costs of suit, in the same manner as the law provides in suits for damages.

SEC. 4547. [When assessments to be put on duplicate.] As soon as the work shall be completed in conformity with the sale, and to the satisfaction of the trustees, they shall immediately certify to the auditor of the county the amount each section sold for, adding the proportionate amount of costs and expenses of such sale, together with a correct description of each piece of land upon which the same is assessed ; and the auditor shall place the same on the duplicate, to be collected as other state and county taxes are collected ; and the trustees shall at the same time certify the amount due to each person, and the auditor shall draw orders for the payment of such amount out of the county treasury ; but any person interested may pay the amount of the purchase money and proportionate share of costs and expenses as aforesaid to the trustees at any time before the same are charged on the duplicate, to be paid by the trustees to the purchaser of such section.

SEC. 4548. [Costs when the verdict against appellant.] If the jury appointed by the probate judge shall report in conformity with the proceedings of the trustees, as far as the interest of the person so appealing shall be concerned, then and in that case all costs made on such appeal shall be taxed against such appellant.

SEC. 4549. [Costs may be put on the duplicate.] If any person fail or refuse to pay his apportionment of costs of locating and establishing the ditch, or of the cleaning out, deepening, widening, or repairing of the same, by the time specified by the trustees for the payment of such costs, they shall certify the same to the auditor of the county, giving a correct description of each piece of land upon which such cost is assessed, and the auditor shall place the same on the tax duplicate, to be collected as other state and county taxes are collected ; and the county treasurer shall pay such amount to the township treasurer as other township funds, specifying the purpose of the same ; and the trustees shall pay out the same in conformity with the record on the ditch journal.

SEC. 4550. [When a person injured may sue trustees.] Whoever sustains damage by the failure of the trustees to perform any duty imposed upon them by this chapter, may recover the same by action against them before a justice of the peace.

SEC. 4551. [Proceedings when papers are lost.] Where the records, proceedings, or papers pertaining to any ditch, under the provisions of this chapter, have in any way been lost or destroyed, the trustees may re-establish the ditch on the original route, and determine the depth, width, and flare, and divide the same into suitable sections, and apportion the same as provided in this chapter, and make a full record of such proceedings, and the record thus made shall thereafter, be deemed conclusive evidence of the original capacity and apportionment of said ditch.

SEC. 4552. [Township ditch may be altered or repaired by trustees.] The trustees shall have the power to cause any ditch, or any part thereof, located and constructed under any law, to be altered, deepened, widened, enlarged, repaired, boxed or tiled, and the same proceedings shall be had so far as is applicable, as is required in the location and construction of the same; and in all cases the expenses thereof shall be apportioned in the same manner as is provided herein for original construction.

SEC. 4559. [What taxes or assessments are not void.] The collection of taxes, or assessments levied or assessed, or ordered to be levied or assessed, to pay for the expense of location, or for the construction of any ditch, laid out or constructed under and by authority of this chapter, shall not be perpetually enjoined or declared absolutely void in consequence of any error committed by the engineer or surveyor, or by the township clerk, or by the trustees of a township in the location and establishment thereof, nor by reason of any error or merely technical informality appearing in the petition or record of the proceedings, nor by reason of any want of notice by which such ditch shall have been located and established.

SEC. 4560. [Only party injured can have relief.] The court, in which any proceeding is brought to recover any tax or assessment, or to reverse or declare void the proceedings to locate or establish any ditch, or to construct the same, or to enjoin the tax levied or assessed, or ordered to be levied or assessed to pay for the location or construction of a ditch, shall proceed in the same manner, and exercise the same authority over said ditch proceedings or any part thereof, as is prescribed and granted to such court in section forty-four hundred and ninety-one of the Revised Statutes, and all acts amendatory thereof or supplementary thereto.

REMOVAL OF DRIFT.

SEC. 4561. [Who may remove drift on another's land, and when.] Any person who may be injured by reason of any drift of wood, or other substance, casually produced in the channel of any stream or water-course, upon the lands of another after three days' notice previously given in writing to the owner, or occupant of such lands, if they are occupied, and if not occupied, then without such notice, may enter thereon, with such assistance as may be necessary, and then and there remove such drift or other obstruction; but any person so entering, shall remain liable, as at common law, for any injury done or committed to the rights of the owner or occupant of such lands, which might be avoided in the removal of such obstructions, and shall not have the right to remove off the lands upon which such drift or obstruction may be situate, any of the substances composing such drift or other obstructions.

SEC. 4562. [Commissioners may remove drift for protection of roads.] The commissioners of any county are authorized to cause to be removed from any river or watercourse within their county, any drift or timber for the better protection of roads and bridges in such county.

SEC. 4563. [Application by tax-payers therefor.] When there is filed with the county auditor a petition signed by five or more tax payers of the county, setting forth the benefits to be derived from removing such drift and timber, the starting point and terminus, with a description of the river or watercourse to be cleared, and amount of drift and timber to be removed, together with an estimate of cost to be incurred to complete the work, the auditor shall at the next regular or called meeting of the commissioners notify them of the filing of the petition.

SEC. 4564. [Appointment of viewer.] The commissioners, upon receiving such notice, shall forthwith appoint some disinterested person resident of the county, who shall go upon the line of such river or watercourse, and carefully examine the same, and make his report to the county auditor in writing, stating whether he deems the clearing of the river or watercourse important and beneficial for the protection of any state or county road or bridge, and if so, an estimate of the amount of money required to perform the labor.

SEC. 4565. [Report of viewer, and proceedings thereon.] The auditor shall, at the first regular or called meeting of the commissioners, after receiving the report from such person, notify the commissioners of the same, and if the report recommends the clearing of the river or watercourse, the commissioners shall proceed to let the same at public sale to the lowest bidder, whose bid is not twenty per cent. above the estimate cost, and who has no official duty to perform about the work, and take a bond payable to the state, of the person to whom the work is let, with good and sufficient sureties for the performance of the same within a specified time; and on completion of the work thus let and accepted by the commissioners, the auditor shall issue a certificate to the person performing the work for the sum due.

SEC. 4566. [Costs and expenses to be paid out of bridge fund.] All the costs of letting and clearing such river or watercourse, and all the other necessary expenses which shall accrue, shall be paid out of the county treasury, out of the bridge fund, on the order of the county auditor.

SEC. 4567. [Commissioners may remove obstructions as a sanitary measure.] The county commissioners of any county may, whenever in their opinion the same will be conducive to the public health, convenience, or welfare, upon petition of the owner of any land adjoining or adjacent to any stream of living water, remove, or cause to be removed any drift, timber, or other obstructions except mill-dams, water-works, or flood-gates, that may hinder the free passage of water in the natural channel of such stream.

SEC. 4567a. [County commissioners may remove certain mill-dams as a sanitary measure.] The county commissioners of any county may, whenever in their opinion the same will be conducive to the public health, convenience or welfare, upon petition of the owners of any lands adjoining or adjacent to any stream of living water, remove or cause to be removed any mill-dam or mill-dams that may hinder the free passage of water in the natural channel of such stream.

SEC. 4567b. [Applications for; how made; bond; duty of county auditor; principal petitioner to give notice; when hearing must be adjourned.] All applications by the owners of lands adjoining or adjacent to any such stream shall be by filing with the county auditor a petition signed by at least two-thirds of said owners, stating the necessity for such improvement and the removal of said mill-dam or mill-dams, together with a sufficient bond with sureties to the acceptance of the county auditor, conditioned to pay all expenses incurred in case the county commissioners refuse to grant the prayer of the petition; and thereupon, the county auditor shall give notice to the commissioners of the filing and pendency of the petition, and the commissioners shall immediately designate a time and place when and where they will meet to hear the petition and complete their proceedings thereon, and the principal petitioner shall cause notice in writing to be given to the owners of each of said tracts of land sought to be affected by said proceedings, of the filing and pendency and time of hearing of the petition, which notice shall be served not less than ten days before the day fixed for hearing thereof, and said original notice, duly verified, shall be filed with said auditor on or before said day of hearing. On the day set for the hearing, if it appear to the commissioners that any person who is interested in such improvement, and in the removal of said mill-dam or mill-dams has not been duly notified as required by the preceding section, or that any requisite preliminary steps have not been taken, they shall adjourn said hearing to some future time, not exceeding twenty days, and shall order such notice to be given, or said preliminary steps to be taken.

SEC. 4567c. [Hearing; view of premises; report and record of findings; negotiations for purchase and removal.] If the commissioners find that the bond has been filed and notice given, they shall proceed to hear and determine the petition and shall proceed to view the premises along the proposed improvement, and the lands of the petitioners and others affected by said mill-dam or mill-dams, and if they find that such improvement and removal of said mill-dam or mill-dams will be conducive to the public health, convenience or welfare, they shall report their findings in writing and order the auditor to enter the same on the journal, and they shall at once proceed to negotiate with the owner or owners for the purchase of such mill-dam or mill-dams of all rights, title and interest they may have to or in the same, and all franchises pertaining thereto, receiving thereby in writing the terms and conditions by which said owner will grant the absolute right to remove the same and for the free passage of water in the channel of such stream.

[Further hearing; notice.] Said commissioners shall fix a day for further hearing, and order that due notice be served in writing by the principal petitioners upon each and every one of said petitioners or any other person or persons interested in the said improvement or the removal of such mill-dam or mill-dams of the time and place of said hearing.

[Adjournment; notice.] If on said hearing it appears to the commissioners that the notice herein provided for has not been given, the commissioners shall adjourn to some future time, not exceeding twenty days, and shall order such notice to be given.

[Meeting for final hearing; statement of costs.] On the day fixed by the commissioners for final hearing they shall meet at the time and

place appointed, and shall then and there state and make known to the petitioners the amount asked by the owner or owners of such mill-dam or mill dams of all their right, title and interest to and in the same and the franchises pertaining thereto, and for the right to remove the same, so that the waters of such stream shall pass through without hindrance, and the necessary cost of removing said mill-dam or mill-dams, as estimated by said engineer or surveyor, together with all other taxable costs of the proceedings.

[**Record.**] And if upon such statement no objections be made thereto by said petitioners, or either of them, said commissioners shall make a record thereof.

[**Apportionment of costs.**] Said commissioners shall apportion to each of said petitioners and all other land owners benefited by the improvement, in a fair and equitable manner, according to the benefits to be derived therefrom, as nearly as can be done, all the costs of the proceedings, as in county ditch cases, the amount asked by the owner or owners of said mill-dam or mill-dams and agreed upon as above, and the amount of cost necessary to the removal of said mill-dam or mill-dams, as reported by the surveyor or engineer.

[**Proceedings on failure to agree or on objection; lands in two or more counties.**] Upon failure to agree with the owner or owners of such mill-dam or mill-dams, or on having agreed, if upon such statement objections be made thereto by the petitioners, or either of them, then the proceedings as to appeals, applications for damages, and in all other respects shall be taken to determine the amount of damages to be awarded to land owners affected, as is provided in the statutes as to the location and establishment of county ditches, and if the lands affected are situated in two or more counties, the proceedings shall be governed by the provisions of the said ditch statutes.

[**Abandoned mill-dam and water-rights; removal of such mill-dam; cleaning out of water-course.**] (But in any case where a mill has become useless or has been destroyed, and has so remained* for more than five years without any attempt to repair or rebuild the same, the mill-dam and water-rights and privileges belonging to the same shall be deemed abandoned, and the rights thereto as against the public health, convenience and welfare, under this act shall cease and be barred; and the commissioners may, under this act, without bargain or compensation, cause such mill-dam to be removed and the watercourse upon which it is located cleaned out and improved when an apportionment has been made as hereinbefore stated.)

[**Assessment of costs.**] The commissioners shall then order the said amounts to be placed upon the tax duplicates, against the real estate of said petitioners, and all other land owners benefited by the removal of such dam, and to be collected within the time, and to meet the payments as far as practicable in conformity with the provisions of the county ditch law, whether agreed upon between said commissioners and said mill-dam owner or owners, or fixed by the commissioners or otherwise in pursuance to the provisions of the laws relating to county ditches, adding to the first year's assessment the taxable costs of the proceedings and the estimated costs of removing said mill-dam or mill-dams.

[**Collection and disbursement of assessments.**] Said assessment shall be collected the same as other assessments against real estate and

paid into the treasury out of the county wherein said petitioners reside, and wherein said mill-dam or mill-dams are situated, and shall be paid out of the county treasury on the warrant of the county auditor, who shall issue his warrants in accordance with the records and orders of the county commissioners.

[**Sale and supervision of work.**] The surveyor or engineer appointed by the commissioners shall sell at public outcry the work of removing such mill-dam or mill-dams and supervise the same as stated in sections forty-four hundred and seventy-five, forty-four hundred and seventy-seven and forty-four hundred and seventy-eight of the Revised Statutes of Ohio.

SEC. 4568. [**Application therefor, and bond.**] All applications by the owner of land adjoining or adjacent to any such stream, shall be by filing with the county auditor a petition, stating the necessity for such improvement, together with a sufficient bond with surety to the acceptance of the county auditor, conditioned to pay all expenses incurred in case the county commissioners refuse to grant the prayer of the petition; and thereupon the county auditor shall give notice to the commissioners of the filing and pendency of the petition, and the commissioners shall immediately designate a time and place when and where they will meet to hear the petition and complete their proceedings thereon.

SEC. 4569. [**Notice to land-owners.**] The petitioner shall cause notice in writing to be given to the owners of each tract of land sought to be affected by said proceedings, of the filing and pendency of the petition, which notice shall be served not less than five days before the day fixed for the hearing thereof; and if any person owning lands sought to be affected by the proceedings be a non-resident of the county, a notice shall be given him by publication for two consecutive weeks in some newspaper published or of general circulation in the county.

SEC. 4570. [**Hearing of preliminary matters.**] On the day set for the hearing, if it appear to the commissioners that any person who is interested in such improvement has not been notified as required by the preceding section, or that any requisite preliminary steps have not been taken, they shall adjourn to some future time, not exceeding twenty days, and shall order such notice to be given, or such preliminary steps to be taken, and a majority of the commissioners shall be competent to perform any of the requirements of this chapter.

SEC. 4571. [**Hearing on the merits, and proceedings thereon.**] If the commissioners find that the bond has been filed and notice given, they shall proceed to hear and determine the petition, and, if they deem it necessary, shall view the premises along the proposed improvement, and, if they find that such improvement will be conducive to the public health, convenience, or welfare, shall order the same and proceed to apportion the clearing of the channel of such stream in a fair and equitable manner, according to the benefits to be derived therefrom, as near as the same can be done, among the owners of lands adjoining or adjacent to such stream, and the county auditor shall make a full and complete record of all such proceedings in the journal of the proceedings of the commissioners.

SEC. 4572. [**Apportionment of the work.**] The commissioners, whenever they order such improvement, shall divide the same into suitable

sections, not less in number than the owners of land sought to be affected, and shall also prescribe the time in which the work on the improvement shall be completed and by whom to be done; and they shall allow all reasonable fees, costs, and expenses incurred in viewing and apportioning such improvement, to be paid out of the county fund; and whenever the commissioners deem the same right and just, they shall assist in the clearing of any such stream, by common levy, not to exceed five-tenths of one mill on the dollar's valuation in any year in their county.

SEC. 4573. [When benefited lands are in more than one county.] Whenever the land to be benefited by such improvement is in two or more counties, the commissioners of each county shall meet and divide, as before specified, the clearing of such stream jointly, and shall be governed in all respects by the provisions of this chapter.

SEC. 4574. [Petition, and notice in such case.] In such case, copies of the notice and petition, as required by sections *forty-five hundred and sixty-eight* and *forty-five hundred and sixty-nine*, shall be filed with the county auditor of each county in which any part of such land is situate; and at the time of hearing of the petition, and at the time of hearing the report of the commissioners, any one or more of the commissioners of such counties may meet with the commissioners of the county in which the petition was first filed, and, when so met, shall each have the same authority to act and decide as if they were severally commissioners of such county and the board were constituted of the whole number of commissioners present.

SEC. 4575. [Notice of appeal, and bond.] Any person interested in such improvement may, after the same is ordered, take an appeal from the proceedings of the commissioners to the probate court of the proper county, by giving written notice thereof to the auditor of such county within five days after the decision of the commissioners, and by filing with the auditor a bond, with two or more sufficient sureties, conditioned to pay all costs made upon the appeal, in case the decision of the commissioners be sustained in the probate court, which bond shall be made to the acceptance of the county auditor, and the probate judge of the county, indorsed on the same, and filed by the probate judge with the other papers in the case; and when two or more persons take an appeal, the probate judge shall order the consolidation of such cases into one case, and the rights of all parties in interest shall be investigated by the jury in the one case thus consolidated.

SEC. 4576. [Transcript, and the filing thereof.] The county auditor shall, at the request of a person so appealing, his agent or attorney, make and deliver to such person, his agent or attorney, a full and complete transcript, duly certified, of the proceedings had in the case, which transcript shall be filed with the probate judge of the county within ten days from the filing of such bond.

SEC. 4577. [Drawing the jury, and venire.] The probate judge upon the filing of such bond and transcript, shall cause to be drawn from the jury box, as provided by law in other cases, a jury of twelve disinterested freeholders of the county, who shall constitute a jury for such case, and shall issue a venire, directed to the sheriff of such county, returnable on a day therein named, not exceeding thirty days, which shall specify the time of meeting of the jury in the probate court.

SEC. 4578. [Notice of the meeting of the jury.] The applicant shall notify all persons interested in the improvement, of the time fixed by the probate court for the meeting of the jury, and if any person interested in the improvement reside out of the state, or can not be served in writing with such notice, the judge, being notified of the fact, shall cause such notice to be published for three successive weeks in some newspaper printed or of general circulation in the county; and proof of the publication of such notice shall be filed with the probate court before the impaneling of the jury, together with the proof of the service of such notice in writing on all persons interested, as aforesaid, at or before the time so specified.

SEC. 4579. [Hearing of preliminary matters.] At the time specified in the notice, the probate judge shall hear and determine all preliminary questions, and if he find that the proceedings in appeal have not been perfected, he shall dismiss the appeal at the costs of the appellant, and certify such dismissal to the commissioners of the county, who thereupon shall proceed as if no appeal had been taken; but the judge may, in his discretion, order and allow the correction of any technical defect, error, or omission in making such appeal.

SEC. 4580. [Oath and report of the jury.] The judge shall administer an oath to the jury faithfully and impartially, and upon actual view, if so required by either party, to determine whether such improvement will be conducive to the public health, convenience, or welfare, and the jury shall file a report with the judge within five days after taking such oath, unless he, for good cause shown, shall allow further time.

SEC. 4581. [Proceedings on report of jury.] Upon the return of the jury, the probate judge shall make a record of all the proceedings had in the case before him, and shall also make such order as to payment of costs as are provided by law in similar cases, which costs, together with those made before the commissioners, shall be divided, to be paid in fair proportion among the appellants, in conformity to the report of the jury; but if the report of the jury shall not be in favor of the appellant, all costs made on such proceeding in the probate court shall be taxed to and paid by such appellant, and collected as judgments at law in other cases; but if two or more persons have appealed, and the report of the jury be for some and against the other appellants, the probate judge shall apportion the costs equally among all the appellants, except those in whose favor the report of the jury is made; and the jurors shall be allowed two dollars each per day, together with mileage as in other cases.

SEC. 4582. [Proceedings when no appeal is taken.] If no appeal be taken, the county commissioners upon the expiration of the time specified by them for finishing the improvement, and upon being satisfied, by inspection and view, that any part of such improvement has not been completed, shall proceed to sell the same to the lowest responsible bidder, by first giving notice of such sale at least two weeks in some newspaper of general circulation in the county where such improvement is located, specifying the time when such work shall be completed, and they shall take such bond, or other security, for the performance of such work, as they may deem proper; and immediately after the sale they shall certify to the county auditor the amount each section sold for, together with a correct description of each piece of land, and the auditor shall place the same on the duplicate, to be collected as other state and county taxes are collected.

SEC. 4583. [Payment for work done.] As soon as the work is completed in conformity with such sale, and to the satisfaction of the commissioners, they shall certify the amount due each person to the auditor of the proper county, and the auditor shall draw orders for the payment of such amount out of the county treasury; but any person interested may pay the amount of the purchase money to the commissioners, at any time before the same is charged on the duplicate, to be paid by them to the purchasers of such section or sections respectively.

SEC. 4584. [Commissioners may keep channel clear.] County commissioners have the same power to keep the channel of any stream of living water in any county free and clear of all drifts, timber, or other obstructions, in the same manner as is provided in this chapter for clearing the same.

CLEANING AND REPAIR OF DRAINS AND WATERCOURSES.

(4584-1) SEC. 1. [Township ditch supervisor.] That in any township in which there have been located and established county or township ditches, or in which county or township ditches may hereafter be located and established, there may at the time and in the manner provided by law for the election of township officers, be elected a township ditch supervisor, who shall serve for a term of three years, and until his successor is elected and qualified. In case a vacancy occurs in this office, by resignation or otherwise, the township trustees shall fill said vacancy by appointment; until the next annual election.

(4584-2) SEC. 2. [Oath, bond, etc.] Before entering upon the duties of his office the township ditch supervisor shall take an oath of office, and shall give bond, with sureties approved by the trustees, in such sum as they determine, payable to them, and conditioned for the faithful performance of his duties as such ditch supervisor, and said bond shall be recorded by the township clerk, and filed with him, and be carefully preserved.

(4584-3) SEC. 3. [Supervisor to redivide all ditches into the original working sections assessed to owners for construction, widening or deepening.] It shall be the duty of the township ditch supervisor to divide all township ditches into the working sections assessed to the lot and landowners, corporate roads, railroads, township and county, for the construction thereof, or for the deepening and widening thereof; and to divide all county ditches into working sections proportionate to the assessment upon lot and landowners, corporate roads, railroads, township and county, for the construction, or for the deepening and widening of the same. In all of said divisions into working sections, the latest apportionment made under petition shall be taken as the basis of said division. Provided, however, that in case the record of any ditch proceedings has been lost or destroyed, the township trustees shall reapportion same according to section 4551 R. S., and furnish a copy thereof to the township ditch supervisor.

(4584-4) SEC. 4. [When ditch located in two or more townships.] When an established ditch or water-course is located in two or more townships, the township ditch supervisors of the townships in which the said improvement is located, shall together make the apportionment provided for in section 3 of this act.

(4584-5) SEC. 5. [Upon notice, duty of owner, etc., to clean out said section so apportioned.] When the apportionment of any ditch provided for in sections 3 and 4 of this [act] is completed, the ditch supervisor shall notify each of the lot and landowners, corporate roads, railroads, township and county, assessed thereon, of the portion assigned to them, and it shall be the duty of each lot and landowner, corporate road, railroad, township and county, so notified, to clean out said portion, or section, of the said ditch or watercourse, to the full depth and capacity heretofore required by the authorities constructing the same, and annually thereafter to reclean the same without further notice. It shall also be the duty of all parties assessed in this section to mark the terminus of their respective working section, by planting a post or marker, on which shall be cut or painted the number of the section.

(4584-6) SEC. 6. [When parties assessed fail to clean out the same, supervisor may sell the work to the lowest bidder, in certain cases.] If there were assessed to any tract of land, road, railroad, township, or county, for the construction or for the deepening and widening thereof as the case may be, of any ditch or watercourse, a sum less than three (3) dollars, the township ditch supervisor may group these small sections together as conveniently as possible, and if the parties to whom they are assessed, neglect or refuse to clean out the same, and keep the same in repair, the ditch supervisor is hereby authorized to sell the work of cleaning out said sections to the lowest responsible bidder, and take a bond with approved surety for the faithful completion of the work, and certify the cost of said work to the county auditor,

[Costs to be taxed against land so assessed.] Who shall place the same upon the tax duplicate, against the lands so assessed, pro rata, and the same shall become a lien upon the land and be collected as other ditch taxes.

(4584-7) SEC. 7. [Sale of work or cleaning ditch, etc.] If any landowner, corporate road, railroad, township or county, notified to clean out the ditch or watercourse under the provisions of this act, shall neglect or refuse to comply with the same before the 15th day of October in each year, the ditch supervisor shall, after giving ten (10) days' notice by posting notices in three conspicuous places in said township, sell the work of cleaning said section or sections to the lowest responsible bidder, and take a bond as provided in section six (6) and certify the cost thereof to the county auditor, as provided in section six (6) of this act. And the ditch supervisor shall certify the amount due the contractor, or contractors, for the work done, according to the provisions of this act, to the township trustees, who shall order the same paid out of the township ditch fund.

(4584-8) SEC. 8. [All costs to be collected by county treasurer.] All costs certified to the county auditor under the provisions of this act shall be collected by the county treasurer and be paid over to the treasurer of the township whence the certificate came, as township ditch funds.

(4584-9) SEC. 9. [Township ditch fund.] The township trustees of any township to which this act applies are hereby authorized and empowered to levy a tax upon all the taxable property of said township not to exceed five-tenths (5-10) of one mill upon each dollar valuation, to be known as the township ditch fund for the purpose of carrying out the provisions of this act.

(4584-10) SEC. 10. [Compensation to ditch supervisor.] The township ditch supervisor shall be allowed one dollar and fifty cents per diem, for the time actually engaged in performing the duties of his office, said compensation to be paid by the township trustees, out of the township ditch fund, upon presentation of an itemized account, verified upon oath by the township ditch supervisor.

[Assistant.] The township ditch supervisor shall be allowed one assistant, when actually engaged in measuring a ditch or ditches. Said assistant shall receive one dollar per day for the time actually employed, and shall be paid by the trustees out of the township ditch fund, upon the certificate of the ditch supervisor.

(4584-11) SEC. 11. [Act not to apply to tiled ditch.] Where any county or township ditch, or any part thereof, has been tiled, or may hereafter be tiled, said ditch, or the part thereof which has been tiled, shall not be affected by the provisions of this act. Provided said tile is of sufficient capacity to carry all the water drainage through said ditch or watercourse so as not to flood the adjacent lands above; but if said tile is small and insufficient to provide the necessary drainage, the surface ditch shall be kept open by the provisions of this act.

(4584-12) SEC. 12. [Owner must keep ditch free of fallen timber, logs, etc.; penalty for failure.] Every person or corporation through whose lands any ditch improvement is constructed, must keep it free, and clear of fallen timber, tree-tops, logs and such like obstructions, upon his or its premises; and in case of a failure to do so, any person or corporation aggrieved by any such obstructions may notify the township ditch supervisor of the fact, in writing, who must at once examine the premises and inquire into the truth of the statement, and, if he find the statement to be true, he must immediately notify the owner of the land on which such obstruction exists, to remove it within a reasonable time, not exceeding twenty days. If the owner so notified fail to remove the obstructions, the ditch supervisor must at once cause the same to be removed at the expense of such owner, and certify such expense to the auditor, who must place the same upon the tax duplicate, as an assessment upon the lands of such person or corporation. This assessment will be a lien upon such lands and must be collected as other ditch taxes, and be paid over to the township treasurer as provided in section 8 of this act. And the ditch supervisor shall certify any expense accruing under this section to the township trustees for payment as provided in section 7.

Cleaning and repairing ditch located in more than one county, see § (4510—11).

Cleaning and repairing on petition in Lucas county, see § (4510—17).

Sinkholes, fissures, breaks, etc., protection and treatment of, see § (4510—18) et seq.

LEVEES.

SEC. 4585. [Probate court may order construction of levees.] The probate court of any county, may whenever found to be conducive to the public health, convenience or welfare, cause to be located, established and constructed as hereinafter provided, a levee within the county, along any stream, watercourse, lake or body of water, or near any stream, watercourse, lake or body of water of any kind, for the protection of land from overflow.

SEC. 4586. [Petition therefor; what to contain, and bond.]

When there is filed in the office of probate judge a petition, signed by one or more persons, owning, controlling, or occupying lands adjacent to, or who shall be interested in, the proposed levee, setting forth the necessity for the same, with a substantial description of the proposed starting point, route, and terminus, and a bond, with good and sufficient surety to the approval of the judge, payable to the state, conditioned to pay all proper costs and expenses in such proceedings, in case the levee be not finally ordered, the probate judge shall fix a time for hearing the petition, not more than thirty days from the time of filing the same.

SEC. 4587. [Notice to parties interested.] The judge, or one of the petitioners, shall cause a notice in writing to be given, at least ten days before the day set for hearing the petition, to the owner of each tract of land, and to the auditor of any county and the clerk of any township which may be affected by the proceeding, of the filing and pendency of the petition, and the time the same will be for hearing before the court; and if any person owning lands which may be affected by the proceeding is a non-resident of the county, or if such owner is a turnpike or railroad company, such notice may be given by publication for two consecutive weeks, in some newspaper of general circulation in the county; but if such railroad company has a principal office, or a regular ticket or freight agent in the county, a notice, if required by the judge, may be served by leaving a copy thereof with the principal officer in charge of such office, or with such ticket or freight agent, in which case notice to such railroad company need not be given by publication.

SEC. 4588. [Application for damages.] An owner claiming compensation for lands appropriated for the purpose of constructing any such levee, shall make an application in writing therefor to the court, on or before the day appointed for hearing the petition, and on failure to make such application, such owner shall be deemed and held to have waived all right to such compensation.

SEC. 4589. [Hearing on preliminary matters.] On the day set for the hearing, if it appear to the court that any person or corporation interested in the levee or embankment has not been notified as required by this chapter, or that any requisite preliminary steps have not been taken, the court shall continue the case not exceeding twenty days, and order such notice to be given or such other preliminary steps to be taken; and the court shall have power at any time before the final order has been made to continue the case and order notice to be served, as required in section *forty-five hundred and eighty-seven* upon any owner of lands who may be found to be affected by said proceeding, and who has not been served with such notice; and if notice is given after the time originally appointed for the hearing of the petition, the petition shall be regarded, as to such owner so notified, as appointed for hearing on the day to which the case is continued for the purpose of giving such notice.

SEC. 4590. [Hearing on the merits, and proceedings thereon.] When the court finds that notice of the filing and pendency of the petition has been given, and all other preliminary steps taken, it shall proceed to hear and determine the petition upon the papers and evidence; and if the court is satisfied that the levee will be conducive to the public health, convenience, or welfare, it shall forthwith appoint three competent, disinterested freeholders of the county, who shall be sworn to faithfully and impartially perform their duty as such viewers, and they, with

the aid of a competent engineer, who shall be appointed at the same time by the court, shall proceed to view the premises along the proposed route, and the lands to be affected by the proposed levee, and make a report of their proceedings in writing, to the court within fifteen days from the date of their appointment, unless in the discretion of the court, a longer time shall be given them; which report shall show whether in their opinion the construction of the levee, substantially on the route petitioned for, will be conducive to the public health, convenience, or welfare, what owners of land should assist in the construction of the proposed levee, and in defraying the costs and expenses thereof, and the lots or lands, and the quantity thereof, which will be benefited by such levee; and if the court, in its discretion, deem it necessary, it may order the engineer to make and return, at the same time the viewers make their report, maps, plats, and profiles of the proposed levee and the lands which may be affected by the same.

SEC. 4591. [Hearing of application for damages.] If the viewers report in favor of the construction of the levee, the court shall appoint a day, not later than ten days from the filing of the report, when it will hear and determine all applications for compensation for lands appropriated, and the necessity for the levee; and in addition to the petition, report of viewers, maps, plats, and profiles of the engineer, the court may hear further evidence and arguments of counsel for or against the construction of such levee; and the judge shall have the right to view the premises before the final order is made, and the court, if found necessary, shall have the right to continue the hearing of the case from time to time, in its discretion.

SEC. 4592. [Damages must be paid before final order.] No final order for the construction of such levee, or any part thereof, shall be made until the full amount of compensation for land appropriated has been paid.

SEC. 4593. [The final order.] If, upon the final hearing of the case, the court finds that the levee ought to be constructed, and is necessary and will be conducive to the public health, convenience, or welfare, it shall order the same to be located, established and constructed; and it shall also order and prescribe the site of such levee, and shall direct the engineer to finally locate, level, and measure the same, and divide it into suitable sections, not less in number than the number of owners of land benefited by its construction, and shall prescribe the time within which the work upon each section shall be completed, and by whom paid for.

SEC. 4594. [How assessments of work to be made.] A person owning lands abutting on or over which such levee shall pass, shall have his section assigned thereon, within or along the boundary of his lands, to the extent of the assessment made against such owner, when the frontage is sufficient, otherwise the same shall be thus assessed as far as practicable; and in determining the number of owners, tenants in common, and the owners of a life estate in any tract of land with tenants in common, may be counted as one, and the court may, in its discretion, order such tenants in common, and such owners of a life estate, to pay for the work on a single section jointly, in proportion to the value of their respective interests.

SEC. 4595. [Costs, and statements for parties.] The court shall allow and assess all reasonable fees, costs, and expenses of locating and

establishing such levee, and shall apportion the payment of the same equitably among the parties to be benefited thereby, and prescribe the time within which the assessment shall be paid, and render judgment therefor, to be collected as other judgments; and the judge shall, if requested, prepare for the use of the party making the request a brief statement in writing, describing briefly his apportionment of the levee, together with the length, height, width, and slope of the same, the amount of costs assessed against such party, and the expense of performing the work apportioned to such party, when to be paid, and by what time the work shall be completed.

SEC. 4596. [Meaning of the word "levee" in this chapter.] The word "levee," in this chapter, shall be understood to embrace and include, with or without being specially mentioned in the petition for a main levee, any side, lateral, or spur levee, or levees necessary to be constructed to secure the objects and purposes for which any main levee may be made.

SEC. 4597. [Changes in route authorized.] The court may, in making the final order, on the recommendation of the viewers and engineer, or of the jury, alter or change the termini and route of a proposed levee, from that set forth in the petition, so as more effectually to secure the objects and purposes of the original petition, if the compensation for lands appropriated is not affected thereby.

SEC. 4598. [When another viewer or engineer appointed.] If a viewer or the engineer die, resign, or refuse, or neglect to perform the duties required of him, the court shall forthwith appoint an eligible person to fill his place who shall qualify and perform the duties the same as if originally appointed.

SEC. 4599. [When riprapping to be done.] If it be found necessary by the court to protect such levee from being washed away by high waters or freshets, that any portion of the same should be ripped up or otherwise protected by stone or timber, in its final order, it may direct additional work to be done, particularly describing its kind and character, and the particular place and the sections on which the same shall be done.

SEC. 4599a. [Court may order construction of flood-gate, etc.] If it be found necessary by the court to construct, erect, build and operate any flood-gate or flood-gates, pump or pumps, elevator or elevators along any portion of said levee for the purpose of draining the lands benefited by said levee, in its final order it may direct the same to be done, particularly describing its kind and character and the place or places and locality or localities on which the same shall be done.

SEC. 4599b. [Assessments for operating expenses of flood gate, pump, elevator, etc.] There shall be levied and assessed according to benefits, each year, upon all the lands benefited by any particular levee, a sum sufficient to defray the operating expenses of any flood-gate, pump or elevator, or for the purpose of defraying the expense of any repair or improvement of the same or of any levee and for all contingent expenses.

SEC. 4599c. [County levee committee; appointment; term; vacancy.] The probate judge, upon application of a majority of the persons interested in a levee now constructed, or that may hereafter be constructed under this chapter, shall appoint three competent freeholders

of the county not interested in any levee within the county, who shall be known as the "county levee committee," and who shall hold office for two years and until their successors are appointed, and in case of a vacancy from any cause, the probate judge may fill such vacancy for the unexpired term.

[**Organization; annual meeting.**] Said committee shall elect one of their number secretary and the oldest member thereof shall be president, and said committee shall meet annually on the first Thursday of May, at ten o'clock a. m., at the office of the county commissioners, which meeting shall be a public meeting for all persons interested in any levee within such county.

[**Record of proceedings.**] And said committee shall keep a correct record of all their proceedings in a book to be provided for that purpose.

[**Hearing by committee; levy according to benefits.**] Said committee shall hear all persons interested in any levee, and shall determine the amount of money that will be necessary to defray the expenses mentioned in section 4599*b*, for each particular levee, for the period of one year, and such amount so determined by said committee, shall be levied and assessed, at such annual meeting or at an adjournment thereof, not exceeding ten days thereafter, upon all the lands benefited by each particular levee, according to benefits to be determined by said committee.

[**Naming of levees.**] And said committee shall give a name to each particular levee, and shall certify the amount levied and assessed upon each parcel of land, for each particular levee, to the county auditor who shall place the same upon the tax duplicate of the county against said lands and the same shall be collected by the county treasurer as other special assessments are required to be collected by law together with all similar penalties, and when the same shall be collected the same shall remain in the hands of the county treasurer in a fund to be named the same as given by said committee to said levee, as aforesaid, to be certified to the auditor upon certifying the first assessment under this act.

SEC. 4599*d*. [**Contracts.**] Said county committee is hereby authorized upon a petition in writing signed by a majority of the persons assessed for any levee, to enter into any and all necessary contracts for the repair, operation, improvement and maintaining of any levee, pump, elevator or flood-gate, which may be prayed for in said petition, and all contracts so made by them shall not be binding upon them personally, but in their official capacity, and all of the same shall be paid out of the aforesaid funds from the county treasurer so levied and collected to meet the same, upon the warrant of the county auditor stating the name of the fund against which the warrant is drawn.

[**Committee to approve vouchers for money; what to contain.**] But before any such warrant shall be drawn by the county auditor, said county committee shall first approve and allow a voucher therefor which shall be signed by said committee or a majority thereof and filed with said auditor, and said voucher shall state the name of the levee, and the fund out of which any claim is to be paid, and the warrant drawn by the auditor shall be against the fund mentioned in such voucher, and the auditor shall keep accounts of each levee fund with said treasurer the same as in other cases.

[**Compensation of committee.**] Said committee shall each receive \$2.00 per day for their service to be allowed by the county commissioners and paid out of the county treasury not to exceed \$20.00 in any one year for each member.

SEC. 4600. [**The jury and venire.**] If at the time set for hearing the petition any party in interest demand a jury the probate judge shall select and impanel a jury of twelve disinterested freeholders of the county, who shall constitute a jury for the case, in which case no viewers shall be appointed, and the probate judge shall issue a venire for such jury, directed to the sheriff of the county, returnable at a day therein named, not exceeding twenty days, which venire shall specify the time of meeting of the jury in said court; and the rights of all the parties in interest shall be investigated in one case and by one jury.

SEC. 4601. [**Impaneling jury and form of verdict.**] At the time fixed for the meeting of the jury, any party interested may challenge any juror for cause, and the court shall hear and determine all further preliminary questions pertaining to the case, and may direct the sheriff of the county to fill any vacancies which may then be in the panel arising from any cause; and the judge shall thereupon administer an oath to the jurors, faithfully and impartially to try the issues submitted to them in the case, and a true verdict render according to the law and evidence, and the jury shall in their verdict report in writing to the court:

First — Whether the proposed levee will be conducive to the public health, convenience, or welfare.

Second — The amount of compensation each person claiming compensation for lands appropriated for the construction of the proposed levee, is entitled to in case the same is located.

Third — What owners of lands should assist in the construction of the proposed levee, and in defraying the costs and expenses thereof, and the lots and lands, and the quantity thereof which will be benefited by such levee, specifying the sections and work to be done and by whom to be paid for, as provided in this chapter.

SEC. 4602. [**Trial to the jury.**] The jurors may, in the discretion of the court, before making up their verdict, be ordered to view the premises along the route of the proposed levee, and the court shall direct the engineer to make return, and lay before the jury, the necessary maps, plats, and profiles of the proposed levee and the lands which may be affected by the same; the parties in interest may offer evidence, and may be heard in person and by counsel before the jury, and the jury shall be subject to the judicial direction of the court in the hearing of the case and in making up its findings or verdict, and shall return a verdict within ten days after being sworn, unless the court, for good cause allow further time; and it is authorized to adjourn the proceedings in the premises as the circumstances of the case may require.

SEC. 4603. [**Proceedings on the verdict.**] Upon the return of the verdict and report of the jury, the court shall receive the same, if found regular and in accordance with law, and thereupon discharge the jury, but if not found regular and in accordance with law, he shall recommit the case to the jury with proper instructions, to return the same in conformity with the law; and after the jury have returned their verdict and reported according to law, they shall be discharged, and the court shall proceed to confirm the verdict and report, if found to

be favorable to the construction of the proposed levee, and shall also make an order for the payment of compensation, as found by the jury, for lands appropriated, and also for the performance of such things as the jury shall find in their verdict; and the court shall also make and enforce such further orders in the premises as are prescribed in sections *forty-five hundred and ninety-three*, *forty-five hundred and ninety-four* and *forty-five hundred and ninety-five*, and all such orders as may be necessary to the complete accomplishment of the objects and purposes of this chapter.

SEC. 4604. [Fees and costs.] Jurors and viewers shall each be allowed pay at the rate of one dollar and fifty cents per day, and mileage at five cents per mile from their residence to the office of the probate judge, and from there to the place of the location of the proposed levee, in case of a view; and the engineer shall be allowed, not to exceed five dollars per day, while actually employed, and all other costs and expenses shall be taxed as is provided by law in similar cases, and all costs and expenses of the probate judge shall be collected and retained by him, but not in excess of those allowed by any other law.

SEC. 4605. [Court may correct errors, etc.] The probate court shall have power to correct any irregularities or clerical errors or mistakes in the report of the viewers, or in the verdict of the jury in relation to the lots and lands, and the quantity and the ownership thereof, if the levee shall be ordered to be constructed, and upon a final order being made for the construction of the proposed levee, the judge shall make a record of the proceedings had in the case; and the court may, after final order, extend the time for the completion of the work on any section of the proposed levee, if deemed necessary.

SEC. 4606. [When proceedings to be dismissed.] If the viewers or the jury report against the construction of the levee, or if the court at any stage of the proceedings before the final order is made, find that such levee should not be constructed, the court shall dismiss the proceedings at the costs of the petitioners, who shall be bound jointly for the costs and expenses with the principal or principals on the bond given as provided in section *forty-five hundred and eighty-six*.

SEC. 4607. [Repair of levees.] When it becomes necessary to repair any levee constructed under the provisions of this chapter or under any other law, or under any agreement of the owners of the lands affected by such levee, the same shall be done under the provisions of this chapter, and the proceedings therefor shall conform as far as possible to proceedings under this chapter for the location of a levee.

[Franklin county.] Provided, however, that in counties containing a city of the first grade of the second class when such repair shall be made necessary by reason of the destruction of such levee by a sudden flood the board of county commissioners of such county if in their judgment they shall deem it to be necessary for public health, convenience or welfare to make such repair without delay at the expense of such county, shall therefor have the power to issue the bonds of such county in the aggregate sum not to exceed fifteen thousand dollars (\$15,000) as other bonds of said county are issued, and shall further have the power to advertise for bids for a period of ten (10) days by publication in such manner as is otherwise provided by law, and shall enter into a written contract with the lowest and best bidder for the

making of such repairs according to the plans and specifications therefor which shall be made prior to the invitation for such bids by the county engineer of such county, the due performance of such contract to be secured by bond in such sum and with such sureties as shall be required by the said board of county commissioners. After the making of such repairs at the expense of the county, such levee shall thereafter be kept in repair according to the other provisions of this chapter.

SEC. 4608. [When levee intersects another levee.] If the route of any proposed levee extend along any natural stream or water-course and over, including or connected with the line of any levee already constructed or partly constructed, the parties interested shall be entitled to have the amount of work and expense they have already been to in the construction of such levee, taken into account in determining the question of what further work and expense, if any, they shall be required to pay for, in the construction of the proposed levee.

SEC. 4609. [Proceedings when levee benefits a road.] When any levee established under this chapter affects beneficially any public or incorporated turnpike road or railroad so that the road-bed or track on any such road will be made better or safer by the construction of the levee, there may be apportioned to the county, if a county, state, or free turnpike road, to the township, if a township road, and to the company, if a corporate turnpike road or railroad, such portion of the work, costs, and expenses thereof, as if they were private individuals, and the court shall require them to pay for such work and pay such costs and expenses in like manner as individuals, except that when a county or township is ordered to pay for any such work and pay such costs and expenses, the commissioners of the county and the trustees of the township are required to pay for such work and such costs and expenses from the general fund of the county, or township.

SEC. 4610. [The sale of the work.] The levee shall be constructed and compensation paid within the time specified in the order of the court, and upon the making of the final order, the judge shall immediately give notice of the sale of such work by sections, or parts of sections, to the lowest bidder, by printed or written handbills; the time of sale shall not be less than ten nor more than twenty days from the date of the notice, and the place shall be either at the door of the court house, or at either terminus of the levee, as the judge may direct; and he shall take such security for the performance of such work and for the payment of all damages to the parties interested in case the same is not completed within the time and in the manner prescribed, as he may deem necessary, and he shall, immediately after such sale, enter his proceedings on his journal and make them a part of the record in the case; and he shall, in case of a sale of the work to the person who is ordered to pay for the same, only take the bond as aforesaid.

SEC. 4611. [When assessment to go on duplicate.] In all other cases the judge shall fix the time within which the parties who have been ordered to pay for the work so sold, shall pay into the court their portion of the work at the price so sold, and in case the same is not paid by the time so fixed he shall certify to the county auditor the several amounts, including costs and expenses apportioned so assessed against each owner or person interested as aforesaid, not before paid, describing each piece or parcel of land so to be charged; and the auditor shall

thereupon enter the same on the duplicate to be collected as other taxes, and when collected the same shall be paid over to the persons entitled thereto, upon the order of the probate judge, whenever he shall be satisfied that the several sections have been completed according to the order of the court before made; in case of a failure to sell any portion of the work at any lettings, and in case any purchaser at any letting fails to give bond or complete any part of the work as required, the judge shall proceed to again let the same and make all necessary orders in relation thereto as prescribed in this section.

SEC. 4612. [Person materially affected may complain of error.]

No person shall be permitted to take advantage of any error committed in any proceeding to locate, establish, and construct, or repair a levee under the provisions of this chapter, nor of any error committed by the probate judge or probate court, the viewers, or the jury in the case, or by the engineer or other person, in such proceedings, nor of any informality, error, or defect appearing in the record of the proceedings, nor of want of notice to the owner of any lands affected thereby, unless the party complaining is first shown to be materially and substantially affected thereby.

SEC. 4613. [And may have relief.] But the court in which any action may be brought to enjoin, reverse, or declare void the proceedings by which any such levee is ordered to be located, established, constructed, or repaired, or to enjoin the performance of any work, or the assessment or collection of any costs and expenses ordered by the probate court for the purposes aforesaid, may, if there be manifest error in such proceedings affecting materially the substantial rights of any plaintiff, in such action, set the same aside as to such plaintiff without affecting the rights or liabilities of the other parties in interest; and the court shall, on the final hearing, make such order in the premises as may seem equitable, and just, and may order the work done, and the costs and expenses paid, by the plaintiff, or the amount of money returned to the auditor of the county against the plaintiff, or any part thereof, to remain on the duplicate for collection, or may perpetually enjoin the same or any part thereof; the costs of such action, and of the proceedings had therein shall be apportioned among the parties, or paid out of the county treasury, in whole or in part, as justice and equity may require and the court direct.

SEC. 4614. [When and how township trustees may establish levees.] The trustees of any township through which a stream or river subject to overflow passes may, on application of any party, enter upon any land in their township to view any proposed levee or embankment, for the purpose of protecting any land, held by more than one person, and cause such levee or embankment to be located and constructed, whenever, in their opinion, the same is demanded by or will be conducive to the public health, convenience, or welfare; and they may appropriate private property, according to the provisions of law relating to the appropriation of private property to the use of corporation[s]; but before any proceedings shall be taken by the trustees under this section, the expenses and costs of location and construction, and all other costs and expenses necessary or incident to the location or construction of the proposed levee, shall be guaranteed or paid to the trustees by the parties, or some of them, interested in the construction of the levee.

STATE ROADS.

SEC. 4615. [How state roads laid out, and width.] All state roads, hereafter laid out, shall be not more than sixty nor less than forty feet wide, and proceedings therefor shall be by petition to the county commissioners, as hereinafter provided.

SEC. 4616. [Petition for; what to contain.] All petitions for a state road shall specify the place of the beginning, the intermediate points, if any, and the place of termination of the road.

SEC. 4617. [Commissioners to view and survey proposed road.] On application by petition signed by at least twenty freeholders of each county through which it is proposed to lay out and establish any state road, the board of commissioners of each county shall appoint one disinterested freeholder of their respective counties as a commissioner to act with other commissioners so appointed from each county to view and survey the proposed road; provided, that when said proposed road affects but two counties the county commissioners of the county in which three-fifths or more of such proposed road is to be located shall appoint two such commissioners to view and survey the same; provided further, that when such proposed road affects but two counties and the sections of the same in the several counties are approximately equal in length the surveyor or engineer appointed in pursuance of section 4619 herein shall be a third commissioner to view and survey the same.

SEC. 4618. [Bonds to be given.] Previous to granting an order on such petition one of the parties in each county interested in the location of the road, shall enter into a bond with two or more responsible freeholders in such county as sureties, to the satisfaction of the county commissioners, payable to the state, and conditioned for the payment of all expenses which may accrue in the location of the road, in case the same should not be established a public highway.

SEC. 4619. [Duties of county commissioners.] On the filing of a petition and bond, which shall be at the same session of the commissioners in each of the counties interested in the location of the road, the commissioners shall issue their order, directing the commissioners by them appointed, to meet at the place of the beginning of the road, on the first Wednesday of the month then next ensuing, and such commissioners, when met, shall employ a skillful surveyor, chain carriers, a marker, and other assistants, if necessary, and proceed to the discharge of the duties of their appointments respectively; and each commissioner, surveyor, and chain carrier shall, before entering on the duties of his appointment, take an oath to discharge his duties faithfully and according to law.

SEC. 4620. [Route of road, etc.] Each road shall be laid out from the place of beginning to the place of termination on the most direct route that suitable ground can be found whereon to establish the same, always having regard to the intermediate points, if any, and all roads established agreeably to the provisions of this chapter shall be opened and considered public highways.

SEC. 4621. [Duties of road commissioners.] The commissioners appointed to lay out and establish the road, shall cause the same to be correctly surveyed and marked throughout the whole distance of the

same, and note the courses and distances thereof; and at the end of each mile, shall mark the number thereof, on a tree, or a monument erected by them for that purpose; and the commissioners and surveyor of each road shall make a certified return of the survey and plat of the whole length of the road, specifying therein the distance the same is laid out in each county, and whether, in their opinion, the public convenience requires the establishment of the road, or any part thereof; one complete copy of which return shall be signed by a majority of the road commissioners and the surveyor, and immediately deposited in the commissioners' office in each county in which any part of the road is laid out, and the auditor of the county shall file the same in his office.

SEC. 4622. [Notice by advertisement.] If the commissioners report in favor of the establishment of the road, the county commissioners of the respective counties shall, at their next session after the filing of the report, order the auditor to cause a notice thereof to be published in some newspaper of general circulation in the county, for four consecutive weeks before the next meeting of the board, notifying all parties interested in the establishment of the same, that the commissioners of the counties will hear parties in favor of or against the establishment of the road, and the application for damages, and compensation for lands appropriated, of any person on account of the location of the road through his lands.

SEC. 4623. [Second publication of notice.] All persons who do not make application for compensation or damages at the next regular session of the commissioners, after the publication of such notice, shall be considered and held to have released all claim to damages by reason of the location of the road; and if there be any lands, the owners of which have not granted the right of way, nor filed their application for damages with the county commissioners, the whole case shall be continued to the next regular session of the commissioners, and they shall again order the auditor to cause notice to such owners and all other persons interested, to be published in some newspaper of general circulation in the county, for four consecutive weeks before their next meeting, that they will, at such meeting, hear all applications for damages.

SEC. 4624. [Appointment of officers to assess damages.] If any person consider himself aggrieved by the location or widening of the road through his premises, he shall file a petition in writing, describing the lands in which he claims damages, with the commissioners of the proper county, at their next regular session after the publication of the notice provided for in the preceding sections; and the commissioners shall appoint a jury of three disinterested freeholders of the county, who, after taking an oath to faithfully and impartially discharge the duties imposed upon them by this chapter, shall proceed to view the road the entire distance the same may have been located through the premises of the complainant, and of minors, idiots, lunatics, or insane persons, where the same are known, and assess the compensation to be paid in money for the property sought to be appropriated, without deduction for benefits arising from the location of the road; but the petitioners for the road, or any one of them, may obtain a relinquishment of damages and right of way from any person through whose land the road may be located.

SEC. 4625. [Payment of damages.] If the commissioners are satisfied that the amount so assessed and determined by the jury afore-

said to be just and equitable, and that the road or any part thereof will, in their opinion, be of sufficient importance to the public to cause the compensation and damages to be paid by the county, they shall order the same to be paid to the claimant from the county treasury; but if, in their opinion, the road is not of sufficient importance to the public, to cause the same to be paid by the county, they may refuse to establish the same a public highway, unless the damages and expenses are paid by the petitioners; but if there be no applications for damages, or the damages are paid by the county or petitioners, then and in either case, the commissioners may establish the same a public highway, and order the same to be recorded.

SEC. 4626. [Compensation of commissioners, employes, etc.] The following persons required to render services under this chapter, shall receive compensation for each day necessarily employed, as follows, to wit: Commissioners two dollars, chain carriers, markers, and other assistants, one dollar, and surveyors two dollars and fifty cents, per day, each, to be charged as costs and expenses; the commissioners to be paid out of the county treasury of their respective counties, on the order of the county auditor; and the fees of the surveyor, marker, chain carriers, and other assistants, shall be equally divided among all the counties interested, and paid out of the county treasury of the respective counties, on the order of the county auditors.

SEC. 4627. [Appeals.] An appeal from the final decision of the commissioners, or [on] any application for damages or compensation sustained by the location of any state road, shall be allowed to the probate court of the proper county, if notice of such appeal be given by the appellant during the same session of the commissioners at which such decision was made; and the appellant shall, within ten days thereafter, enter into bond with good and sufficient surety, to be approved by the county auditor, for the payment of all costs and expenses, arising from, or in consequence of, such appeal; and the appellant shall, within five days thereafter, deliver to the probate judge a transcript of the proceedings had before the commissioners.

SEC. 4628. [The jury, and its proceedings.] Upon receiving the transcript, the judge shall immediately issue a summons against the obligors in the bond filed under section *four thousand six hundred and eighteen* which shall be served and returned as other writs of like character; in such suit the appellant shall be plaintiff and the obligors defendants; and upon the return of service, the judge shall cause a jury of twelve men to be selected and returned by the sheriff and clerk as provided by law, and such proceedings and trial may be had before the jury as are provided in chapter four; and upon return of their verdict to the probate judge, he shall enter the same on record, with the former proceedings, and certify the decision to the county auditor, and the decision made and recorded shall be final, except as hereinafter provided.-

SEC. 4629. [Costs on appeal.] In all cases of appeal from the final decision of the county commissioners, as provided in section *four thousand six hundred and twenty-seven*, the appellant shall pay all costs that may accrue in consequence of said appeal, unless the award rendered by the jury in the probate court shall exceed in amount the award rendered by the jury appointed by the county commissioners.

SEC. 4530. [When costs and damages paid by county.] If, upon the reception of the decision obtained in the probate court, the county commissioners shall not deem the road of sufficient importance to cause the expenses incurred and damages assessed in the probate court to be paid by the county, they may refuse to establish the same, unless the parties interested in the location of the road shall pay or cause to be paid, before the opening of the road, to the satisfaction of the county commissioners, in case the road is established a highway, all expenses incurred and damages assessed; but the commissioners, if in their opinion a part only of the road will be of public utility, may record and establish such useful part, and reject the residue, in case it be capable of division.

SEC. 4531. [When the road can be established.] If the expense and damages are paid or secured to be paid as aforesaid, or the commissioners direct the same to be paid by the county, then and in either case, they shall enter an order that the road be established a public highway.

SEC. 4532. [Fees and costs.] For services required by sections *forty-six hundred and twenty-seven* and *forty-six hundred and twenty-eight*, the officers and other persons, shall each be entitled to the same fees as they are entitled to by law for like services in other cases; the auditors to be paid out of the county treasury, and the judge and others entitled to fees, to be taxed in the bill of costs in the cause in court.

SEC. 4533. [How width reduced.] The county commissioners of any county, upon notice given in some newspaper of general circulation in the county, for four consecutive weeks, and on petition presented to them, signed by at least twelve freeholders of the county, if they deem it just and proper so to do, may reduce the width of any state road, or any part thereof, to any width not less than forty feet, or increase the width of any such road to any width not more than sixty feet, and shall order the county auditor to make a record of the same; but the commissioners shall, previous to making any such order, appoint three disinterested citizens of the county, to view and report to them, under oath, as to the utility of such proposed change, and also the width which, in their opinion, would be necessary.

SEC. 4534. [How road turned, altered, vacated, etc.] Any part of a state road in any county may be turned or altered, or its beginning or true course ascertained, or, where it has become useless or has remained unopened for the term of five years, may be vacated, by the commissioners of such county, and, when it has been injured or destroyed, it may be repaired by the township trustees; and proceedings for such purposes shall be had and conducted as provided in like cases for county roads.

SEC. 4535. [Alterations in state roads established.] That all alterations of state roads heretofore or hereafter made and established, shall form a part of said road, and so much of the original road as lies between points at which the alterations intersect shall be and remain vacated.

SEC. 4536. [Vacation by non-user.] Any state road or part of such road which has heretofore been authorized, which remains unopened for public use for the space of ten years, shall be vacated, and the authority for opening revoked for non-user.

COUNTY ROADS.

SEC. 4637. [Width of county roads.] All county roads hereafter laid out and established shall not be less than thirty nor more than sixty feet wide, to be determined by the viewers as hereinafter provided, except that when the road is upon the state line, the county commissioners may determine the width not less than fifteen nor more than thirty feet of the land to be taken in this state;

[Hamilton county.] And provided, further, that in any case where, in any county containing a city of the first grade of the first class, a steam or electric road has been or may be established on and along any county road or state road under the control or supervision of the county commissioners, the county commissioners may determine the width of the whole, or any part of said road over which said railroad passes, or may pass, not exceeding eighty feet; but in all such cases the damages assessed by the viewers, on account of the establishment or widening of such road, as provided by law in chapter 2, title 7 of the Revised Statutes of Ohio, unless voluntarily paid shall be duly assessed upon the property abutting upon the road or part of road so established or widened, by the front foot; the same to be done and collected in three annual installments, as provided by law, governing assessments by municipal corporations.

SEC. 4637-1. [County roads; power of commissioners.] On a petition therefor signed by the owners of at least a majority of the foot frontage on any county road or part thereof, heretofore established or hereafter to be established, the county commissioners may do any one or more of the following acts or things:

a. Cause the county surveyor to establish a grade along said road, or part thereof, subject to the approval of said commissioners.

b. Cause said road or part thereof to be widened, altered or established to a greater width than sixty feet and not more than one hundred feet, to be determined by the viewers as provided in this chapter.

c. Grade, drain, curb, pave and improve said road, or part thereof, proceeding in the making of the same in the manner prescribed in section 2824a of the Revised Statutes.

[SEC.] 4637-2. [Damages, costs and expenses; how paid.] The county commissioners may assess the damages on account of the widening, altering or establishing of said road or part thereof, also the costs and expenses of any or all of said improvements or such part of said damages, costs and expenses as they may deem equitable under the circumstances upon the taxable property abutting upon such road or part thereof, either according to the foot frontage or according to the benefits. The county commissioners are hereby created an assessing board for the purpose of assessing the damages, costs and expenses, as herein set forth, upon the abutting property as aforesaid.

[SEC.] 4637-3. [Part of expense may be paid from county treasury or improvement fund.] The commissioners may order such part of the damages, cost and expense of such improvement as they may deem equitable, to be paid out of the county treasury, or out of any state and county road improvement fund.

[SEC.] 4637-4. [Notice of assessment.] Before adopting the assessments so made, the county commissioners shall publish notice for

three weeks consecutively, in some newspaper of general circulation in the county, that such assessments have been made, and that the same are on file in the office of the county commissioners for the inspection and examination of the persons interested therein.

[SEC.] 4637-5. [Filing of objections to assessments.] If any person objects to the assessment he shall file his objections in writing with the board of county commissioners within two weeks after the expiration of the said notice, and thereupon the board shall appoint three disinterested freeholders of the county to act as an equalizing board.

[SEC.] 4637-6. [Hearings by equalizing board.] Upon a day appointed by the commissioners for that purpose, such equalizing board, after taking an oath before a proper officer honestly and impartially to discharge their duties, shall hear and determine all objections to the assessment, and equalize the same as they may think proper, which equalized assessment they shall report to the board of county commissioners, which shall have power to confirm the same or set it aside and cause a new assessment to be made, and appoint a new equalizing board possessing the same qualifications, which shall proceed in the manner above provided.

[SEC.] 4637-7. [Confirmation of assessments.] When the assessment is confirmed by the county commissioners it shall be complete and final; provided that whenever by any of the provisions of this act any act or thing is required to be done by the county commissioners the concurrence of two-thirds of said county commissioners shall be deemed sufficient.

[SEC.] 4637-8. [Assessment upon real estate subject to life estate.] When such [an] assessment is made upon real estate subject to a life estate, the provisions of section 2268 of the Revised Statutes shall apply.

[SEC.] 4637-9. [Collection of assessments.] The assessments so made shall be certified by the commissioners to the auditor of the county, who shall place the same on the tax list against such taxable property, which shall thereupon become a lien upon such property, and the same shall be collected as other taxes, in not to exceed ten annual installments; provided that said commissioners may, after the amount of one installment of said assessment has been paid, in anticipation of the collection of the balance of such assessment, issue their notes for the balance of the whole amount of damages, cost and expenses, and cause the damages to be paid at once, also the improvement to be made at once, in which case interest at the rate of five per cent. per annum may be added to all unpaid installments and collected therewith.

[SEC.] 4637-10. [Land not to be taken until damages are paid.] The county commissioners shall not take possession of any land appropriated for the purpose of a county road until the damages assessed for the same shall be paid;

[Abandonment of appropriation proceedings.] And they may abandon any proceedings for the appropriation of land for road purposes upon the payment of the defendant's costs, expenses, and attorney fees as found by the court;

[Damages not to be paid until assessments are collected.] And in all cases where the county commissioners decide to collect said damages.

by assessing the same on abutting property, they shall not be required to pay such damages until the same are collected by assessment,

[Effect of failure to certify assessments.] But the failure of the county commissioners to so certify an assessment for such damages to the county auditor to be placed upon the tax duplicate in such installments as they may determine upon so that one installment may be placed upon the first duplicate made up after the determination of the entire amount thereof, shall be considered as an abandonment of the property, rights and interests so appropriated.

(4637-11) SEC. 3. [Provisions of statutes which should apply; right of appeal.] All the provisions of title 7, chapter 2, and of title 13, chapter 5, of the Revised Statutes, so far as the same are not inconsistent herewith, shall apply to all levies made and to all roads established, widened or altered and improved under the provisions of this act, and the same right to appeal to the probate court as now exists under the provisions of title 7, chapter 4, of the Revised Statutes is reserved.

SEC. 4637a. SEC. 1. [Establishment or alteration in Cuyahoga county.] That in any county containing a city of the second grade of the first class, the commissioners may establish county roads of the width not to exceed one hundred feet, and may cause to be widened or altered not to exceed the width of one hundred feet such county roads or parts thereof as may heretofore have been established, and upon the petition of the owners of a majority of the foot frontage along any county road, the county commissioners shall direct the county surveyor to establish a grade along such road, or any part thereof, subject to the approval of said commissioners; provided, however, that the petitioners therefor shall represent not less than one mile of the foot frontage of said road.

SEC. 4637b. SEC. 2. [Assessments.] In all cases where county roads may hereafter be established, widened or altered by virtue of this section, the county commissioners who are hereby created an assessing board for the purpose of assessing the cost and expense as set forth herein, may, instead of requiring the compensation and damages for the land taken and expense of grading and draining said road to be paid in whole or in part out of the county treasury or by the petitioners, as provided in section 4651 of the Revised Statutes, assess the same or such part thereof as they may deem equitable under the circumstances, upon the lots or lands abutting upon the said improvement and upon lots and lands benefited thereby and in making such assessments regard must be had as far as practicable to the benefits conferred upon the property assessed.

SEC. 4637c. SEC. 3. [Certification and collection of assessments.] The assessment so made shall be certified by the commissioners to the auditor of the county, who shall place the same on the tax list against such taxable property, which shall thereupon become a lien upon such property, and the same shall be collected as other taxes in not to exceed five annual installments; provided, that said commissioners may, in anticipation of the collection of such assessment, cause the whole of such compensation, damage and expense to be paid at once out of the county treasury to the parties entitled thereto, in which case interest at the rate of five per cent. per annum may be added to all the unpaid installments and collected therewith.

SEC. 4637e. SEC. 5. [Portion paid by county.] The commissioners may order such part of the compensation, damages and cost as they may deem equitable, to be paid out of the county treasury.

SEC. 4637f. SEC. 6. [Notices of assessments.] Before adopting the assessments so made, the county commissioners shall publish notices for three weeks consecutively, in some newspaper of general circulation in the county, that such assessments have been made, and that the same is [are] on file in the office of the county commissioners for the inspection and examination of persons interested therein.

SEC. 4637g. SEC. 7. [Objections to assessments.] If any person objects to the assessment, he shall file his objections in writing with the board of county commissioners within two weeks after the expiration of the said notice, and thereupon the board shall appoint three disinterested freeholders of the county to act as an equalizing board.

SEC. 4637h. SEC. 8. [Equalization of assessments.] On a day appointed by the commissioners for that purpose, such board, after taking an oath before a proper officer honestly and impartially to discharge their duties, shall hear and determine all objections to the assessment and equalize the same as they may think proper, which equalized assessment they shall report to the board of county commissioners, which shall have the power to confirm the same, or set it aside and cause a new assessment to be made, and appoint a new equalizing board possessing the same qualification, which shall proceed in the manner above provided.

SEC. 4637i. SEC. 9. [Confirmation.] When the assessment is confirmed by the county commissioners, it shall be complete and final; provided, that whenever by any of the provisions of this act any act or thing is required to be done by the county commissioners, the concurrence of two-thirds of said county commissioners shall be deemed sufficient.

SEC. 4637j. SEC. 10. [Laws applicable.] All of the provisions of title 7, chapter 2, of the Revised Statutes, so far as the same are not inconsistent herewith, shall apply to all roads established, widened or altered under the provisions of this act, and the same right to appeal to the probate court as now exists under the provisions of title 7, chapter 4, of the Revised Statutes, is reserved.

SEC. 4637k. [Widening and alteration of roads in Lorain county.] That in any county having at the last federal census, a population of not less than 40,295, nor more than 40,298, the commissioners may cause to be widened or altered not to exceed the width of eighty feet such county roads or parts thereof as may heretofore have been established, and upon the petition of the owners of a majority of the foot frontage along any county road, the county commissioners shall direct the county surveyor to establish a grade along such road, or any part thereof, subject to the approval of said commissioners; provided, however, that the petitioners therefor shall represent not less than one-half mile of the foot frontage of said road.

(4637k-1) SEC. 2. [Assessment of compensation and damages.] In all cases where the county roads may hereafter be established, widened or altered by virtue of this action, the county commissioners who are hereby created an assessing board for the purpose of assessing the cost and expense as set forth herein, may, instead of requiring the compensation and damages for the land taken and expense of grading and

draining said road to be paid in whole or in part out of the county treasury or by the petitioners, as provided in section 4651 of the Revised Statutes, assess the same or such part thereof as they may deem equitable under the circumstances, upon the lots or lands abutting upon the said improvement and upon lots and lands benefited thereby and in making such assessments regard must be had as far as practicable to the benefits conferred upon the property assessed.

(4637k-2) SEC. 3. [Collection of assessments.] The assessments so made shall be certified by the commissioners to the auditor of the county, who shall place the same on the tax list against such taxable property, which shall thereupon become a lien upon such property, and the same shall be collected as other taxes in not to exceed five annual installments; provided, that said county commissioners may, in anticipation of the collection of such assessments, cause the whole of such compensation, damage and expense to be paid at once out of the county treasury to the parties entitled thereto, in which case interest at the rate of five per cent. per annum may be added to all the unpaid installments and collected therewith.

(4637k-4) SEC. 5. [Compensation, etc., may be paid out of county treasury.] The commissioners may order such part of the compensation, damages and cost as they may deem equitable, to be paid out of the county treasury.

(4637k-5) SEC. 6. [Publication of assessments.] Before adopting the assessments so made, the county commissioners shall publish notices for three weeks consecutively, in some newspaper of general circulation in the county, that such assessments have been made, and that the same is (are) on file in the office of the county commissioners for the inspection and examination of persons interested therein.

(4637k-6) SEC. 7. [Objection to assessments.] If any person objects to the assessment, he shall file his objection in writing with the board of county commissioners within two weeks after the expiration of the said notice, and thereupon the board shall appoint three disinterested freeholders of the county to act as an equalizing board.

(4637k-7) SEC. 8. [Hearing objections.] On a day appointed by the commissioners for that purpose, such board after taking an oath before a proper officer honestly and impartially to discharge their duties, shall hear and determine all objections to the assessment and equalize the same as they may think proper, which equalized assessment they shall report to the board of county commissioners, which shall have the power to confirm the same, or set it aside and cause a new assessment to be made, and appoint a new equalizing board possessing the same qualification, which shall proceed in the manner above provided.

(4637k-8) SEC. 9. [Confirmation of assessments.] When the assessment is confirmed by the county commissioners it shall be complete and final; provided, that whenever by any of the provisions of this act any act or thing is required to be done by the county commissioners, the concurrence of two-thirds of said county commissioners shall be deemed sufficient.

(4637k-9) SEC. 10. [Application of existing statutes.] All of the provisions of title 7, chapter 2, of the Revised Statutes, so far as the same are not inconsistent herewith, shall apply to all roads estab-

lished, widened or altered under the provisions of this act, and the same right to appeal to the probate court as now exists under the provisions of title 7, chapter 4, of the Revised Statutes, is reserved.

SEC. 4638. [The petition and bond.] Applications for laying out, altering, changing the width of, or vacating any county road shall be by petition to the county commissioners, signed by at least twelve freeholders of the county residing in the vicinity where the road is to be laid out, viewed or reviewed, altered or vacated, and one or more of the signers to any such petition shall enter into bond with sufficient surety, payable to the state for the use of the county, conditioned that the persons making such application shall pay into the treasury of the county the amount of all costs and expenses accruing thereon in case the application shall fail; and in case the application shall not fail, the commissioners may, in their discretion, order the petitioners to pay any or all costs and expenses of such application, or may pay all or any portion thereof out of the county treasury.

SEC. 4639. [Judgment for costs, and suit on bond.] When the commissioners make such an order, and the petitioners fail, neglect, or refuse to pay the costs and expenses, the persons signing the bond shall be liable thereon for the full amount of all the costs and expenses of the application, and the auditor of the county shall deliver the bond to the prosecuting attorney, who shall collect and pay the same to the county treasurer; and in all cases of contest the court having jurisdiction of the case shall have full power to render judgment for costs according to justice between the parties.

SEC. 4640. [What petition to contain.] Petitions for laying out, vacating, or altering a county road shall specify the place of beginning, the intermediate points, if any, and the place of termination of the road, or part proposed to be altered or vacated.

SEC. 4641. [Notice of application.] Previous to any such petition being presented, notice thereof shall be given by advertisement set up at the auditor's office, and in three public places in each township through which any part of the road is to be laid out, altered, or vacated, at least thirty days previous to the meeting of the commissioners at which the petition shall be presented, and stating the time when such petition is to be presented; and the substance thereof shall be published for four consecutive weeks before the presentation of any such petition, in some newspaper published in the county in which the road sought to be established, altered, or vacated by such petition is situated, if there be a newspaper therein.

SEC. 4642. [Appointment of viewers.] On the presentation of the petition, if the commissioners are satisfied that notice has been given as aforesaid, they shall appoint three disinterested freeholders of the county as viewers, who shall also be a jury to assess and determine the compensation to be paid in money for the properties sought to be appropriated, without deduction for benefit to any property of the owner, and to assess and determine how much less valuable, if any, the land or premises from which such appropriation may be taken, will be rendered by the opening and construction of the road, and the county surveyor to survey the same;

[Commissioners to issue orders to viewers.] And shall issue an order directing the viewers, with the county surveyor, to proceed on

a day to be named in the order, or on their failing to meet on that day, within five days thereafter, to view, survey, and lay out or alter said road, and determine whether the public convenience requires that such road or any part thereof shall be sixty feet in width, or whether a less width than sixty [feet] will as well promote the public convenience, and report the width, in their opinion, the same shall be established and opened.

SEC. 4643. [When road viewers fail to perform duty a new order may issue.] If the viewers fail to proceed on the day named in the order, or within five days thereafter, so that said duty shall not be performed and reported to the commissioners at their regular or special session next after such order was made, the commissioners may at such next regular or special session issue a new order and appoint new viewers, who shall be by such order required to perform the same duties as required of said original viewers under the original order, or the commissioners may make such other order in the premises as to them may seem proper.

SEC. 4644. [If viewer fail to attend, how another appointed.] If a person appointed as viewer or reviewer on any road by the commissioners or probate judge of the county fail to attend at the place specified in the order at or before ten o'clock a. m. of the day in the order specified, the surveyor and two viewers shall fill the vacancy by appointing a judicious, disinterested freeholder of the county, and in case of a review when five viewers are required, the surveyor and not less than three of the viewers may appoint a judicious freeholder of the county to fill the vacancy, who shall be required to take the same oath and be vested with the same power to do and perform the same duties as if he had been appointed by the commissioners or probate judge of the county.

SEC. 4645. [Notice to land-owners.] The principal petitioner, or the county auditor, shall give at least six days' notice, in writing, to the owner, or his agent, if residing within the county, or, if such owner be a minor, idiot, or insane person, to the guardian of such person, if a resident of the county, through whose land the road is proposed to be laid out and established, or through whose land the road which it is proposed to alter or vacate may have been previously established, and also six days' notice to the viewers and surveyor, named in the order of the commissioners, of the time and place of meeting, as specified in the order, and of the day by which claims for compensation must be filed; and the county auditor, if the road is proposed to be laid out, altered, or vacated on any lands owned by a non-resident of the county, shall cause a notice to such non-resident to be published, for four consecutive weeks, in some newspaper published in such county; but if there be no newspaper published therein, then in some newspaper in an adjoining county to that in which the lands sought to be affected by the road are situated, which notice shall state the time and place of the meeting of the viewers and surveyor, as specified in the order of the commissioners, and also the substance of the petition.

SEC. 4646. [Duties of viewers.] The viewers and surveyor shall meet at the time and place specified in the order of the commissioners, and after taking an oath faithfully and impartially to discharge the duties of their appointments respectively, shall take to their assistance two suitable persons as chain-carriers and one marker, and proceed to view, survey, and lay out or alter the road as prayed for in the pe-

tion, or as near the same as in their opinion a good road can be made at reasonable expense, taking into consideration the utility, convenience, inconvenience and expense which will result to individuals, as well as to the public, if such road or any part thereof is established and opened, or altered; and also, as a jury, discharge the duties required of them in section *forty-six hundred and forty-two*, and assess and determine the damages sustained by any person through whose premises the road is proposed to be established, altered, or vacated.

SEC. 4647. [When compensation and damages not to be assessed.] But the viewers shall not be required to assess or award damages or compensation to any person except minors, idiots, or lunatics, in consequence of the opening of the road, unless the owner or his agent, having notice as provided in section *forty-six hundred and forty-five* of the application and proceedings by which his property is sought to be appropriated or may be injured, shall have filed a written application with the viewers, giving a description of the premises on which damages or compensation is claimed; and all applications for damages shall be barred unless they be presented as provided for by this chapter.

SEC. 4648. [Who may administer oath.] When an oath is required to be taken by any person under the provisions of this chapter, the same may be administered by the surveyor, or by one of the viewers or reviewers, who has been previously sworn.

SEC. 4649. [Duties of surveyor. etc.] The surveyor shall survey the road, under the direction of the viewers, and cause the same to be conspicuously marked throughout, noting the courses and distances, and at the end of each mile shall cause the number of the same, and also the commencement and termination of the road or survey, to be marked on a tree, or monument erected for that purpose, and shall make and deliver to one of the viewers, without delay, a correct certified return of the survey of the road, and a plat of the same; and the viewers shall make and sign a report in writing, stating their opinion in favor of or against the establishment or alteration of the road, or any part thereof, and set forth the reasons of the same, which report, together with the plat and survey of the road, or alteration, shall be delivered to the county auditor by one of the viewers, on or before the first day of the session of the commissioners then next ensuing.

SEC. 4650. [Duties of commissioners on report of view.] The commissioners, on receiving the report of the viewers, shall cause the same to be publicly read on two different days of the same session, and if no application be made to them for a review of the road, or any part thereof, or alteration, and they are satisfied that such road, or any part thereof, if the same be capable of division, will be of public utility, and the report of the viewers is favorable thereto, and no damages have been claimed or assessed, shall on the third day of the session cause the report, survey, and plat to be recorded; and from thenceforth the road shall be considered a public highway, and the commissioners shall issue their order to the trustees of the proper township or townships, directing the road to be opened; but if the report of the viewers be against such proposed road, or alteration, or if, in the opinion of the commissioners, the same is unnecessary, no further proceedings shall be had thereon, and the obligors, in the bond securing the expenses, shall be liable for the full amount of such costs and expenses.

SEC. 4651. [Report and payment of damages accruing from opening of county roads.] The viewers shall, at the time they make their report of the view, also make a separate report, in writing, stating the amount of damage[s], if any, and to whom by them assessed, which would accrue by the opening of the road; and they shall also file the written application on which such assessments have been made, with the county auditor, and the commissioners shall cause such report to be publicly read on the third day of the session at which it was received, and if no petition for review or alteration has been presented and received, and they shall be satisfied that the amount so assessed and determined is just and equitable, and that the road will be of sufficient importance to the public to cause the damages which have been assessed to be paid by the county, they shall order the same to be paid to the applicants from the county treasury; but if in their opinion the road is not of sufficient importance to the public to cause the same to be paid by the county, they may refuse to establish the same a public highway unless the damages which have been assessed are paid by the petitioners; or they may, in their discretion, order a portion of such damages to be paid out of the county treasury, and require the petitioners to pay the remainder thereof, before such roads are opened; but if application by petition shall have been made for review or alteration, then no further proceedings shall be had on the report till the final determination of the commissioners on such application.

SEC. 4651a. [Review; amended report.] No report of viewers shall ever be set aside by the commissioners for any irregularity which does not materially affect the substantial rights of some interested party, and where a report is set aside for any such material irregularity the commissioners may appoint the same or other viewers, and the proceeding shall re-commence at the point provided for by section *four thousand six hundred and forty-two*, and proceed as before. Provided, that where it is practicable in the judgment of the commissioners the viewers may be sent back at any time before their report is finally acted upon by the commissioners, to supply or amend any omission or irregularity in their work or report as originally reported, and the amended report shall when finished be re-delivered to the county auditor to be dealt with as in the case of an original report.

SEC. 4652. [Application for and proceedings on review.] After the viewers have made return in favor of the road, and before the return is recorded and the road established, any citizen of the county may apply to the commissioners for a review of the road, by petition, agreeably to section *forty-six hundred and thirty-eight*, and the commissioners shall, on such petition being presented and being satisfied the same is just and reasonable, appoint five disinterested freeholders of the county to review the road, and issue their order to the reviewers, directing them to meet at a time to be specified in the order, or within five days thereafter; and the petitioners for review shall cause at least six days' notice to be given to the principal petitioner for the road, of the time and place of the meeting of the reviewers; and the reviewers shall meet, and after taking the oath required in section *forty-six hundred and forty-six*, shall proceed to examine the route surveyed for the road by the former viewers, and make a report in writing to the commissioners, stating their opinion in favor of or against the establishment of the road, or any part thereof, and their reasons for the same.

SEC. 4653. [Proceedings on report of reviewers.] If the report of the reviewers be in favor of the road, the same shall be established, recorded, and opened, agreeably to the provisions of this chapter, and the persons bound for the same shall pay into the county treasury the amount of the costs of such review; but if the report be against the establishment of such road, no further proceedings shall be had thereon before the commissioners, and the persons executing the first bond shall pay into the county treasury the costs and expenses of the view, survey, and review.

SEC. 4654. [To find the line of a road.] When the place of beginning or true course of any state or county road, or any public highway not within the limits of any municipal corporation shall be uncertain by reason of the removal of any monument or marked tree, by which such road was originally designated, or from any other cause, the county commissioners of the proper county may appoint three disinterested landholders of the county to review and find the line of the road, and if they deem it necessary, a competent surveyor to survey the same, and the reviewers and surveyor, after taking the oath required in section *forty-six hundred and forty-six* (4646), shall view and survey said road, and the same correctly mark throughout as in the case of new roads and shall make a return of the survey and plat of the road to the commissioners, who shall cause the same to be recorded as in other cases.

[Establishment by judicial proceedings.] When such viewers are unable to ascertain the boundary lines of such road or highway with certainty, the commissioners of the county may commence and prosecute a civil action in the courts of justice against any or all owners of land that abut upon said highway, to ascertain and have the boundaries of such road or highway judicially established in one action, and thenceforth such road or highway so surveyed, or its boundaries judicially established as aforesaid, shall to the full limits of such boundaries be a public highway.

SEC. 4655. [Application to turn road.] If any person through whose land a county road is, or may be established, shall be desirous of turning the road through any other part of his land, he may, by notice and petition, agreeably to the provisions of this chapter, apply to the commissioners of the county while in session, to permit him to turn the road through any other part of his land, on as good ground, and without increasing the distance to the injury of the public; and upon the receipt of such petition, the commissioners shall appoint a surveyor, and three disinterested freeholders of the county, as viewers of the road, who shall proceed to view and survey the ground over which the same is proposed to be turned, and ascertain the distance which it will be increased by such proposed alteration and make a report, in writing, stating the several distances so found, together with their opinion as to the utility of making the alteration.

SEC. 4656. [Application to change county road; proceedings on report of viewers.] If the freeholders report to the commissioners that the prayer of the petitioner is reasonable, and that the alteration will not place the road on worse ground, or increase the distance to the injury of the public, they shall upon receiving satisfactory evidence that the proposed new road has been opened a legal width, and in all respects made equal to the old road for the convenience of travelers, and if in their opinion the same will be just and reasonable, declare such new road

a public highway, and make record thereof, and at the same time vacate so much of the old road as is rendered necessary [unnecessary] by the new; and the person desiring the alteration shall pay all the costs of the new survey, and return, unless the commissioners are satisfied that the alteration is of sufficient advantage to the public to cause the same to be paid by the county. And provided that any appeal heretofore or hereafter taken, remaining imperfect or not prosecuted to a hearing for two years after the giving of the appeal bond, shall be dismissed, and the county commissioners shall proceed under their order as though no appeal had been taken therefrom.

SEC. 4657. [Application for road on county line.] When it becomes necessary to establish a road on a county line, the inhabitants along such line may petition the commissioners of their respective counties for a view of such road, in the manner provided in this chapter; and the commissioners of each of the counties interested, shall appoint two discreet landholders as viewers, who, or a majority of them, shall meet at the time and place named in the order of the commissioners of the oldest county interested, who shall appoint a surveyor; and the viewers and surveyor shall also be a jury for the assessment of damages, and shall, in all respects, be governed by the preceding sections of this chapter, and shall make their report in writing for or against such road to the commissioners of the counties concerned; and the commissioners, upon receiving such report, shall, in all respects, be governed by this chapter.

SEC. 4658. [Proceedings on viewers' report.] If, on receiving such report, there is no legal objection thereto, and the commissioners of all the counties interested are of opinion that such road, if opened, would be of public utility, they shall order the same to be opened in the manner pointed out by this chapter.

SEC. 4659. [How width of road on state line determined.] The commissioners of any county through which a county road has been established upon a line of the state, may, upon petition and notice as hereinbefore provided, determine the width, not less than fifteen nor more than thirty feet, of the land within the county to be used for the road.

SEC. 4661. [Application for vacation.] When a county road, or part of a county road is considered useless, or has remained unopened for the term of five years, any twelve freeholders residing in that part of the county where such road is established, may make application, agreeably to the provisions of this chapter, to the commissioners of the county, to vacate the same, setting forth in the petition the reasons why the road ought to be vacated, which shall be presented and publicly read at a regular session of the commissioners, and no other proceedings shall be had thereon until the next session of the commissioners, when it shall again be read; and if no objection be made, the commissioners may declare vacated the road, or any part thereof which they may deem unnecessary to keep open for public convenience.

SEC. 4662. [Appointment and report of viewers.] If objection be made in writing to such vacation, the commissioners shall appoint three disinterested persons to view the road, who shall take the same oath as required by section *forty-six hundred and forty-six* and proceed to view the road, and make report of their opinion thereon, and the

reasons for the same, to the commissioners; and if the viewers report in favor of vacating the road, or any part thereof, the commissioners may, if they deem it reasonable and just, declare the road vacated, agreeably to the report of the viewers.

SEC. 4663. [Penalties against viewers and surveyor.] If a person appointed by the county commissioners as a viewer, reviewer, or surveyor of any road, refuse or neglect to perform the duties required by this chapter, without making satisfactory excuse for such refusal or neglect, he shall be fined in any sum not exceeding five dollars, to be recovered by action by any person suing for the same, before a justice of the peace within the township wherein the person so appointed, and refusing or neglecting, may reside; and the recovery shall be paid without delay, by the justice of the peace or constable collecting the same, to the treasurer of the township, taking his receipt therefor; and the trustees shall cause all fines which shall be paid into the township treasury, under the provisions of this chapter, to be expended on roads and bridges within their townships.

SEC. 4664. [Fees of viewers, markers, etc.] All persons required to render services under this chapter shall receive compensation for each day they are necessarily employed, as follows, to-wit: viewers and reviewers, one dollar and fifty cents; chain-carriers and markers, one dollar each; and surveyor, five dollars; to be charged as costs and expenses, and paid out of the county treasury, on the order of the county auditor.

SEC. 4665. [Repair of roads washed out.] When a county road is injured or destroyed by the washing of any lake, river, or creek, or by any washing or sliding of land occasioned by natural drainage, the trustees of the township in which such injury or loss of road has occurred, upon petition of any six freeholders of the township, shall call to their aid a competent surveyor, and proceed to examine such road; and if, upon such examination, the trustees, or a majority of them, are satisfied that such road has been destroyed, or so much injured that the public good requires an alteration of the same, they shall proceed to alter and lay out so much of the new road as may supply the several parts of the road thus destroyed or injured.

SEC. 4666. [Application for damages, and proceedings thereon.] If a person through whose lands any such alteration or new road is laid out, feels injured thereby, he shall make application to the trustees, at the time of making the alteration on his premises, to assess and determine, according to the provisions of this chapter, the compensation to be made in money for the property sought to be appropriated, and how much less valuable, if any, the premises will be rendered by the alteration of the road; and the trustees and surveyor shall make a report of their doings in the manner pointed out as to the duty of viewers and surveyors in cases of new roads; and the auditor and commissioners of the proper county shall be governed in the reception and recording of such report in all respects as is prescribed in this chapter in cases of new roads.

SEC. 4667. [Fees under the last two sections.] The surveyors and trustees shall receive for each day they are necessarily employed under the provisions of the two preceding sections, the same compensation allowed to surveyors and viewers in cases of new roads, the sur-

veyor to be paid out of the county treasury, on the order of the county auditor, and the trustees out of the township treasury, on the order of the township clerk.

SEC. 4668. [Road vacated when unopened for seven years.] Any county road or part thereof, which has heretofore or may hereafter be authorized, which remains unopened for public use for the period of seven years after the order is made or authority granted for opening the same, shall be and the same is hereby vacated, and the authority granted for erecting the same barred by lapse of time.

SEC. 4669. [Alterations become part of road; parts vacated.] All alterations of county roads heretofore made and established, or which shall hereafter be made and established, shall be and remain part of such roads; and so much of the original roads as is rendered unnecessary by such alterations in the opinion of the viewers and county commissioners shall be and remain vacated.

SEC. 4670. [Commissioners must mark line of road by stone monuments.] The county commissioners shall cause stone monuments to be placed at the beginning, intermediate points, and termination of all roads laid out and established under the provisions of this chapter, and said monuments shall be noted in their record of roads.

(4670-1) SEC. 1. [Cuyahoga county additional road levy.] In counties containing a city of the second grade of the first class, the commissioners, at their March or June session annually, in addition to the levy authorized for road and bridge purposes by section 2824 of the Revised Statutes, shall levy on each dollar of valuation of taxable property within said county, five-tenths of a mill; and in addition thereto, on each dollar of valuation of taxable property within the township outside of the cities and incorporated villages, which townships outside of the cities and incorporated villages are hereby made a taxing district for that purpose, one mill for the creation of a fund to be known as the state and county road improvement fund, and to be used for the improvement of state and county roads outside of such municipal corporations.

(4670-2) SEC. 2. [Improvement of such roads.] The county commissioners of such counties shall have power to improve any such state or county road or any part thereof, by straightening or altering the same, and by grading, paving with steel rails, stone or brick or other suitable material, or a combination of any or all of these materials, graveling, planking or macadamizing the same and shall use the funds hereinbefore created for that purpose.

(4670-3) SEC. 2a. [Purchase of road.] The commissioners of such county may purchase any turnpike or plank toll-road, or any part thereof, lying within such county, at a price that may be agreed upon by them and the owners of such turnpike or plank road; and in case they are unable to agree with the owners thereof, upon such purchase and sale, they may appropriate the same; and for this purpose they shall cause an accurate survey and profile of such turnpike or plank road to be made, and shall file the same with the probate judge or court of common pleas of the county, and thereupon the same proceedings shall be had as are now provided by law for the appropriation of private property by municipal corporation; and upon payment of the agreed

price, or, payment into court of the compensation assessed, and right to charge or collect toll shall thereupon cease, and the commissioners shall use the fund created by section *one* (1) [§(4670-1)] of said act for that purpose.

(4670-4) SEC. 2b. [Assessment.] When the commissioners make an appropriation of any turnpike or plank road as specified in the last preceding section, and fail to pay for the same within three months after the assessment of compensation shall have been made, as in said section provided, the right of the commissioners to make such appropriation on the terms of the assessment so made, shall cease and determine; and the turnpike or plank road so appropriated shall be relieved from all incumbrance on account of the proceedings in such case, and the judgment or order of the court, directing such award or assessment to be paid, shall cease to be of any effect, except as to the costs assessed against the commissioners.

(4670-5) SEC. 3. [Engineer; bond; surveys, etc.; compensation.] When the commissioners determine to make any such improvement they shall employ a competent engineer to superintend the performance and completion of said work, who shall enter into a good and sufficient bond in a sum not less than one thousand dollars, to be approved by the county commissioners, conditioned for the faithful performance of his duties hereunder. The engineer shall make all necessary surveys, profiles, estimates and specifications, and submit the same to the commissioners of said county for their approval, and the same shall be filed and preserved in their office. He shall receive such compensation for his services as is fixed by law for the compensation of the county surveyor for like services in other cases.

(4670-6) SEC. 4. [Advertisement.] Upon the approval of said surveys, profiles, estimates and specifications the commissioners of said county shall advertise for bids in some newspaper of general circulation in the county and shall let the contract for making such improvement to the lowest and best bidder or bidders, who shall give such reasonable security for the proper performance of their contract within the time and in the manner prescribed therein, as the county commissioners may deem expedient.

Act authorizing temporary loans in anticipation of proceeds of above act, see § (2824-1) R. S.

(4670-7) SEC. 1. [Improvement of certain public roads.] In any county of this state having not less than two hundred and twenty-five miles of improved graveled free roads, including any former toll-roads, where there is an unimproved county road or part thereof, not exceeding three miles in length, connecting two improved graded public roads or an improved part of one such public road with another such improved road or part thereof, such unimproved county road or part thereof may be improved by grading, graveling, draining and bridging, or by any of such operations, by the commissioners of such county in the manner provided in this act.

(4670-8) SEC. 2. [Petition; appointment of viewers; duties.] Whenever twenty or more landholders from three or more townships of any such county file with the commissioners thereof a petition for such improvement, naming the road or part thereof to be so improved, with its termini, said commissioners shall appoint three disinterested and

judicious freeholders of the county as viewers of such road, who shall, after being duly sworn faithfully to perform their duties, secure a surveyor and proceed to view said road and ascertain the character and dimensions of the improvement which, in their judgment, should be made, make a careful estimate of the cost thereof, and make due return with proper detail drawings of the same to said commissioners.

(4670-9) SEC. 3. [**Finding for improvement.**] On such return of said viewers being made, said commissioners shall determine whether the proposed improvement, in their judgment, is of such a nature and general benefit as should in fairness be paid [for] out of the county treasury, taking into consideration the benefits that such locality has derived from the bridge and other general funds of the county, in comparison with other portions thereof; and if they are of the opinion that such improvement should be made, they shall so declare by resolution. And thereupon they shall pass upon said report of said viewers as to the character and dimensions of such improvement, which they may modify, but not so as to increase the estimated cost thereof.

(4670-10) SEC. 4. [**How improvement to be made; appointment of superintendent of work; compensation of superintendent, etc.**] On the approval of said report of said viewers, either in its original form or as modified, said commissioners shall cause said improvement to be made under the supervision of a competent and disinterested person appointed by them as a superintendent of work; such superintendent shall be under their control and direction, and removable for cause at their pleasure, and shall receive for his services the sum of two dollars per day; and said viewers each shall receive for their like services a like sum; and the surveyor shall receive the compensation prescribed by law. Not more than one such improvement shall be made in any county in any period of two years.

(4670-11) SEC. 5. [**Superintendent to furnish estimates.**] Any such improvement shall be advertised, let and paid for, on estimates of the superintendent, approved by said commissioners, as it progresses, as if done under title 7, chapter 7, of the Revised Statutes of Ohio.

(4670-12) SEC. 6. [**Bonds.**] Said commissioners may issue and sell at not less than par the bonds of said county in sums of one hundred dollars, or multiples thereof, bearing interest not exceeding five per cent. per annum and having not exceeding three years to run, payable principal and interest at the treasury of said county or at such point in the city of New York as may be designated therein, for the amount necessary to cover the cost of such improvement, which shall not exceed two thousand dollars per mile, and shall provide for the payment of such bonds by the necessary levies upon the grand duplicate of said county. Provided such bonds may be paid for out of the bridge fund or general road improvement fund, or both, and the levy for either or both of said funds may be increased above that now provided by law to the amount necessary to meet such expense.

(4670-13) SEC. 7. [**To what other roads provisions of act shall apply.**] The provisions of the foregoing act shall apply to any unimproved county road which may be located upon or adjacent to any county line, upon condition that all the counties adjoining said road shall be such as are described in the foregoing act. Such road upon or adjacent to any such county line may be improved under the provisions of the

foregoing act by the action of the joint board of commissioners of the two or more counties adjoining said road. In such case the petition therefor must be signed by twenty or more landholders from three or more townships of each county interested in said improvement. Upon such petition so signed being filed with the auditor of either county so interested in said improvement, it shall be the duty of said auditor to call a session of the joint boards of commissioners of said counties to take action thereon; and the said joint board shall have full jurisdiction to so construct and improve said road under the provisions of said act. The expenses of said improvement shall be apportioned between the counties interested therein [in] such proportion as may be deemed just and equitable by said joint board of commissioners. And each of said boards may issue and sell the bonds of their respective counties, as provided in section six of this act; the said bonds to be issued for a sum sufficient to pay the proportionate share of said costs allotted to each of said counties.

(4670-14) **SEC. 1. [Petition for improvement of roads; duties of commissioners thereafter.]** That when a majority of the resident owners of any real estate lying and being within one mile of any public road, shall present a petition to the county commissioners of any county in the state of Ohio, asking for [the] grading and improving of any such road, the board of county commissioners shall go upon the line of such road described in such petition, and if in the opinion of the county commissioners the public utility requires such road to be graded and improved, the commissioners shall determine whether the improvement shall be constructed of stone, gravel, or brick, any or all, and they shall determine what part or parts of such road improvement shall be of stone, gravel, or brick, any or all, and shall enter their determination on their journal, and at the same time appoint an engineer to go upon the line of such road and make such markings, gradient lines, plat and profiles and estimates as such commissioners shall order in their entry on their journal, and order that the improvement be made; and at the same time said commissioners shall order that a portion of the cost and expense thereof, which shall not be less than one-half, nor more than two-thirds, of the total cost and expense thereof, shall be paid out of the proceeds of any levy or levies upon the grand duplicate of the county assessed against [which] the taxable property of any township or townships in which such road may be in whole or in part, as authorized by section 5 of this act. And shall also order that the balance of said cost and expense be assessed upon and collected from the owners of the said real estate, and from the real estate benefitted thereby in proportion to the benefit to be derived therefrom by said real estate as determined by said commissioners. Said order shall also state the lands which shall be subject to be assessed for the cost and expense of said improvement, and whether the estimated assessment therefor shall be made before the improvement is commenced, or after the same is completed.

(4670-15) **SEC. 2. [Appointment of engineer.]** After making such order for an improvement, the commissioners shall appoint a competent engineer to superintend the performance and completion of the work, who shall, under the directions and with the approval of said commissioners prepare and file the necessary plans, plats, profiles and specifications of the work.

[Contract to be let to lowest bidder.] After such plans and specifications as the commissioners deem necessary are adopted, the work

shall be publicly let by the county commissioners to the lowest responsible bidder, who shall enter into bond with sufficient sureties, and in such amount as the commissioners shall approve and determine, conditioned for the faithful performance of said work.

[**Notice of letting.**] Notice of such letting shall be first published for at least four weeks in some newspaper printed in the county and of general circulation therein, stating the nature and extent of the work and the time when said letting will be made; or, if sealed bids are required, when the same will be opened. The commissioners may let the work as a whole, or in convenient sections as they may determine. The commissioners may require a bond from each bidder in such sums as they may determine, with sureties to their approval, conditioned that if the contract be awarded on such bid, the bidder will enter into the contract and execute the bond, with approved sureties, for the faithful performance of the contract. The county commissioners may remove the engineer herein provided for at any time, and appoint another in his place. And they may, in their discretion, if in their judgment no reasonable bid is made for said work, refuse to accept any bid so made or to enter into such contract, but re-advertise the same.

(4670-16) SEC. 3. [**Engineer to make an estimated assessment.**] The said commissioners shall either before the said improvement is commenced, or after the same is completed, as they shall have determined at the time of ordering the improvement, order said engineer to make, upon actual view, and to report to said commissioners, an estimated assessment of the proportion of the cost and expense aforesaid upon the real estate to be charged therewith, or upon such real estate included in the descriptions and boundaries aforesaid, as in his judgment should be assessed, in proportion as nearly as may be to the benefits which may result from such improvement to the real estate so assessed, which assessment shall be filed with the county commissioners, and kept in the auditor's office for public inspection.

[**Adoption of report, etc.**] Before adopting the assessment so made and reported, the said commissioners shall publish notice for three weeks consecutively, in some newspaper of general circulation in the county, that such assessment has been made and the same is on file in the office of the auditor for inspection; and if no objections are filed thereto within one week after the date of the last publication of said notice, the commissioners may confirm the same.

[**Objections to assessment.**] If the owner of any property assessed objects to the assessment so made, he shall file his objections in writing with the said commissioners within one week after the date of the last publication of said notice, and thereupon the commissioners shall appoint three other disinterested freeholders, to act as an equalizing board, who shall meet at the county auditor's office at a time to be fixed by the county commissioners, with power to adjourn from time to time, who shall hear and determine all objections to said assessment, equalize the same, or approve the assessment already made, as they shall deem just. They shall report their action to said commissioners, who shall have power to confirm the same, or set the same aside and cause a new equalizing board to be appointed with like powers and qualifications. When said assessment is confirmed by the county commissioners, the same shall be final. The members of said assessing and equalizing board shall, before entering upon their duties, take an oath before a proper

officer to faithfully, honestly and impartially discharge their duties in making or equalizing said assessments, and in either case a majority of the board shall have power to determine any question or matter before them. The equalizing board, or any of its members, shall have power to administer oaths to witnesses, and said board shall hear testimony for or against the parties filing exceptions as aforesaid. If any of the real estate to be assessed is subject to a life estate, the assessment made thereon shall be apportioned between the owner of the life estate and the owner of the fee in proportion of the relative value of their respective estates, to be ascertained upon the principles applicable to life annuities.

(4670-17) SEC. 4. [**Record of proceedings to be kept by auditor.**] Said commissioners shall cause to be kept by the county auditor a full record of all the proceedings herein provided for, together with accurate accounts of the receipts and expenditures of money, under the provisions of this act; and all profiles, plats and specifications shall be filed and kept in the office of the county auditor; and no money shall be drawn from the treasury belonging to the fund raised under the provisions of this act, except to pay liabilities already accrued, and then only in pursuance of the orders caused by the commissioners while in session as a board, to be entered upon the record of their proceedings, and by order drawn by the county auditor upon the county treasury in favor of the person to whom such money is due.

(4670-18) SEC. 5. [**"Stone and gravel road building fund."**] For the purpose of providing by general taxation a fund out of which not less than one-half nor more than two-thirds of the costs and expenses of all improvements made under the provisions of this act can be paid, the commissioners are hereby authorized to levy upon the taxable property of any township or townships within the county in which such improved road is to be or has been constructed, not exceeding ten mills in any one year upon each dollar of the valuation of the taxable property in such township or townships. And said levy shall be in addition to all other levies authorized by law, notwithstanding any limitation upon the aggregate amount of such levies now in force. The proceeds of the levy or levies hereby authorized to be made, shall be applied and used by the county commissioners in the construction of such stone and gravel roads, as the case may be, and for no other purpose, and these funds shall be expended under the direct orders and supervision of the county commissioners. All the proceeds of such stone and gravel road building levies and of the sale of any bonds under the provisions of this act, shall be placed to the credit of a fund to be called "the stone and gravel road building fund," out of which shall be paid all the costs and expenses of said improvement, including the expenses of the preliminary view and survey and the fees of the engineer and auditor, but the auditor shall keep a separate account of each different improvement in a book to be kept for that purpose.

(4670-19) SEC. 6. [**Bonds may be issued.**] The commissioners are hereby authorized, whenever in their judgment it is desirable, to sell the bonds of any such county in which such improvement is to be or has been constructed to any amount necessary to pay, of the costs and expenses of such road improvement, the respective shares of such township or townships and of the land owners whose lands therein are benefitted by such road improvement, as provided in the preceding

section; said bonds to state for what purpose issued, to bear interest at a rate not in excess of five per cent. per annum, payable semi-annually, to mature in not more than ten years after their issue, in such amounts and at such times as the commissioners shall determine, but not more than one-fifth of the principal of said bonds shall mature in any one year, and they shall be sold according to law and for not less than par and accrued interest; the proceeds of such bonds to be applied and used exclusively for the payment of the expenses and cost of construction of such stone or gravel road improvement, and the levy for the payment of the principal and interest of such bonds may be in addition to any levy now authorized by law.

(4670-20) SEC. 7. [When person signs both petition and remonstrance; costs.] If it appear that any person who signed the petition asking for such road improvement afterwards signed a remonstrance, so that by counting such person remonstrator instead of petitioner the object and prayer of such petition will be defeated, the person who is both petitioner and remonstrator shall be held liable, and shall pay all costs growing out of the presentation of the petition and the proceedings had thereon; and if the costs are not paid within thirty days after the dismissal of further proceedings in the case, the auditor shall tax the costs against such person, and if there is more than one such person, the auditor shall apportion the costs among such persons in the proportion of the appraised value of their several lands for taxation that are within one mile of the route on which the improvement was prayed for, and shall place the same on the grand duplicate for collection, to become due and payable at the next December collection of taxes thereafter; and the same penalties shall attach and the same proceedings shall be had in the collection as in delinquent state and county taxes.

TOWNSHIP ROADS.

SEC. 4671. [Width of township roads.] All township roads hereafter laid out and established shall not be less than sixteen nor more than sixty feet wide, and the width shall be determined by the viewers, as hereinafter provided.

SEC. 4672. [Petition for township road, and notice.] If any person, for the convenience of himself and neighbors, wishes to have a township road laid out from the plantation or dwelling-place of any person, or from any mill or house of public worship, or to any cemetery or burial-ground, or to a public road, or from one public road to intersect another, or from any tract of wild land or timber land, or from any stone quarries, coal mines or mineral lands other than petroleum or natural gas lands to a railroad or railroad station, or from any railroad station, to a township, county, or state road, or saw-mill, he may petition the trustees of the proper township, after giving thirty days' previous notice thereof, by advertisement posted up in three public places within the township, setting forth therein the time when the petition is to be presented, the place of beginning, intermediate points, if any, and the place of termination of the road.

SEC. 4673. [Petition for township road; bond required.] On such petition being presented to the trustees, a majority of whom shall constitute a quorum for the transaction of all business of which they

have jurisdiction, and they being satisfied that proper notice has been given, as aforesaid, they shall cause the petitioner to enter into bond with sufficient surety, payable to the state, for the use of the township, and conditioned that the person or board of education making such application shall pay into the treasury of the township the amount of all costs and expenses accruing thereon in case the application shall fail; and in case the application shall not fail the trustees may, in their discretion, order the petitioner to pay any or all costs and expenses of such application, or may pay all or any portion thereof out of the township treasury.

SEC. 4674. [**Appointment, and duties of road viewers.**] The petition shall be read in open meeting of the trustees, and they being satisfied that such proposed road is necessary, shall appoint three judicious, disinterested landholders of the township, who shall constitute a jury, and a surveyor, who shall, after taking the oath required by section *forty-six hundred and forty-six*, take to their assistance two chain carriers, and a marker, and proceed, at the time directed by the trustees, or within three days thereafter, to view the ground along which the road is proposed to be established, and locate the same as near the line named in the petition, as a good road can be had at a reasonable expense, and determine, according to the provisions of section *forty-six hundred and forty-two*, the compensation which shall be paid to the owner of the land through which it is proposed to establish the same, and the amount of damage he may sustain.

SEC. 4675. [**Claims for damages.**] The provisions of chapter *two*, as to notice to land-owners, and the manner of claiming compensation and damages, shall apply in all applications relating to township roads.

SEC. 4676. [**Report of viewers.**] The viewers shall make a report in writing to the trustees, setting forth their opinion in full for or against the establishment of such road, and if in favor of the establishment of the road, the report shall state the width to which it shall be opened, which shall not be less than sixteen nor more than sixty feet, together with a statement of the damages, if any, assessed to each person through whose land the road is proposed to be established, which report, together with a return and plat of the survey of the road, shall be deposited with the township clerk, who shall notify the trustees thereof.

SEC. 4677. [**Proceedings of trustees on report of viewers of township road.**] The trustees shall, at their next meeting, cause the report to be read, and, if the same be in favor of establishing the road, and the trustees deem it reasonable and just, they being satisfied that the compensation and damages, if any have been claimed and assessed, are just and equitable, and that the road will be of sufficient importance to the public to cause the same to be paid by the township, they shall order the same to be paid to the person or persons entitled thereto from the township treasury; but if, in the opinion of said trustees, the road is not of sufficient importance to the public to cause the same to be paid by the township, they may refuse to establish such road unless the compensation and damages which have been allowed and assessed are paid by the petitioner, or said trustees may, in their discretion, order a portion of such compensation and damages to be paid out of the township treasury, and require the petitioner to pay the remainder thereof before such road is opened; and the trustees shall order the clerk of the township to enter the report on record and issue their order to the petitioners or any of them, or to the proper supervisor where it is made his duty to open

such road, to open the road to the width named in the report of the viewers, and the same shall be considered a private or township road, subject to be kept open and in repair at the expense of the applicants for the same, or otherwise as provided by law; but if the viewers report that the prayer of the petitioners is unreasonable and ought not to be granted, no further proceedings shall be had therein by the trustees; and all costs accruing under this section shall be paid by the persons making application for the road, except as herein provided.

SEC. 4678. [Repairs of township roads, and costs.] A township road which commences in a state, turnpike, township, or county road, or at a railroad station, and is not less than thirty feet in width, and passes on and intersects another state, turnpike, county or township road, shall be opened, and kept in repair by the supervisor in whose district it may be situated, in whole or in part, and the costs of the view and survey of such road shall be paid out of the township treasury.

SEC. 4679. [When the road is in two townships.] When the route of a proposed township road is along a dividing line between two townships, or crosses such dividing line, the person intending to apply for the road shall notify the trustees of both townships of his intention and on receiving such notice, the trustees of the two townships shall appoint some time and place at which they will meet in joint board; and the time fixed for the meeting shall be so arranged that the applicant will have ample time to give the requisite thirty days' notice, as required in section *forty-six hundred and seventy-two*, which notice shall be given in both townships, and shall state the time and place of meeting of the joint board of trustees.

SEC. 4680. [How joint board to proceed.] The joint board of trustees when so met, shall be governed by the provisions of this chapter, and if they grant a view and survey, they shall appoint a time and place when and where they shall meet to receive the report of the viewers and surveyors; and the proceedings at such meetings shall be recorded in both townships, and in case of an appeal, the appellant shall be governed in all respects by the provisions of the preceding sections, except that he shall be required to enter into bond in both townships in which a part of the road is located.

SEC. 4681. [Width of road may be changed.] Township trustees of the several townships shall have power to increase or reduce the width of any of the township roads within their respective townships, but the same shall not be widened beyond the maximum limit, or narrowed to less than the minimum limit fixed by law for such roads.

SEC. 4682. [Proceedings therefor.] Before a township road shall be increased in width as provided in the foregoing section, the same proceedings shall be had, in all respects so far as the same may be applicable, as are herein required for the laying out, opening, and establishing of such township road; and before any township road shall be reduced in width, as provided in the foregoing section, the same proceedings shall be had, in all respects, so far as the same may be applicable, as may be required in regard to the vacation of township roads.

SEC. 4683. [Vacation.] When a township road becomes useless, any one or more residents of the township may, after giving the notice required in section *forty-six hundred and seventy-two*, petition the trustees to vacate such road, and if the trustees are satisfied that the

proper notice has been given, and no injustice will be done thereby, they shall, at their next regular meeting, declare the same vacated, and give notice thereof to the township clerk, who shall enter the same on the records of the township; but any person in the township feeling aggrieved, shall have a right to appeal from the final decision of the trustees to the probate court in like manner as provided in chapter four.

SEC. 4684. [Alteration.] The trustees of any township are authorized, upon petition for that purpose, to alter or change the direction of any township road in their respective townships, in such manner as shall be reasonable and as the public convenience may require.

SEC. 4685. [Proceedings therefor.] Upon application for an alteration or change in any township road, the same proceedings shall be had by and before such trustees in all respects as required by section *forty-six hundred and seventy-two*.

SEC. 4686. [Are public highways; Washington township, Pick-away county.] All township roads heretofore or hereafter established are hereby declared to be public highways; provided, that in townships which by the federal census of 1890 had, or by any subsequent federal census may have a population of 1,140, in counties which by the last federal census had, or by any subsequent federal census may have a population of 26,959, all roads which commence in an established road and pass on and intersect another established road, and which have been open and used by the public for more than twenty-one years as public highways shall be considered township roads, and shall be kept in repair by the supervisors, the same as other established roads and highways.

(4686-1) SEC. 1. [Submission of improvement question to electors of township and village therein.] The trustees of any township in this state, shall, when the petition of one hundred or more of the taxpayers of such township is presented to them praying for the improvement of the public roads within such township, and including any road running into or through any village or city of the second class, fourth grade, submit the question of the improvement of said roads to the qualified electors of such township, at the next general election held after the presentation of such petition.

(4686-2) SEC. 2. [Form of proposition and ballot: notice.] The qualified electors of such township shall at said election have submitted the policy of the improvement of its public roads by general taxation. Those voting in favor of such proposition shall have on their ballot, "Road improvement by general taxation—Yes;" and those opposed, "Road improvement by general taxation—No." The township trustees shall cause notice of said election to be published in two newspapers in general circulation if such are printed in said township for at least ten days, and shall also cause handbills, announcing the same, to be posted at the usual places of holding elections, at each precinct in such township at least ten days previous to such election.

(4686-3) SEC. 3. [Judges and clerks of election; returns.] The trustees of such township shall appoint three judges and two clerks for each precinct therein, who shall conduct such election in like manner as is by law provided for holding other elections, and who shall within three days thereafter return to the clerk of said township a full and correct abstract of the votes cast at such election, and shall be governed

in all respects by the laws regulating general elections, and shall receive the same compensation as judges and clerks of other elections, which shall be paid out of the township funds, under the order of the township clerk. The poll-book and abstract so returned to the township clerk, shall within five days thereafter, be opened by the township trustees and clerk and a correct statement of the result shall be entered upon the records of the township by the clerk for public inspection.

(4686-4) SEC. 4. [Result of negative vote; resubmission.] If at such election a majority of the votes cast are against the policy of improving the roads by general taxation, the township trustees shall not assess any taxes for that purpose; but they shall, when a like petition is thereafter presented to them, again submit the same question at the next annual election, either spring or fall, to the qualified voters of such township, notice of which shall be given and the election conducted, in all respects, in the manner hereinbefore prescribed.

(4686-5) SEC. 5. [Appointment, etc., of commissioners; vacancy; designation of improvements; engineer's selection and duties.] If, at such election a majority be found in favor of the policy of the improvement of the public roads of such township by general taxation, the trustees of such township shall appoint three freeholders, as commissioners, who shall serve three years from and after the date of their appointment, and in the event of a vacancy occurring upon such board, from any cause whatsoever, such vacancy shall be filled by appointment for the unexpired term by the trustees. Such commissioners shall designate and determine the established roads of such township, which shall, in their opinion, be improved. The commissioners shall call to their assistance a competent engineer, who shall make a correct map of such township, plainly showing the established roads of such township which have been by such commissioners designated for such improvement; also, profiles of such roads, showing the grade thereof, as they then exist, or have been established, which he shall turn over to the custody of the township clerk.

(4686-6) SEC. 6. [Oath and non-compensation of commissioners; compensation of engineer.] The commissioners so appointed shall before entering upon the discharge of their duties take an oath or affirmation, to honestly and impartially discharge their duties with a view to the public welfare, and shall serve without compensation. The engineer shall receive such sum, not to exceed four dollars per day, as he may with the commissioners agree upon. The compensation of the engineer shall be paid out of the township funds, upon the order of the township clerk, after allowance by the township trustees.

(4686-7) SEC. 7. [Order of improvement.] After the report of the commissioners, and the map and profiles have been filed with the township clerk, the township trustees shall, in determining which roads and treets shall be first improved, of those designated by the commissioners, select those nearest the center line of such township, north and south, and if, in their opinion, it is not expedient to improve all roads in all directions at one time, they shall proceed to improve the roads which in their opinion are the most traveled and used within such township.

(4686-8) SEC. 8. [Record; account of receipts and expenditures.] The trustees shall cause to be kept by the township clerk in a book, to be provided by them for that purpose, a full and correct

record of their proceedings under this act, relating to the matter of improving roads within such township; and also an accurate separate account of, receipts and expenditures under its provisions; and no money raised for the improvement of public roads and streets shall be drawn from the treasury, except for liabilities already accrued, and then only in pursuance of orders caused by the trustees, whilst in session as a board, and be entered on the record of their proceedings, and by orders drawn in pursuance thereof by the township trustees, upon the township treasurer, and in favor of persons only to whom the money is due.

(4686-9) SEC. 9. [Award of contracts.] When the township trustees have by resolution determined to improve a designated road, the work of its construction shall be by them publicly let to the lowest responsible bidder, after notice given of such letting by publication in one or more newspapers if published in such township, and by handbills judiciously posted, at least fifteen days before the letting of the contract.

(4686-10) SEC. 10. [Specifications.] For the purpose of letting contract, the trustees shall cause each road about to be improved, to be divided, into suitable sections, and the sections numbered from the point of beginning, toward the township line, and shall let the same by sections. All contracts shall be let upon proper specifications of the various kinds of labor required upon each section and also the material, which shall enter into the construction of the same. Bidders shall be required to separately state their bids for each class of work, in such manner as the trustees may demand, and shall also bid separately for the material to be furnished.

(4686-11) SEC. 11. [Bond.] Contractors shall be required to give bond in amount at least equal to the contract price, with sufficient security for the faithful performance of his contract, payable to the township trustees, for the use and benefit of such township, and with the necessary stipulations on part of the contractor, and specifications of the work and material inserted therein.

(4686-12) SEC. 12. [Point where construction to begin; payment.] In all cases the constructions of such roads shall commence at the point of beginning, and no payment for work shall be made except upon the estimates made by the superintendent of improved roads, appointed by the trustees, and by him duly certified, for work actually done and for material actually furnished, after reserving such per cent., not less than fifteen, as may be fixed by the parties to the contract, to guarantee the performance thereof.

(4686-13) SEC. 13. [Specifications.] No road shall be improved under the provisions of this act which is less than forty feet in width, and shall be graded at least twenty feet in width; shall be turn-piked with earth so as to drain freely to the sides and may be macadamized, raised with stone or gravel not less than ten nor more than sixteen feet in width, and not less than sixteen inches thick in the center, nor less than twelve inches thick at the outer edge of said bed of stone, and gravel well compacted together in such manner as to secure a firm, even and substantial road. In no case shall the grade, or ascent, or descent of the road be greater than seven degrees. The road shall be well provided with the necessary side drainings, waste-ways and under-drains to prevent overflowing or washing of water; and the com-

missioners of the county in which such township is located shall, upon the application of the township trustees, cause the necessary bridges and culverts on said road to be constructed or reconstructed in a substantial manner so as to conform to the grade of the improved road. Provided, that nothing in this section contained shall be construed so as to compel the county commissioners to construct any bridge, which in their judgment could be avoided by a reasonable change in the road, or construct a bridge when for the time being, on account of the financial condition of the bridge fund they cannot, in their judgment, do so, without neglecting the needed repairing or construction of other bridges of greater public importance.

(4686-14) SEC. 14. [Free turnpikes; regulation of tires.] All roads improved under the provisions of this act shall be free turnpikes; but the trustees of any such township shall have the same power to regulate the width of the tires to be used on such road as is conferred upon the county commissioners in section 4904 of the Revised Statutes of Ohio, and the penalties provided in section 4905 of said statute, shall be applicable and imposed for any violation of the rules adopted by such trustees regulating the travel upon such improved roads..

(4686-15) SEC. 15. [Employment, pay, oath, etc., of superintendent of the improved roads.] Before entering upon the improvement of any roads, under the provisions of this act, the trustees of any such township shall employ some competent engineer, who shall be known as superintendent of the improved roads, and who shall be paid not more than four dollars per day for time actually employed, out of the funds raised for the improvement of roads. He shall, before entering upon his duties, take and subscribe an oath or affirmation to faithfully and honestly discharge his duties, and shall give bond in the sum of five thousand dollars, payable to the trustees for the use and benefit of said township, conditioned that he shall faithfully and honestly discharge his duties, all and singular as superintendent of improved roads of such township; and for the duties performed under the provisions of this act, the trustees shall, upon filing an itemized statement to the clerk of such township, as provided in section 1530, Revised Statutes, as amended April 21, 1890, receive two dollars per day in addition to the fees allowed in section 1530, for other services rendered for the time actually employed, and such compensation shall not in any one year exceed the sum of one hundred dollars each, for the services performed under this original act; and the trustees shall allow the township clerk for services performed under this act a reasonable compensation, not to exceed one hundred dollars in any one year.

(4686-16) SEC. 16. [Duties of superintendents; payment for work, etc.] It shall be the duty of the superintendent of improved roads, of such township, to prepare all plans, profiles, specifications and to determine the grade of any road about to be improved by the trustees of such township, when by them directed so to do; and all work done on said roads shall be under his supervision, and all material shall be inspected by him, and both shall be subject to his approval. No payment shall be made for any work or material except upon his estimates and certificate that the same is in compliance with the contract. He shall make and furnish to the parties in interest, estimates for the work done and material furnished, at such times, as the

contract may provide, and may employ such assistance as he may require, first having had the consent of such trustees thereto, who shall receive such compensation as the township trustees may allow.

(4686-17) SEC. 17. [Issue of bonds.] For the purpose of providing the money necessary to meet the expenses of improving such roads, the trustees of any such township may, if in their opinion it be advisable, issue the bonds of the township, payable at such times as they may determine, not exceeding thirty years, in the sum of five hundred dollars each, bearing interest at a rate not to exceed six per cent. per annum, payable semi-annually; and such bonds shall not be sold for less than their par value, and accrued interest, and the aggregate amount of the bonds of any such township, at any one time outstanding, shall not exceed fifty thousand dollars. The sale of such bonds shall be advertised for at least thirty days and the same sold to the highest bidder, at the office of the trustees of such township.

(4686-18) SEC. 18. [Annual tax.] When the trustees of any such township have determined to improve any road, as herein provided, in order to provide for the payment of such improvement and to provide a fund for the redemption of any bonds issued by them under the provisions of section *seventeen* [§(4686-17)] of this act, together with the interest thereon, they shall, in addition to the other road taxes authorized by law to levy annually upon each dollar of valuation of all the taxable property of such township an amount not exceeding three mills upon each dollar of such valuation, and shall continue such levy from year to year until all the roads by said commissioners designated for improvements have been improved, as herein provided, and the bonds issued for that purpose, together with interest thereon, have been paid.

4686-18a. [Submission of question of increased tax levy.] The trustees of any township in this state, in which free turnpikes have been heretofore constructed under the provisions of this act, shall, when the petition of one hundred or more of the taxpayers of such township, including any village, therein, is presented to them praying for an increase of tax levy for the improvement of public roads and streets of such township and village, submit the question for an increase of tax levy for the improvement of public roads and streets to the qualified electors of such township and such village, at the next general election held after the presentation of such petition. The qualified electors of such township and village shall, at said election, have submitted to them the policy of an increase of tax levy for the improvement of its public roads and streets by general taxation. Those voting in favor of such proposition shall have on their ballots, "Increase of tax levy for road improvement by general taxation—Yes," and those opposed, "Increase of tax levy for road improvement by general taxation—No."

[Notice of election.] The township trustees shall cause notice of said election to be given in the same manner as provided in section 4686-2 of this act, and the provisions of section 4686-3 of this act shall be applicable to such election. If at such election a majority of the votes cast are in favor of an increase of tax levy for road improvement by general taxation, the township trustees shall levy annually upon each dollar of valuation of all the taxable property of such township, including such village, an amount not exceeding six mills upon each dollar of valuation, as provided in section 4686-18 of this act; and if a majority of the votes cast are against an increase of tax levy for road im-

provement by general taxation, the township trustees shall not levy a tax in excess of that which they were authorized to levy before such election was held;

[Resubmission of question.] But they shall, when a like petition is hereafter presented to them, again submit the same question, at the next general election held after the presentation of such petition, to the qualified voters of such township, including such village, notice of which shall be given and the election conducted, in all respects, in the manner hereinafter prescribed.

(4686-19) SEC. 19. [Certification and collection of tax.] The trustees of any such township shall cause the amount of taxes by them levied each year, under the provisions of section 18 [§(4686—18)] of this act, to be certified to the auditor of the county, in which it is located, as other taxes are certified to him, and the same shall be by him placed upon the duplicate of the taxable property of such township, and the same shall be collected by the treasurer of said county as other taxes are collected.

(4686-20) SEC. 20. [Provisions for repairs.] The trustees of any such township shall provide for the keeping in repair of such improved roads and for that purpose the provisions of sections 4891, 4892 and 4893, and any amendments thereto of the Revised Statutes are made applicable to such township.

(4686-21) SEC. 21. [Annual tax for repairs.] To provide a fund for the keeping in repair of such improved roads, the trustees of such township may levy annually an amount not to exceed one-half of one mill upon each dollar of the valuation of all taxable property in such township, in addition to other road taxes by them levied.

(4686-22) SEC. 22. [Duties and fees of township treasurer.] The treasurer of any such township shall receive and disburse all money arising from the provisions of this act. He shall receive as compensation therefor one-half of one per centum of the first ten thousand dollars, or less, distributed in any one year and one-fourth of one per centum of any amount in excess of ten thousand dollars, to be paid out of the township funds, and he shall receive no other compensation for services rendered under this act.

(4686-23) SEC. 23. [Exemption.] No taxes or assessments shall be levied upon any property in such township, by the county commissioners of the county in which it is located, under the provisions of chapters 6, 7, 8, title 7, of the Revised Statutes of Ohio, after any public roads thereof have been improved under the provisions of this act.

(4686-24) SEC. 24. [Application of cost where improvements made on assessment plan.] That in all cases where roads have been heretofore improved or shall be hereafter improved by being graded or macadamized or paved on the assessment plan, and paid for, or in process of being paid for, by abutting property owners, that the entire cost of the improvement herein provided for such width as may be designated by the commissioners, and at such time as such commissioners may designate such roads for improvement shall be paid to the treasurer of the township, as the case may be, and the money so paid shall

be by him applied to the payment of outstanding bonds issued for said improvement.

(4686-25) SEC. 25. [Restrictions.] That not to exceed five miles of roads shall be improved in any one year, and that in no event shall the bonds herein authorized be issued for a sum greater than is required to pay the cost of the improvement of roads for the current year.

(4686-26) SEC. 1. [Improvement of dedicated street, etc., by township trustees; appropriation of real estate therefor.] Upon the presentation of a petition therefor, signed by the owners of a majority of the feet front abutting on any dedicated street, alley, or avenue, as set forth in any plat or map of record in the recorder's office of any county, and when said dedicated street, alley or avenue is not within the limits, or subject to the control of any municipal corporation, the trustees of the township wherein said street, alley or avenue is situated, are hereby authorized and required to open, extend, widen and straighten said street, alley or avenue, in such manner as may be indicated on the recorded plat or map which dedicates said street, alley or avenue, and shall appropriate, enter upon and hold any real estate within the township necessary for such purpose, regardless of any other public use of said real estate.

(4686-27) SEC. 2. [Proceedings for appropriation.] The trustees of any township upon receiving the petition, as provided in section one (1) [§(4686-26)] hereof, shall immediately make application to the probate court of the county, as provided in section 2236 of the Revised Statutes of Ohio, and thereafter, as far as practicable, the proceedings shall conform to, and be had under the provisions of sections 2236 to 2261, inclusive, of the Revised Statutes of Ohio.

(4686-28) SEC. 3. [Compensation of trustees; assessments upon abutters; payment of assessments; collection of unpaid assessments; application of moneys; power of county treasurer.] The trustees shall receive reasonable compensation for their services, which shall not exceed in any case the sum of twenty-five dollars each, which, with all costs and expense of constructing said improvement, together with the interest on any bonds issued by the trustees for the same, shall be levied and assessed upon each front foot of the lots and lands abutting on each side of the street, alley or avenue to be improved, and shall be a lien from the date of the assessment upon the respective lots or parcels of lands assessed; said assessment shall be payable in five (5) annual payments, and shall be paid to the township treasurer; and the option of paying his portion of such assessment in full within a period of twenty (20) days from the date of the levy thereof, shall be given to each of the property owners, but no notice to the property owners of such option shall be necessary. The township treasurer shall, on or before the second Monday of September annually, certify all unpaid assessments to the county auditor, and the same shall be placed on the tax list, and shall be, with ten (10) per cent. penalty to cover interest and cost of collection, collected by the county treasurer in the same manner as other taxes are collected, and when collected he shall pay the same to the township treasurer; and all moneys received by the township treasurer on such assessments shall be applied to the payment of the bonds issued under this act, and for no other purpose; and for the purpose of enforcing the collection of the assessments so certified to him, the

county treasurer shall have the same power and authority now allowed by law for the collection of state and county taxes.

(4686-29) SEC. 4. [**Bonds.**] For the purpose of raising money necessary to meet the expense of the improvement the trustees of a township wherein such street, alley or avenue is situated, are hereby authorized and directed to issue the bonds of the township, not exceeding \$5,000 in amount, payable in installments, or at intervals not exceeding in all the period of six (6) years, bearing interest at the rate of six (6) per cent. per annum, which bonds shall not be sold for less than their par value.

(4686-30) SEC. 1. [**Levy for improvement of highways by township trustees.**] The trustees of any township in the state of Ohio, wherein no other system of road improvement by macadamizing or graveling has heretofore been adopted and in use, be, and are hereby authorized to levy and assess upon the taxable property of their respective townships, a tax not exceeding four mills in any one year upon the dollar valuation of the taxable property of such township in addition to other taxes authorized by law, for the purpose of improving by macadamizing and graveling the public highways in such township, as may be deemed expedient or necessary by the board of trustees of such township, and for no other purpose.

(4686-31) SEC. 2. [**Collection of tax.**] That the taxes authorized to be levied shall be placed by the county auditor upon the taxable property of the township, and collected by the county treasurer as other taxes, and when collected shall be paid to the township treasurer of the township from which the same was collected, and be under the control of the township trustees thereof, for the purpose of improving by macadamizing and graveling the public highways of such township.

(4686-32) SEC. 3. [**Trustees to determine roads for improvement; powers of trustees.**] The board of trustees shall designate the road or roads to be improved, which shall be, first the main and leading road or roads of the township, and upon which the material can be most easily procured. The board of trustees after having determined which road or roads are to be improved, shall examine such road or roads and ascertain if the proposed road or roads are sufficiently graded and drained, and if such be not the case, they may take to their assistance a competent surveyor or engineer, whose duty it shall be to make, under the direction of the board of trustees, a survey and level of the road or road as selected, fix the grade of the road or roads, and the grade and capacity of the drains on the sides thereof. The trustees shall cause to be constructed all necessary culverts on such road or roads, fix the width of the graveled, paved or macadamized track not less than nine feet nor more than sixteen feet, and the depth thereof not less than eight inches nor more than twelve inches in the center, and the slope from the center to the sides.

[**Consolidation of districts.**] The trustees may consolidate the road districts, through which any such proposed road improvement passes, and direct the supervisors of such road districts to work the two days' labor in such district in hauling the material, such as crushed stone or gravel upon such road. The work of hauling the material upon the road in such road district shall be under the supervision of the supervisor of such district, but be performed in such manner as shall be prescribed by the trustees.

(4686-33) SEC. 4. [Letting of work.] A majority of the board of trustees shall be necessary to order the said road improvement, and the work of the construction, and the furnishing of the material for such improvement shall be publicly let; excepting such work as may be done by the supervisors of the road district as herein provided. The contract for the material to be used in the construction of said road improvement, and the contracts for hauling said material upon the roads, shall be let separately.

(4686-34) SEC. 5. [Notice by publication; contract to be let to lowest bidder; bond.] The trustees, after having given public notice of the time and place of such letting for at least two weeks, in a newspaper of general circulation in the township or county, or by hand-bills, or both, at the discretion of the board of trustees, specifying the kind and quality of the material, and the part of the road upon which the same is to be used, shall let the same to the lowest bidder, who shall give bond to the acceptance of the trustees.

[Donations.] The trustees may accept donations of material or labor which may be offered by any person or persons for the benefit of any or all roads to be improved, and the road upon which the largest donation is offered shall be constructed first. The bids for the material and for the work of hauling the same shall be separately stated, and the trustees may reject any or all bids.

[Payment for work and material.] The trustees shall examine and accept the work when completed, and ascertain the amount of material furnished under the provisions of this act, and if found in all respects correct, shall draw an order for the amount due for work, or for material furnished, upon the township treasurer, which shall be countersigned by the township clerk.

(4686-35) SEC. 6. [Overseer; compensation.] The board of trustees may appoint one of their number, or some other suitable person, who shall oversee the work, and for services rendered under the provisions of this act, [and] they shall be entitled to receive, for each day actually employed the sum of one dollar and fifty cents per day,

[Record.] And the trustees shall provide for the township clerk a suitable book in which there shall be kept a complete record of the business transacted under the provisions of this act;

[Duty of clerk; compensation.] And it is hereby made his duty to keep a full and complete record of the action of the board of trustees under this act, and the township clerk, for making such record, shall be entitled to receive ten cents per hundred words, and for all other services such reasonable compensation as may be allowed by the board of trustees.

(4686-36) SEC. 7. [Expenses paid from road fund.] The fees of the township officers, the engineer, and the person who may be appointed by the board of trustees under the provisions of this act, shall be paid out of the township road fund.

[Itemized accounts.] But before any payment shall be made for services rendered under the provisions of this act, the person entitled thereto shall make out and file with the township clerk, an itemized account of his services, whereupon the trustees shall, if they find the same correct, draw an order on the township treasurer, countersigned by the township clerk.

(4686-37) SEC. 8. [**Roads free; repairs.**] The roads graveled, paved or macadamized under the provisions of this act shall be free to the public travel, and shall be kept in repair by the trustees out of the funds that come into the township treasury from the county treasurer, as provided for in section one thousand four hundred and fifty-nine (1459) of the Revised Statutes of Ohio.

(4686-38) SEC. 1. [**Township trustees may create township into road district for purpose of improving public way.**] That the trustees of any township, whenever in their opinion it is expedient and necessary, and for the public convenience and welfare, to improve the public ways of said township, in whole, or in part, by grading, macadamizing or graveled, draining, culverting, and bridging, may, by resolution, create said township into a road district for the purpose of improving the public ways therein, or any number of them; and when, in any such township, there may be a municipal corporation, or municipal corporations, such trustees may, by such resolution, erect the portion, or portions, of such township not included within the corporate limits of any such municipal corporation, or municipal corporations, into such road district; and in like manner the township trustees may erect any election precinct, or part of election precinct, in such township, into such road district: and any road district, so created, shall be given an appropriate name, by which it shall be known and designated.

(4686-39) SEC. 2. [**May borrow money and issue bonds.**] That in order to provide means for improving the public ways in any such road district, the township trustees may, if in their judgment it is expedient and necessary to do so, borrow money and issue bonds of such road district for the payment of the same; such bonds to be issued at such times, and in such amounts, as the work progresses, as may, in the judgment of the township trustees, be necessary for the purposes of such road improvements; and such bonds shall bear interest at a rate not exceeding five per centum per annum, payable semi-annually, shall be in denominations of not less than one hundred and not more than one thousand dollars each, as may be determined by the trustees, shall not run longer than twenty years, as may be determined by the trustees, and shall be signed by the township trustees, or a majority of them, and attested by the township clerk: and the interest shall be evidenced by appropriate coupons attached to each bond, and authenticated by the signature of the township clerk:

[**Limit of issue.**] Provided, that it shall not be lawful for the township trustees to cause to be outstanding more than one hundred thousand dollars par value of such bonds of such road district, at any one time: nor to issue, under any single vote, more than the aggregate amount stated in the notice of the election therefor.

(4686-40) SEC. 3. [**Question to be submitted to electors.**] That before the improvement of any such public ways shall be undertaken, and before any bonds shall be issued under this act to pay for such improvements, the question of improving said public ways and of issuing bonds under, and in accordance with this act, shall be submitted to the qualified electors of such road district, at a general or special election of which, of the purpose, time and place, within such township, of holding which, and of the aggregate amount of bonds proposed to be issued, said trustees shall have caused not less than ten days' notice to be given in the manner as provided by the laws of Ohio for other general or special elections, as the case may be.

(4686-41) SEC. 4. [Ballots for election.] That whenever the township trustees shall determine to submit such question to the electors of any such road district, they shall pass a resolution to that effect, in which resolution the boundaries of such road district, if they be not coincident with the boundaries of the township, shall be designated; and the clerk of said township shall file a certified copy of such resolution with the deputy state supervisors of elections of the county in which such road district is located, not less than fifteen days before the time therein fixed for said election; and the deputy state supervisors of elections shall cause to be prepared and furnished at the expense of such township, ballots for said election, on which shall appear the words "Road improvement bonds — Yes," "Road improvement bonds — No;" and when such road district is a part of a township the notice of the election above provided to be given shall designate the boundaries thereof.

(4686-42) SEC. 5. [Judges and clerks of election.] That, at any election held thereunder, the judges and clerks of election for the time being of the township in which the same is held, shall act as judges and clerks, and vacancies shall be filled in like manner as in other elections; and such officers shall certify the result of said election forthwith after it shall have been ascertained, to the clerk of said township, who shall abstract and record the same, and the electors at such election, desiring to vote in favor of the proposition shall place a cross mark, in black lead pencil, to the left of the words "Road improvement bonds — Yes," and those desiring to vote against said proposition shall place such cross mark to the left of the words "Road improvement bonds — No;" and if a majority of the votes cast, upon such question, at such election, shall be in favor of the proposition, the township trustees shall proceed to improve the public ways of such road district and to issue bonds to provide means therefor; and the township clerk shall forthwith certify the result of said election and the description of the boundaries and the name of such road district to the county auditor.

(4686-43) SEC. 6. [Employment of engineer; his duties.] That immediately after said election, if said proposition shall have carried, the township trustees shall employ a competent civil engineer and such assistants as shall be necessary, which engineer shall be the engineer of the road improvements of such road district and shall prepare a correct plat of such road district, showing all of the established public ways therein, which plat shall be designated by the name of the road district, and shall be forthwith recorded in the office of the township clerk; and thereupon the said trustees shall determine the order and manner in which said public ways shall be improved, beginning, so far as practicable, with the main roads; and in improving such public ways the macadamized, or graveled, portion shall be so located, whenever practicable, as to leave sufficient space for a dirt road at its side, and said graveled or macadamized portion shall be not less than eight, nor more than fourteen feet, in width, and the gravel or macadam shall be not less than twelve inches in depth in the center, and eight inches in depth at each outer side.

(4686-44) SEC. 7. [Division of improvement into working sections.] That as the improvement of each public way is determined upon, the engineer shall proceed to divide the improvement into working sections and to make a correct profile of each working section of such public way as it then exists, and a profile of the grades established for

its improvement, and to prepare specifications for, and an estimate of the cost of each working section of the improvement, which shall be filed and recorded in the office of the clerk of the township.

(4686-45) SEC. 8. [**How contract made.**] That the contracts for furnishing the materials and performing the labor in and about such improvement, shall be made by such sections and in like manner as is provided by law for other township improvements.

(4686-46) SEC. 9. [**How payments to be made.**] That payments shall be made on account of such work and materials, upon estimates of the engineer as the work progresses, ten per centum of each estimate being retained until the final completion and acceptance of the work.

(4686-47) SEC. 10. [**Advertisement and sale of bonds.**] That the bonds provided to be issued hereunder shall be sold at not less than par and accrued interest, in such quantities as may be deemed expedient by the township trustees; and shall be advertised and sold in the manner provided by law for the advertisement and sale of any other township bonds.

(4686-48) SEC. 11. [**How repairs to be kept up.**] That such public ways, when improved, shall be maintained and kept in repair by the county commissioners, and the expense thereof shall be paid out of the county road fund.

(4686-49) SEC. 12. [**Tax levy.**] That the township trustees shall provide means to pay the expense and cost of such improvements, and to pay the principal and interest of such bonds, by a general tax levied upon the taxable property of the respective road district. The levies for which tax shall be certified to the county auditor as is provided by law in the case of other levies of other township trustees.

(4686-50) SEC. 13. [**Supervisor of improvement; compensation.**] That the township trustees shall designate one of their number to supervise the improvement of each working section of said public ways, improved under this act, and the trustee so designated shall receive for his services in that behalf not to exceed two dollars a day for the time actually and necessarily employed in such supervision; and the trustees shall provide such blanks, books and records, as shall be necessary to meet the requirements of this act; and shall allow to the township clerk for the services to be rendered by him, reasonable compensation; all of which shall be paid out of the funds provided for such improvement on the order and allowance of the township trustees.

APPEALS IN ROAD CASES.

SEC. 4687. [**When order to open road may be executed.**] No order of the county commissioners for the establishment of a county road, or for the alteration or vacation, in whole or in part, of a state or county road, or changing the width of a county road shall be executed until twenty days have elapsed after the entry of such order in the record of the commissioners, and no order shall issue to open any township road until fifteen days after the same has been established, at which time the clerk of the township may issue such order, by direction of the trustees, unless an appeal has been perfected.

SEC. 4688. [Who may appeal to probate court.] An appeal from the final order of the county commissioners establishing a county road, or altering or vacating, in whole or in part, a state or county road, or changing the width of a county road, may be taken to the probate court of the same county by any person having an estate in fee, for life, or years, in any lands or tenements, situate in any township in the county, in or through which township such new, altered, changed, or vacated road passes, or by the husband of any married woman, or guardian of any ward, having such an estate.

SEC. 4689. [Appeal bond.] To perfect such appeal, the appellant shall execute with sufficient sureties, or cause to be executed by sufficient sureties, to be approved by the county auditor, a bond or undertaking, payable to the state, in a penal sum of not less than one hundred nor more than three hundred dollars, in the discretion of the auditor, conditioned for the payment by such appellant of all costs that may be adjudged against him in the probate court, or in any other court, to which the proceeding may be removed by petition in error, which bond shall be filed with the auditor on or before the twentieth day after the entry of the order appealed from in the record of the commissioners: but minors, idiots, or lunatics, or their guardians respectively, may appeal without giving bond, by causing an entry to that effect to be made within the period aforesaid, by the county auditor in the record of the commissioners.

SEC. 4690. [Auditor to transmit papers to court.] Within ten days after the filing of an appeal bond, or the making of an entry for an appeal, as aforesaid, the county auditor shall transmit to the probate court the original papers in the proceeding, and a certified transcript, from the record of the commissioners, of all proceedings and orders had or made by or before them therein, upon the receipt of which, the probate judge shall forthwith docket the proceedings, styling the petitioners plaintiffs, and the appellants defendants, and shall set a day for the hearing thereof, which shall not be later than the twentieth day after such docketing of the appeal.

SEC. 4691. [When court may affirm or set aside proceedings.] If, upon the hearing of the matter, it appear that the proceedings previous to the appeal were, in substance, regular and legal, and if no exception be taken by any claimant of compensation and damages to the assessment returned to and approved by the county commissioners, the probate court shall affirm the orders of the commissioners, and enter a judgment against the appellants for all costs created by the appeal; but if the previous proceedings are found to be substantially erroneous, the court shall set them aside, and order another view by three disinterested freeholders of the county, to be appointed by the court, who shall perform the same duties that are required by chapter two, of viewers appointed by county commissioners, except that they shall make their return to the probate court.

SEC. 4692. [The order to viewers.] The order to the viewers shall specify a place where, and a day upon which, or within two days, Sunday excepted, thereafter, they shall meet to commence the performance of their duties, and shall require them to make their report on or before a day therein specified, which shall not be later than the twentieth day after the entry of the order in said court: and the court shall also appoint a surveyor to attend the viewers and perform the duties required

by the chapter aforesaid of surveyors, who shall have power to take to his assistance two chainmen and a marker, all of whom shall be disinterested, and he shall deliver a report and plat of his survey to one of the viewers, in time to be returned with their report and it shall be so returned.

SEC. 4693. [When the court must confirm proceedings.] If the proceedings and report of viewers and surveyor, or of the reviewers hereinafter mentioned, be substantially legal, and also substantially coincides with the order of the commissioners appealed from, the court shall confirm such proceedings and report, and shall render a judgment against the appellants for the costs created by the appeal; or, if the report of the viewers be favorable to the petitioners, but materially varies from the order appealed from, the court shall nevertheless confirm the same, if it be within the scope of the petition, and substantially legal; and the court may, in such case, require all the costs created by the appeal to be paid by the appellants, or by the petitioners, or a portion of them by the one party, and the residue by the other, as may be equitable, and shall render a judgment accordingly.

SEC. 4694. [When review may be ordered.] If the report of the viewers, appointed by the court be adverse to establishing, altering, vacating, or changing the width of the road, the court shall, upon the motion of the petitioners, or any twelve of them, but not otherwise, order a review by five disinterested freeholders of the county, to be appointed by the court, to whom an order similar to that hereinbefore prescribed in respect to viewers shall be issued; and such reviewers shall examine the proposed new road, alteration, or change, or road or part thereof proposed to be vacated, as defined or referred to in the order appealed from, and report in writing to the court their opinions for or against the same, with their reasons; and if their report be such as is mentioned in the first clause of the preceding section, the court shall proceed as directed in said clause, but if it be adverse to such new road, alteration, change or vacation, no further proceedings shall be had in the premises, except to render a judgment against the petitioners for all costs that have accrued from the commencement of the proceedings before the commissioners.

SEC. 4695. [When other viewers, etc., may be appointed.] When a viewer, reviewer, or surveyor, appointed by the court, is unable or fails to attend to the duty required of him, the court may substitute another in his stead.

SEC. 4696. [Oath of viewers, etc.] Every viewer, reviewer, surveyor, chainman or marker, appointed or selected under the provisions of this chapter, shall, before entering upon his duties, take an oath faithfully and impartially to discharge the duties of his appointment, which oath may be administered by any person authorized by section *forty-six hundred and forty-eight* to administer an oath, or by any other competent authority.

SEC. 4697. [Appeals from township trustees.] An appeal to the probate court from the final decision of the trustees of the township or any petition or report for or against the establishment of a road, shall be allowed, and the court may order another view of the road, assessments of damages, or make any other order which may be just and reasonable in the case, if the appellant enter into bond to the state, for the use of the township, in the sum of one hundred dollars, with sufficient security,

to the acceptance of the township treasurer, within fifteen days from the date of the decision of the trustees; conditioned, in case the appeal be from a decision in favor of the establishment of a road, for the payment of all costs and expenses arising from such appeal if the road be established and the assessment of compensation and damages be not increased by the proceedings had in the probate court, and in case the appeal be from a decision against the establishment of a road, such bond shall be conditioned for the payment of all costs, and expenses arising from such appeal, if the road be not established by the proceedings in the probate court; and the appeal shall be entered with the probate judge within six days from the filing of the bond with the township treasurer.

SEC. 4698. [Decision of court certified to trustees.] The decision obtained in the probate court as provided in the foregoing sections shall be certified to the township clerk, who shall notify the trustees thereof; whereupon the trustees shall dispose of the case agreeably to the order of the probate court, and the probate judge shall be allowed to tax the same fees which are by law allowed for similar services in other cases.

SEC. 4699. [Appeals by claimant of damages.] Every claimant of compensation and damages on account of the establishment or alteration of a county or township road, or alteration of a state road, or change in width of a county road, may appeal to the probate court, from the final decision of the county commissioners or township trustees, confirming the assessment of compensation and damages made by the viewers in his behalf, or the refusal of the viewers to award damages to him, which appeal shall be perfected and docketed in the mode hereinbefore described in section *forty-six hundred and ninety*, [except that] the appellant shall be the plaintiff, and the obligors in the bond shall be the defendants; and several claimants may unite in a joint appeal, although their claims may be distinct, or they may severally appeal.

SEC. 4700. [Proceedings on such appeal.] Upon such appeal, whether joint or several, the probate court shall confine itself to the questions of compensation and damages presented by it, and shall forthwith, after the docketing thereof, cause a jury of twelve men to be selected and returned by the sheriff and clerk of the county, as provided by law, and, after receiving the names of such jurors, issue a venire commanding them to appear in court, on a day and hour named in the venire, which shall not be later than the twentieth day from its date, to serve as jurors upon the trial of such claims.

SEC. 4701. [Notice to appellants and obligors.] The court shall also issue a summons or notice to all the appellants, whether joint or several, and to the obligors aforesaid, to attend at the same time and place, which summons or notice shall be served by delivering to each person named therein a copy thereof, or by leaving such copy at his usual place of abode; and if any of the parties are non-residents of the county, but have an agent or attorney therein, service on such agent or attorney, in manner aforesaid, shall be sufficient, or a summons or notice may be sent to another county for service upon any party residing or being therein; if an appellant is a non-resident when he perfects his appeal, he shall leave with the probate judge the name of an agent or attorney in the county, upon whom service may be made, and if he fail to do so, no service upon him shall be necessary; and service upon a guardian shall be sufficient service upon his ward.

SEC. 4702. [Challenges, talesmen, and oath of jurors.] If any of the jurors fail to attend, or for good cause be excused from serving, or be set aside on account of a challenge, the panel shall be filled with talesman [talesmen] as in other cases; each party shall be entitled to two peremptory challenges, and may make any number of challenges for cause; and in respect to challenges, the appellants whose claims are on trial shall be considered as one party, and the obligors as the other; the jury shall be sworn in all the causes, whether the appeals are joint or several, at the same time, unless for good cause shown the court otherwise direct; and the oath of the jury shall conform, as nearly as may be, to the oath prescribed for the jury in proceedings by corporations to appropriate property.

SEC. 4703. [Conduct of the trial.] On motion of either party, or of any one of the appellants, the jury shall, under the care of an officer of the court, and with such person or persons as the court may appoint to show them the premises, and before any testimony shall be given, except the plat and field notes of the road and the title papers of the claimants, if produced, which they shall take with them, proceed to examine the road as established or ordered, and the property of the several claimants taken therefor, or alleged to be injured thereby, and after making such examination, shall return to the probate court, at the time the court shall have appointed; whereupon, or upon the jury being sworn, if no view is moved for, the trial of the claims, in the order the court shall direct, or any number or all of them at the same time, if the parties so agree, shall be proceeded with in the same manner as in other jury trials in the court; but any claimant may elect to have his claim tried separately; and the jury shall render a separate verdict upon each claim, which shall be entered upon the record of the court, and a new trial shall not be granted except for misconduct of the jury, nor shall an appeal, except by petition in error, as hereinafter provided, be taken to any other court.

SEC. 4704. [Trial by jury after assessment in court.] When an assessment for compensation and damages has been made, or refused, by viewers of a county or township road, or alteration of a state, county, or township road, or change of width of a county road, appointed by the probate court, any claimant may, before the confirmation of the report of the viewers, file exceptions to their decision upon his claim whether it was rejected altogether, or compensation and damages awarded to him; whereupon such proceedings shall be had for a trial by jury, of his claim, and of any others thus prosecuted, as are provided in the preceding section; and the provisions of said section shall, in all respects, apply to the same.

SEC. 4705. [When claimant to pay costs.] If by the final decision in the probate court, any claimant of compensation and damages do not obtain a greater sum than was awarded to him by the order of the commissioners or township trustees from which he appealed, he shall pay all costs created by his appeal, so far as the court can ascertain the same, and judgment shall be rendered against him for the same; and in cases not hereinbefore specially provided for the court shall give such judgment in respect to costs as may be equitable,

[County paying costs for defendant.] And the county commissioners may, in their discretion, pay out of the county treasury any part or all of any costs that may be adjudged against defendants if in their opinion the public utility and the justice of the case justifies it.

SEC. 4706. [Judgments therefor to be in favor of state.] All such judgments shall be rendered in favor of the state, and may be enforced by execution issued by the probate court, of its own motion, or at the instance of any person entitled to any part thereof, and the money, when collected, shall be paid to the persons respectively entitled thereto.

SEC. 4707. [Court to make complete record.] The probate judge shall make a record of all proceedings had in the probate court under the provisions of this chapter, including the reports and plats of viewers, reviewers, and surveyors, and forthwith, after the termination of the proceedings upon an appeal, transmit to the county auditor, if the appeal was from the county commissioners, or to the township clerk, if it was from township trustees, all original papers received from him, and also a transcript, from the record aforesaid, of the proceedings upon such appeal.

SEC. 4708. [When auditor to make record, and its effect.] If it appear by the transcript so transmitted to the county auditor that the court has approved the establishment, alteration, vacation, or change of a road, and that the compensation and damages, if assessed in or under the orders of the court, do not, in the aggregate, exceed the amount assessed, approved, and ordered to be paid out of the county treasury before the appeal, the auditor shall forthwith record, in the proper book, the final decision of the court in the premises, with all reports, plats, field notes, or other matters appearing in the transcript necessary to a right understanding of the same, and note in said book the date of such recording; and thenceforth the road shall be established, vacated, altered, or changed, as the case may be, and he shall issue the necessary orders for the payment of the compensation and damages.

SEC. 4709. [When commissioners may pay damages.] But if the damages so assessed exceed, in the aggregate, the amount ordered to be paid out of the county treasury, the auditor shall lay the papers and transcript before the county commissioners, at their next session, who may thereupon establish such road, alteration, or change, and order the compensation and damages to be paid out of the county treasury, or refuse to establish the same unless the compensation and damages, or such portion thereof as they shall require, be paid, within such time as they may designate, by the petitioners.

SEC. 4710. [When auditor shall issue order, and its effect.] If the appeal from the county commissioners was under section *forty-six hundred and ninety-nine*, and the compensation and damages assessed in that court in favor of all the appellants do not, together with the compensation and damages awarded to claimants who did not appeal, exceed the amount which the commissioners had, before the appeal, ordered to be paid out of the county treasury, the auditor shall issue the necessary orders for the payment of all said compensation and damages, and the road, or alteration, shall be considered as established from the date of the final order in the probate court.

SEC. 4711. [Proceedings of commissioners on transcript.] But if the assessments in the probate court, with the compensation and damages awarded to claimants not appealing, exceed the amount so ordered to be paid out of the county treasury by the commissioners, the auditor shall lay the papers and transcripts received from the probate judge before the commissioners, at their next session, and they shall act upon

the same as in the case mentioned in section *forty-seven hundred and nine*, but the commissioners, if in their opinion a part only of a road will be of public utility, may record and establish such useful part, and reject the residue, if such division can be made without affecting the rights of any person entitled to compensation and damages.

SEC. 4712. [**Proceedings of trustees on transcript.**] The township clerk, upon receiving a transcript from the probate judge, as afore-said, shall lay it before the township trustees, who shall make an order in conformity with the decision of the probate court.

SEC. 4713. [**Decison of court reviewable on error.**] The final decision of the probate court, made under the provisions of this chapter, may be reviewed, upon a petition in error, by the court of common pleas of the proper county, but shall not be reversed for any defect in form if found to be substantially correct; and upon a reversal, a court of common pleas may award a writ of procedendo, when deemed necessary.

SEC. 4714. [**Fees of officers and others.**] For their services required by this chapter, the officers herein mentioned or referred to shall be entitled to the same fees as they are entitled to by law for like services in other cases; and the person or persons appointed to show premises to a jury shall receive such compensation, to be taxed in the cost bill, as the court shall direct.

SUPERVISORS AND ROAD WORK.

SEC. 4715. [**Duties and powers of supervisors.**] Every supervisor shall open or cause to be opened, and also keep in repair, all public roads and highways which are laid out and established in his road district, and remove, or cause to be removed, all encroachments, by fences or otherwise, and all obstructions that may from time to time be found thereon; and supervisors may enter upon any uncultivated or improved lands, unincumbered by crops, near to or adjoining such roads, cut or carry away timber, except trees or groves or improved lands planted or left for ornament or shade, and may dig, or cause to be dug and carried away, any gravel, sand or stone which may be necessary to make, improve or repair any such road, and that the owner of such property so taken by the supervisor be paid a reasonable compensation therefor, to be assessed by the trustees, and said claimant, for his damages, may have an appeal, as hereinbefore provided for in section *forty-six hundred and ninety-nine*, and the amount found due shall be paid as provided in section *four thousand seven hundred and forty-five*.

Ditches and watercourses on highways into which underground drains empty shall be kept open and deep enough by supervisor, § (4510-16).

SEC. 4715a. [**Unlawful making of open ditches along highways ; penalty.**] It shall be unlawful for any supervisor to excavate or make any open ditch on and along a public highway in front of any dwelling-house or yard surrounding the same, or entrance thereto, or in front of the entrance or approach to any barn on that side of the road on which the said buildings are situate, unless he forthwith puts in a sufficient under-drain and fills up the excavation to the original level, except when authorized to make such open ditch at such points, by the owner of such buildings or trustees of the township. And any road supervisor violating this section shall forfeit and pay to the owner of any such buildings

twenty-five dollars, to be recovered in a civil action before any justice of the peace.

SEC. 4716. [Further powers of supervisors.] A supervisor may also enter upon any lands adjoining or lying near the road, and make such drains or ditches through the same as he may deem necessary for the benefit of the road, but shall do as little injury to such lands, and the improvement and timber thereon, as the nature of the case and the public good will permit; the drains and ditches so made shall be conducted to the nearest water-course, and shall be kept open by the supervisor; and they shall not be obstructed by the owner or occupier of the lands, or any other person having the same in charge, under the penalty of forfeiting a sum not exceeding ten dollars for each offense, which shall be collected by the supervisor, and paid by him to the township treasurer, and applied to the road fund of the township.

(4716-1) SEC. 1. [Road taxes in Highland county; how may be worked out.] In every county in the state of Ohio, having a population of thirty thousand two hundred and eighty-one (30,281) at the last federal census, or any succeeding census, all taxes collected for the repair of all free turnpike roads, and all county roads in said counties, and expended on said roads under the supervisor or any other authorized agent, it is hereby made the duty of such supervisor or agent, to notify all the tax-payers living in any road district in any of the foregoing specified counties whose road tax shall exceed two dollars in any one year, of the time and place of making said road improvements, and said tax-payers shall have the right to work out so much of their several amounts of road taxes as may be expended on said roads, under the direction of said supervisor or agent, at such time and place as he may specify.

(4716-2) SEC. 2. [Penalty for noncompliance with provisions of this act.] Any supervisor or agent neglecting or refusing to notify any of the taxpayers specified in section *one* [§(4716-1)] of this act, shall be liable for the amount of said taxes to be collected by the township trustees, or county commissioners, in an action of debt from the supervisor or agent or their securities on their official bond, for the benefit of any such road as the original tax was levied.

For "Labor on Highways," etc. See § (2664-4) et seq.

SEC. 4729. [Road-beds to be leveled off.] Every supervisor shall cause to be graded and leveled off, the earth and gravel that may be scraped, shoveled, or hauled into any public road under his direction or charge, at the time that such work is performed; and for any neglect or refusal on the part of such supervisor to cause such leveling or grading in a reasonable degree, he shall forfeit not less than one dollar nor more than five dollars, to be paid into the township road fund, to be recovered by an action in the name of the township, before a justice of the peace within the township where such supervisor resides; and the trustees of the township, after having been notified by any resident freeholder of the township of such neglect or refusal, shall, by one of their number, examine the work, and if he find that it has not been performed in a reasonable degree according to the provisions of this section, he shall prosecute such supervisor as provided herein.

SEC. 4730. [Destruction of brush, briars, weeds, etc., on highways.] The superintendent of any improved or macadamized road, supervisor of county and township roads, or street commissioner of any

city or village, shall, between the 1st and 20th days of June, and between the 1st and 20th days of August, and if necessary, between the 1st and 20th days of September of each year, cut and burn or destroy, or cause the same to be done, all brush, briars, burrs, Russian and Canada or common thistle, or other noxious weeds growing or being within the limits of any county or township road, improved or macadamized road, street or alley within his jurisdiction.

[**Compensation.**] Such supervisor or superintendent shall be allowed not to exceed \$1.50 per day, for all necessary labor done in the performance of said work, to be allowed by the trustees and paid by the treasurer of the township out of the road fund, or general fund, but a street commissioner shall be allowed and paid, for any such services performed by him, by the proper municipal authorities.

[**Owner or tenant may perform labor; compensation.**] The supervisor or superintendent of any such roads shall allow any land owner or tenant to cut and destroy any such brush, briars, burrs, thistles or other noxious weeds, growing or being on such roads along the lands abutting on such roads owned or occupied by such land owner or tenant, but before the said work is performed shall fix a reasonable compensation therefor, which shall be credited on the road tax of that year assessed against said premises; provided, however, that such land owner or tenant shall do said work or cause the same to be done before the 1st day of the month in which such work is required to be done as specified in this section.

[**Destruction of briars, brush, etc., on toll roads; penalty.**] The superintendent, or manager of any toll, steam or electric road shall cut, burn or destroy, or cause the same to be done, all brush, briars, burrs, Russian, Canada or common thistle, or other noxious weeds growing or being within the limits of any such road between the days of each month as above specified in this section, and in default thereof, and for five days thereafter, the trustees of any township through which any such road passes, shall cause the same to be done, and shall have the right of action against any such toll, steam or electric road company for the amount of such work, together with one hundred per cent. penalty, and costs of action to be recovered before any justice of the peace of such county.

• SEC. 4731. [**Drift against bridges, ditches, or culverts to be removed.**] The supervisor of each road district, or the superintendent of any free turnpike or improved road, shall remove or cause to be removed all timber or drift lodged against bridges, except toll bridges, or bridges upon toll roads, and all timber, drift and sediment lodged in and obstructing the free passage of water in ditches constructed for the draining and protection of such roads, or under or against any culvert over the same, or over any natural water-course adjoining and upon the line of free turnpikes, and all other public roads in his district; and he shall receive the same compensation for such work or duties performed as is prescribed by law for other road work. And in case any supervisor or superintendent fails or neglects to comply with the provisions of this act, he shall be held liable to a fine of not less than five and not more than twenty-five dollars. And any adjoining landowner affected thereby may, at the expiration of ten days, after serving a written notice on such supervisor or superintendent to remove any drift or sediment, as herein mentioned, of his own motion, remove or cause the same to be:

removed, for which he shall receive the same compensation and from the same source as such supervisor or superintendent would have been entitled to in the performance of his duty.

SEC. 4732. [**Destruction of Canada or Russian thistles, wild lettuce or wild mustard growing on lands in townships.**] The trustees of any township in this state upon information in writing, that Canada or Russian thistles, wild lettuce or wild mustard are growing on any lands in their township, and are about to spread or mature seed between the first day of June and the fifteenth day of October of each year, said trustees shall cause notice in writing to be served upon the owners, lessee, agent or tenant having charge of any such lands notifying such owner, lessee, agent, or tenant that Canada or Russian thistles, or other noxious weeds mentioned in this section, are growing on such lands, and that such Canada thistles, or other noxious weeds, shall be cut and destroyed within five days after the service of such notice; and in default thereof, the said township trustees shall enter upon such lands and cut and destroy such thistles, or other noxious weeds; and that the cost of cutting the same with the cost of such notice, will become a lien against said lands. Any constable or deputy, marshal of any city or village, or deputy, is hereby authorized to make service and return of any such notice, and the fees of such service and return shall be the same as are allowed for service and return of summons in civil cases before magistrates. If any owner, lessee, agent or tenant having charge of any such lands shall fail to comply with such notice, the township trustees shall cause said thistle or other noxious weeds aforesaid to be cut and destroyed, and may employ any person to perform such labor, and allow such person fifteen cents per hour for the time occupied in performing such labor, and pay the sum for such labor out of any money in the treasury of said township not otherwise appropriated, and take receipt for the same. Said township trustees shall make return in writing to the board of commissioners of their county, with a statement of the charges for their services, the amount paid to the person for performing such labor, together with the fees of the officers who made the service of notice and return with a proper description of the premises; and the same having been allowed, shall be entered upon the tax duplicate, and shall be a lien against said lands, from and after the date of such entry on the duplicate, and shall be collected as other taxes, and returned to the township with the general fund.

SEC. 4732a. [**Destruction of Canada and common thistles and other noxious weeds within cities and villages other than Cincinnati, Cleveland, Columbus and Dayton.**] That in all cities and incorporated villages, except cities of the first and second grade of the first class and first and second grade of the second class, the mayor shall, during the month of May of each year, cause notice to be published for two consecutive weeks in one or more newspapers published in the corporation, or by posting up written or printed notices in said city or village at three public places for ten days next previous to the first day of June of each year, warning the owners, lessees or agents of lots and lands within such city or village to cause all Canada or common thistles, or other noxious weeds mentioned in section forty-seven hundred and thirty-two, growing on any such lots or lands within said corporation, to be cut and destroyed so that they do not mature seed or spread to adjoining lands. The common council of such city or village shall upon information in writing that Canada or common thistles or other noxious

weeds mentioned in section forty-seven hundred and thirty-two are growing on any such lands within their corporation between the tenth day of June and the fifteenth day of October of each year, [shall] cause such Canada or common thistles or other noxious weeds to be cut and destroyed so that they do not mature seed or spread to other lands, and said council may employ any person to cut and destroy said noxious weeds and allow such person so employed fifteen cents per hour for the time employed in such labor. And said council shall pay said amount out of any money of the general fund in the treasury of said city or village not otherwise appropriated, and take a receipt therefor. And said council shall make return in writing to the board of commissioners of their county, with a statement of the amount paid for such labor, and one dollar additional, as a penalty on each lot or parcel of land containing less than one acre, and with two dollars on each lot or parcel containing more than one acre. The same having been allowed, the auditor shall enter the amount so certified to him on the tax duplicate of the county against the lots or lands on which said Canada or common thistles or other noxious weeds were cut and destroyed, and the amounts shall be a lien against said lots or lands from and after such entry, and shall be collected as other taxes are collected, and returned to such city or village with the general fund;

[Release of land on payment of costs of such destruction and penalty.] Provided, that [if] any such owner of such lots or lands shall tender to the treasurer of such township in cases of townships, or to the treasurer of such city or village in the case of city or village, the amounts so chargeable against such lots or lands for such labor, together with the penalty as certified to by the clerk of said township, city or village showing the amount of such charges and penalty, the treasurer shall receive the amount so tendered, upon which said lots and lands shall be discharged from further liability.

SEC. 4732b. [Compensation of township trustees; penalty for not performing duties; disposition of fines.] Township trustees shall be entitled to \$1.50 per day for their services under this act; the mayor of any city or village, or trustees of any township, or superintendent or other officer of any toll road, or superintendent of any improved or macadamized road, or supervisor of any county or township road, or street commissioner of any city or village, who neglects or refuses to perform their duties as mentioned in sections 4730, 4732 and 4732a, shall be fined in the sum of fifty dollars in any court having competent jurisdiction of such cases; such fines shall go into the road fund of the township in cases against township or toll road officers; and into the street fund in cases against mayors or other municipal officers.

SEC. 4732c. [Destruction of Russian thistles on lands in townships; penalty for default; final jurisdiction.] The trustees, constables, or road supervisors of any township in this state, upon information in writing that Russian thistles are growing on any lands in their township, between the first day of June and the fifteenth day of October of each year, shall forthwith cause notice in writing to be served upon the owner, lessee, agent, or tenant, that such Russian thistles shall be cut and destroyed within five days after the service of such notice; and in default thereof, such officer shall forthwith make complaint before any justice of the peace within the township, and any owner, lessee, agent or tenant, who shall be convicted of such default, shall be fined in a sum not less than five nor more than twenty dollars, and pay the cost of

prosecution, and in such cases justices of the peace shall have final jurisdiction.

SEC. 4732d. [Destruction of Russian thistles growing on public highway or right of way of railroad company; penalty for default; final jurisdiction.] Any person who has personal knowledge that any Russian thistles are growing on any public highway or right of way of any steam or electric railroad company in any township of this state may notify in writing any trustee or road supervisor within the township such portion of said public highway or right of way of any steam or electric railroad company is situated and in case Russian thistles are found growing on the right of way of any steam or electric railroad company may notify the nearest agent or section foreman who has charge of such portion of such railroad, and such trustee, supervisors, agent or section foreman shall within five days after service of such notice cut and destroy such Russian thistle, or cause the same to be done; and in default thereof, such officer shall upon conviction before any justice of the peace of such township, be fined not more than twenty-five dollars, nor less than five dollars, and pay the costs of prosecution, and in such cases justices of the peace have final jurisdiction.

SEC. 4733. [Trustees or road supervisor may construct foot-walk, foot-bridge, etc., upon petition.] That the trustees may and are hereby authorized to construct on either side of any public road in the township a public footwalk or sidewalk, and also public foot-bridges over streams of water crossing any such road, whenever it is made to appear by petition of twelve freeholders of the township, presented to the trustees, that such footwalk, sidewalk or foot-bridge is necessary; and the trustees may, if the request is deemed reasonable, order the supervisor of the district in which said improvement is desired to construct the same of such material and at such expense as the trustees shall prescribe, which shall not in any manner obstruct the public highway or any private entrance; or the trustees may construct by contract with the lowest responsible bidder; all such improvements to be paid for out of the township road fund.

SEC. 4734. [Guide-boards to be erected.] The township trustees shall cause to be erected and kept in repair, at the expense of the township, at all intersections of the public ways of the township which lead to any city, town, village, depot or other important place or road, a post and guide-boards, displaying in legible letters, the name and indicating the direction and distance to all such places to which each of said roads leads. Upon the presentation to one of the trustees, of a petition, signed by ten freeholders, electors of the township, asking for the erection of a post and guide-boards at any designated intersection of the public ways of such township, and naming the inscription desired thereon, the trustees shall forthwith cause the same to be erected; and failing or neglecting to do so for the period of sixty days, the petitioners may cause the same to be erected and collect the cost thereof, not exceeding five dollars for each post so erected, from the township trustees.

SEC. 4735. [Trustees to furnish tools, machinery and implements.] The township trustees are authorized to furnish such tools, implements and machinery as they may deem necessary for the construction, repair and maintenance of the roads in the several road districts within their township, to be paid for out of any money in the township treasury not otherwise appropriated, and shall take a receipt from each

supervisor for such implements as may be delivered to him, showing the number, kind and condition thereof; and such supervisor shall be liable for any injury or damage that may result to such implements, or any of them, from the improper use thereof or by unnecessary exposure to the weather during the time the same may be in his possession, to be recovered in an action in the name of the trustees, and he shall, on the first Monday in March, annually, return the same to the trustees.

SEC. 4736. [Watering places may be provided.] The township trustees are authorized to provide and maintain suitable watering places for procuring water for persons and animals on the public highways in their township, and the trustees of two or more townships may join in providing and maintaining such watering place where it is located on or near the township line, or on a road leading from one township into another; but not more than fifty dollars shall be expended in or by any township, in any one year, for such purpose, to be paid out of any money in the township treasury not otherwise appropriated.

SEC. 4737. [Additional road tax.] If township trustees deem an additional road tax necessary, they shall determine the per centum to be levied upon the taxable property of their respective townships, not exceeding three mills on the dollar, for the purpose of cutting down hills, filling low places, and making repairs that may be necessary by reason of any casualty that may occur in the public highways of their respective townships, which shall not, in any year exceed the sum of two hundred dollars, unless the question of a greater levy be submitted to a vote of the qualified voters of the township, at a special election called by the trustees for that purpose; if a majority of the qualified voters at such election vote in favor of levying an increased tax, for the purposes aforesaid, the trustees shall certify the same to the county auditor, in writing, on or before the first Monday of June in each year, and the auditor shall assess the same on the taxable property in the township, not included in any municipal corporation, and the same shall be collected in the December installment, and paid out as other taxes, except as hereinafter provided.

SEC. 4738. [Rate of such levy to be published.] The auditor of each county, immediately after the county commissioners and trustees of townships at their annual sessions for that purpose, have determined the amounts to be assessed for road purposes in their respective counties and townships, shall give notice, in some newspaper in general circulation in the county, of the per centum on each hundred dollars of the valuation so determined to be assessed in such county and township respectively, and that said tax may be discharged by labor on the roads under the direction of the supervisors of the several districts; and he shall make a list of the names of tax payers, and the amount of the road tax with which each stands charged, and transmit the same to the clerk of the proper township.

SEC. 4739. [Tax to be certified to supervisors.] The township clerk, immediately after the receipt of such list, shall make out and deliver to each supervisor an abstract of the amount of road tax each person in his district is charged with.

SEC. 4740. [Passways may be constructed.] Any landholder through whose land a state, county, or township road is now or may be hereafter laid out and established, is authorized, under the direction of the

supervisor of the proper district, to construct a passway either over or under such road, so as to permit stock to pass and repass; but the passway shall not be constructed over or under any road within the limits of the outlots of a city, town, or village, and shall not hinder or obstruct the travel on such roads, and shall be kept in good repair at the expense of the landholder.

SEC. 4741. [Vacancies in office of supervisor; how filled.] When a vacancy occurs in the office of supervisor, by death, resignation, or otherwise, the trustees of the township shall appoint some suitable person to fill the vacancy, who shall, before entering upon the duties of his office, take an oath to faithfully and impartially discharge the duties of his office, and shall be under the same restrictions and penalties as though he had been duly elected and qualified.

SEC. 4742. [Penalties against supervisors.] A supervisor who neglects or refuses to perform the several duties enjoined on him by this chapter, or who, under any pretence whatever, gives or signs any receipt or certificate, purporting to be a receipt or certificate for labor or work performed, or money paid, unless the labor shall have been performed or money paid prior to the giving or signing of such receipt or certificate, shall forfeit for every such offense, not less than five dollars nor more than fifty dollars, to be recovered in an action before a justice of the peace within the township where he resides; and the trustees of the township shall prosecute all offenses against the provisions of this section; but if a supervisor conceives himself aggrieved by the judgment of such justice, he may on giving sufficient security for the payment of costs, appeal to the court of common pleas, which shall make such order therein as to it may appear just and reasonable.

(4742-1) [Supervisors not to work out road tax other than their own.] No supervisor shall directly or indirectly be concerned in any contract for working out the road tax, other than his own, provided for in section (4738) *four thousand seven hundred and thirty-eight*, under the penalty provided for in section (4742) *four thousand seven hundred and forty-two*.

SEC. 4743. [Only public roads to be worked.] A supervisor shall not perform nor cause to be performed labor on any road not regularly laid out and established by law.

SEC. 4744. [Certificates for timber, etc., taken for road.] A supervisor of roads, or a superintendent of a free turnpike, improved, or other macadamized road having no gate thereon, who takes any timber, stone, or gravel, for the purpose of making, improving, or repairing any road or structure, or repairing any bridge or crossway within his district, shall, on demand of the owner of the land, or his agent, or the guardian of any ward, or the executor of any will, having the lands in charge from which the same were taken, give a certificate showing the quantity of such timber, stone, or gravel, with the value thereof respectively, and the time, and purpose for which, the same was taken.

SEC. 4745. [How paid.] A person who receives such certificate shall present the same to the township trustees of the proper township, at any regular or called session, within twelve months after the taking of such timber, stone, or gravel, and the trustees, if satisfied that the amount is just and equitable, shall cause the same to be paid out of the fund hereinafter provided for; but a certificate so allowed and paid by

the trustees shall not exceed twenty-five dollars to any road district per annum; any greater amount that may be presented shall be examined, and if allowed, shall be certified by the trustees to the commissioners of the county, with the accompanying vouchers, to be allowed by them if, in their opinion, the same is just and equitable, and the commissioners shall cause the same to be paid out of the county funds for that purpose; and the township trustees are authorized to levy annually, upon the taxable property of their respective townships, in addition to other taxes authorized by law, a tax sufficient to pay such certificates, not exceeding twenty-five dollars to each road district in the township, which shall be certified, assessed, and collected as other township taxes.

(4745-1) SEC. 1. [When county commissioners may condemn material for road purposes.] Whenever the board of county commissioners of any county in this state are unable to purchase of or contract with the owner or owners of any gravel bank or gravel bed, or other deposit of gravel, or the owner or owners of any stone, timber or other material in the judgment of such board of county commissioners necessary for the construction or repair of any road or highway within the said county, upon fair and equitable terms, or in case the owner or owners refuse to sell or contract with the county commissioners of any such county for the sale of such material, on such board of county commissioners agreeing to allow a reasonable [compensation] therefor, then such board of county commissioners are authorized and hereby empowered to condemn and appropriate for public use said material in such quantities as, in the judgment of said board of commissioners, the public needs may require, allowing the owners therefor a just and equitable compensation for the same.

(4745-2) SEC. 2. [Findings may be appealed from.] An appeal from the amount of compensation allowed by any such board of county commissioners, for the payment of any material condemned and appropriated as aforesaid for public use, shall be allowed to the probate court of the county, which appeal shall be perfected and docketed in the mode prescribed in sections *four thousand six hundred and eighty-nine* and *four thousand six hundred and ninety* of the Revised Statutes of Ohio, except that the appellants shall be the plaintiff and the board of county commissioners the defendant.

(4745-3) SEC. 3. [Proceedings in probate court.] Upon such appeal, the probate court shall confine itself to the question of compensation presented by it, and shall forthwith, after the docketing thereof, cause a jury of twelve men to be selected and returned by the sheriff and clerk of the county, as provided by law, and shall issue a venire, commanding them to appear in court on the day and hour named in the venire, which shall not be later than ten days from its date, and sworn as jurors upon the trial of such claim.

(4745-4) SEC. 4. [How notice given.] The probate court shall cause a notice to be served upon the appellant and upon the board of county commissioners to attend at the time and place designated for hearing such appeal, which notice shall be served by delivering each person named therein a copy thereof, or by leaving such copy at his usual place of residence, and if any parties are non-residents of the county, and have an agent or attorney therein, service on such agent or attorney shall be sufficient, or such notice may be sent to another county for

service upon any party residing or being therein; and if the appellant is a non-resident, when he perfects his appeal, he shall leave with the probate judge the name of an agent or attorney in the county upon whom service of such notice may be made; and if he fail to do so no service upon him shall be necessary; and service upon a guardian shall be sufficient service upon his ward; and all further proceedings upon such appeal, relating to challenges, selection of talesmen, oath of jurors and conduct of the trial shall be the same as is prescribed in sections *four thousand seven hundred and two* and *four thousand seven hundred and three* of the Revised Statutes of Ohio, in so far as such proceedings are applicable to the trial of the appeal herein provided for.

(4745-5) SEC. 5. [Costs; how paid.] If the compensation awarded to such appellant on appeal is not greater than the compensation allowed by the board of county commissioners, such appellant shall pay all the costs made on such appeal, and judgment shall be entered against the appellant therefor, for which execution shall be awarded; but, if upon such appeal, a greater compensation is awarded than was awarded by the board of county commissioners, judgment shall be entered against said board of commissioners for such costs.

SEC. 6. This act shall take effect and be in force from and after its passage.

(4745-6) SEC. 7. [Van Wert county; tax for road repair material.] In any county which at the last federal census had, or which at any future federal census may have a population of not less than twenty-nine thousand and fifty (29,050) and not more than twenty-nine thousand and eight hundred (29,800), the commissioners of any such county to pay for such material shall levy a tax upon all the taxable property in said county not exceeding one (1) mill on the dollar valuation, and for a period not exceeding five years, the total sum to be thus raised not exceeding eight thousand (\$8,000.00) dollars.

(4745-7) SEC. 8. [Bonds.] To anticipate the receipts which may come into the county treasury by reason of such tax, the commissioners of any such county may borrow such sums of money as shall not exceed altogether said eight thousand (\$8,000.00) dollars, and issue bonds therefor at a rate of interest not exceeding six (6) per cent. per annum, which bonds shall be payable at a time not exceeding five (5) years from date of issue, and to be paid out of the funds realized from said tax levy.

(4745-8) SEC. 9. [Free use of material.] The commissioners of any such county shall allow the free use of any such material by road supervisors and township trustees, and any other authority in any such county having the care and control of public roads and streets in such county, to be used for constructing, improving and repairing roads and streets.

SEC. 4746. [Obstructions to be removed.] At any time during the year when any public highway is obstructed, the supervisor of the district shall forthwith cause the obstruction to be removed, for which purpose he shall immediately order out such number of persons liable to do work or pay tax upon the public highways of his district as he may deem necessary; if any person thus called out has performed his two days' labor upon the public highways, or paid his road tax, the supervisor shall give [him a] certificate for the amount of labor performed under such order, which may be applied on the labor or tax that may be due from such person the ensuing year.

SEC. 4747. [Roads on state or township lines.] A supervisor of a road district bordering on the state line between Ohio and adjoining state may, when a public highway has been located upon such state line in accordance with and under the provisions of the laws of the state of Ohio, apply the labor of his district upon said road, in the same manner as on roads located within the boundaries of the state; and in case any public road is or may be established as a part of the line or boundary of any township or municipal corporation, the trustees of such adjoining townships, and council of such corporations, as the case may be, shall meet at some convenient place as soon after the first Monday of March as convenient, and apportion such road between the townships, or township and corporation, as justice and equity may require, and the trustees of the respective townships, and council of the corporation, shall cause the road to be opened and improved accordingly, and shall thereafter cause their respective portions to be worked and kept in proper repair.

(4747-1) SEC. 1. [Highways along state line.] When it may be desirable to lay out, construct or improve, by grading, graveling or macadamizing any state or county road on or along the state line, between the state of Ohio and any adjoining state, the boards of county commissioners of the several counties of this state adjoining any other state, are hereby authorized and empowered to join with the boards of county commissioners or other proper authorities of any adjoining counties of other states, in the construction and improvement in the manner aforesaid of such roads above described; and said boards of county commissioners are hereby authorized and empowered to enter into contracts jointly, with said boards of county commissioners or other proper authorities of said adjoining counties in adjoining states, for the construction and improvements of said roads, each county to pay such proportion of the costs of said improvement as shall be determined and agreed upon by and between said boards of county commissioners or other proper authorities of such adjoining states, and the board of county commissioners of any such county in this state, the share of no county in this state to exceed one-half the entire cost of said improvement; but any road so constructed or improved as above described shall be free of all tolls.

(4747-2) SEC. 2. [By what law county commissioners governed.] In the exercise of the powers enumerated and granted in section one [§(4747—1)] of this act, the board of county commissioners of any county in this state shall be governed by and in accordance with the provisions contained in chapters six, seven and eight, division two, title seven, part two of the Revised Statutes of Ohio, and in all acts amendatory thereof or supplementary thereto, so far as the same shall be applicable.

SEC. 4748. [Obstruction of road by railroad agents.] If any person or corporation, or a conductor of any train of railroad cars, or any other agent or servant of a railroad company, obstruct, unnecessarily, any public road or highway authorized by any law of this state, by permitting any railroad car or locomotive to remain upon or across the same for a longer period than five minutes, or permit any timber, lumber, wood, or other obstructions to remain upon or across the same to the hindrance or inconvenience of travelers, or any person passing along or upon such road or highway, every person or corporation so offending shall forfeit and pay, for every such offense, any sum not

exceeding twenty nor less than two dollars, and shall be liable for all damages arising to any person from such obstruction, or injury to such road or highway, to be recovered by an action at the suit of the trustees of the township in which the offense is committed, or of any person suing for the same before a justice of the peace within the county where the offense is committed, or by indictment in the court of common pleas in the proper county; every twenty-four hours such person or corporation, after being notified, suffers such obstruction to remain, shall be deemed an additional offense against the provisions of this section; and all fines accruing under this section, when collected, shall be paid to the treasurer of the township in which the offense was committed, and be applied by the trustees to the improvement of roads and highways therein.

SEC. 4749. [Company liable for fines against employees.] Every railroad company or other corporation, the servant, agent, or employe of which in any manner, obstructs any public road or highway, shall be liable to pay all fines which may be assessed against such servant, agent, or employe for so obstructing the same, and such liability may be enforced by execution issued against such corporation on the judgment rendered against such servant, agent, or employe.

SEC. 4750. [How fires in woods or prairies extinguished.] Whenever the woods or prairies in any township are on fire so as seriously to endanger property, the trustees of such township may order as many of the inhabitants of the township, liable to work on the highways, and residents in the vicinity of the place where such fire is as they deem necessary, to repair to the place where such fire is, and there to assist in extinguishing the same, or stopping its progress; and every person called out under the provision of this section shall be allowed, by the supervisor of his road district, to be applied on his poll or road tax, the same amount per day that he is now allowed for work on public highways.

SEC. 4751. [Penalties for refusal to assist.] If a person refuse or willfully neglect to comply with such order, he shall forfeit a sum not less than five nor more than fifty dollars, to be collected before any justice of the peace of the township.

SEC. 4752. [Bridges over mill-races.] No person possessed of the right to any water privilege shall be required to erect a bridge over any mill-race or water-course, excavated or constructed by such person across any public road or highway for hydraulic purposes; nor shall any person be required to keep in repair any bridge that has been or may hereafter be erected over any mill-race or water-course so excavated or constructed.

SEC. 4753. [Mill-races across roads.] When any public highway is hereafter laid out and established the person possessed of any such right, shall within one year thereafter, file in the office of the auditor of the county, a declaration of such right, in writing, describing the same, and setting forth therein the place at which as near as practicable, he intends at some future day to excavate and construct a mill-race or water-course across such highway; which declaration shall be recorded by the auditor and thereafter such right shall be considered valid in law for the benefit of such person, his heirs, or assigns; but nothing in this section shall be so construed as to prevent any person possessed of such right from excavating and constructing a mill-race or water-course across any public highway that has heretofore been laid out and established on giving the notice required by the next section.

SEC. 4754. [Notice to be given of intention to construct mill-race.] When any person excavates or constructs a mill-race across a public highway, he shall give at least thirty days' previous notice, in writing, to the trustees of the proper township, of his intention so to do; and if he fail or neglect to give such notice, the supervisor of the proper road district may, if, in his opinion, the public good demands it, fill up such mill-race or water-course, at the cost of the party so failing and neglecting to give the notice, to be recovered by the supervisor, together with fifty per centum thereon, and the costs of suit, for the use of such road district, in an action before any court of competent jurisdiction.

SEC. 4755. [Trustees may authorize improvement of certain roads.] The trustees of any township may, upon the written petition of one or more persons interested, describing the road or part thereof proposed to be improved, authorize any person living on or near any unimproved state, county or township road, situate within the township, which intersects or connects with any turnpike or improved road, to improve any part or all of such road situate within the township, within such time as they may direct, by grading the same not more than sixteen feet wide, and graveling such grade not exceeding twelve feet wide, or otherwise improving the same; such improvement shall be made under the instructions of the supervisors of roads within whose districts the road or part thereof to be improved is situate; and as soon as such road or part thereof authorized to be improved as aforesaid, within any road district, is fully improved and completed to the satisfaction of the supervisor of such district, he shall estimate the work so done by the several persons authorized, either by themselves or those employed by them, under such rules and regulations as the township trustees shall prescribe as to extent and character of such improvement, and give to such persons a certificate specifying the amount of labor performed by them, stating when authority was given to improve such road, and when the same was completed in his district, and accepted by him, and the value in money of such labor so estimated; but in estimating the value of such labor in money, the supervisor shall not allow a greater sum than two dollars and twenty-five cents for each team and driver, and not to exceed one dollar for each hand per day for the time actually employed; and in case of dispute between the supervisor, and any person interested in such improvement as to the manner of making the same, its completion, or the value of the work, the matter in dispute shall be submitted to the trustees of the township, and their decision shall be final.

SEC. 4756. [Expense of improvement to be credited on road tax.] The holder of any such certificate shall be entitled to have the amount thereof credited on any road tax, payable in labor, levied on the property of such person situate within the county, after the completion of such improvement; if such road tax levied in any year on such property is not sufficient to cover the amount of the certificate, the same shall in like manner be so credited from year to year, until the certificate is fully paid without interest; at the time of making such credit upon the certificate, the supervisor shall issue and deliver to the holder thereof a receipt for the road tax charged against such person for the current year; and the holder of the certificate may transfer the same, or any balance due thereon, to any subsequent purchaser of the property owned by him when the certificate was issued.

SEC. 4757. [Material for improvement of public roads.] The trustees, at the time of authorizing such improvement, shall direct in their order at what point the materials therefor shall be taken, under the general laws in force for procuring materials for the improvement of public roads, which point shall be the nearest and most convenient to the place where the materials can be procured in the township; provided, that where a road is located in two townships, the material for the improvement thereof may be procured at the nearest and most convenient point in either township.

ROAD DISTRICTS.

(4557-1) SEC. 1. [Organization of road districts; how governed and controlled.] In any county two or more adjacent townships, not exceeding four townships, occupying contiguous and compact territory, may organize into road districts. Such road districts shall be governed and controlled for the purpose of constructing pikes and improving roads as herein provided by a road commission, composed of not more than four in number.

[Road commission; how appointed; nominations by township trustees; removals.] Such commission shall be appointed by the county commissioners of such county, not more than one of whom shall be a resident of any such township composing such road district, and such commissioner shall be nominated by the respective township trustees, and may be removed at any time for incompetency or neglect of duty by said county commissioners.

[When appointment to be made.] Provided, that no such appointment of road commissioners shall be made or such commissioners appointed until the construction of such road district shall be petitioned for, to the county commissioners, by at least fifty or more of the resident taxpayers of each of such townships asking for the improvement of the public roads of such townships and asking for the establishment of such road district.

(4757-2) SEC. 2. [How districts created.] The county commissioners on receiving such written petitions from the respective townships shall be authorized to forthwith pass resolutions and place the same upon their journal organizing such townships into a road district and notify the respective boards of trustees of such townships of such action, and the same shall, within ten days thereafter, be considered and held to be a road district for the purposes of this act.

[Notice to trustees to make nominations; selection of board; apportionment politically.] Said county commissioners shall forthwith, after the expiration of such ten days, notify, in writing, the township trustees to nominate suitable persons for the office of road commissioner and from such nominees so presented by such trustees, the county commissioners shall select a non-partisan board not more than two of whom shall be a member of any one political party.

[Meeting of board for organization.] Said board shall forthwith meet at the county seat and organize by electing one of their number president, and one of their number secretary, and shall keep a record of all their proceedings.

(4757-3) SEC. 3. [Submission of question of improving roads.] Within ten days after said commission is duly organized, it shall notify the deputy state supervisors of elections of such county, of its said organization, whereupon it shall be the duty of the deputy state supervisors of elections to submit the question of improvement of the public roads of such road district, to the qualified electors thereof at any general or special election. The qualified electors of any such district including any village or city situated therein shall at such election have submitted to them the proposition of improving the public roads within such district by general taxation levied upon property in such district.

[Form of ballot.] And those voting in favor of such proposition shall have on their ballots, "Road improvement by general taxation—Yes," and those opposed, "Road improvement by general taxation—No."

[Notice of election.] The said road commissioners shall cause notice of such election to be given in at least two of the newspapers published in or of general circulation in such road district, and shall also cause handbills or posters announcing the same to be posted up at the usual place of holding elections in each ward and precinct in such road district at least ten days prior to such election.

(4757-4) SEC. 4. [Appointment of judges and clerks; returns; compensation.] The deputy supervisors of elections of such county shall appoint four judges and two clerks for each ward and precinct in such road district, who shall conduct such election in like manner as is by law provided for holding other elections. They shall forthwith return to the deputy supervisors of such county, a full and correct abstract of the vote cast at such election, and shall be governed in all other respects by the laws regulating general elections and shall receive the same compensation as judges and clerks of other elections, which shall be paid in accordance with general statutes.

[Canvass of votes.] The poll-books and abstracts so returned to the deputy state supervisors of elections, shall, within two days thereafter, be opened by them and a correct statement of the result shall be entered upon the records of the county commissioners by the auditor of the county for public inspection.

(4757-5) SEC. 5. [Effect of negative vote.] If, at such election, a majority of the votes cast are against the proposition of improving the public roads by general taxation, the said road commissioners shall not assess any tax for that purpose, and their duties shall cease;

[Resubmission of question.] And when a new board of road commissioners, as herein provided by petition, shall be again created, they shall, when a like petition is thereafter presented to them, again submit the same question at the next annual election, either spring or fall or special, to the qualified voters of such road district. Notice of such special election shall be given as provided by the general statutes for submitting special questions.

(4757-6) SEC. 6. [Effect of affirmative vote; designation of roads for improvement.] If, at such election, a majority be found in favor of the policy of improvement of the public roads of such road district by general taxation, such road commissioners shall forthwith designate and determine what roads and the extent of the improvement in the respective townships which should in their opinion be improved, at what points the improvement should begin and how much of such roads

to be completed annually. But no roads shall be by them designated for improvement which is [are] not already established or which does [do] not now extend beyond the road district limits. Nor shall any public highway within the corporate limits of city or village within such road district be so designated or improved unless such road extends to and beyond the said road district continuously.

[**Employment of engineer and assistants.**] Such road commissioners shall have the power to employ a competent civil engineer, and such assistants for him as they may deem necessary, who shall make a correct map of the established roads of such road district, designating plainly which have been by such commissioners selected for improvement, and also profiles of such roads showing the grades thereof as they then exist, as well as prepare such other information as may be required by said commissioners, all of which shall be kept on file with the secretary of said road commission for public inspection.

(4757-7) SEC. 7. [**Term of office of commissioners; oath.**] The commissioners so appointed shall hold their office for a term of four years, and before entering upon the discharge of their duties, take an oath of office to honestly and impartially discharge their duties with a view to the public welfare.

[**Compensation.**] They shall receive as compensation for each day actually employed the same compensation as township trustees.

[**Engineer's compensation.**] Such engineer shall receive such sum not exceeding four dollars per day as he may agree upon with said road commissioners, and not to exceed one hundred dollars in any one month.

[**How compensation paid.**] The compensation of the commissioners and engineer shall be paid out of the road fund, raised for the purpose of said improvement, upon the order of the auditor of the county after the allowance by the county commissioners.

(4757-8) SEC. 8. [**Selection of roads for improvement.**] Immediately after the report of such road commissioners and the map and profiles of such engineer have been filed, such road commissioners shall, in determining which road shall be first improved of those designated, select the most public roads of the road district both east and west and north and south, and if, in their opinion it is not expedient to undertake the improvement of such selected roads in all directions at one time, they shall proceed to first improve the most prominent thoroughfare in such district.

(4757-9) SEC. 9. [**County auditor ex officio member.**] The county auditor shall be ex officio member of said board but shall only have a vote in case of a tie vote on any question before said board of road commissioners.

[**Record kept by commissioners.**] The said road commissioners shall cause to be kept by the secretary or clerk of the board in a record book to be provided by them for that purpose, a full and complete record of their proceedings under this act relating to the improvements of all public roads acted upon by them; and also an accurate, separate account of receipts and expenditures under its provisions;

[**Payments for improvement.**] And no money raised for the improvement of such roads shall be drawn from the treasury except to

pay liabilities already accrued and then only in pursuance of orders issued by said road commissioners or a majority of them while in session as a board to be entered upon the record of their proceedings, upon a ye and a nay vote, and by orders drawn in pursuance thereof by the auditor of the county and in favor of the persons only to whom the money is due.

(4757-10) SEC. 10. [Work of construction let on bids; notice.]

When such road commissioners have, by resolution, determined to improve a designated road or part thereof, the work of its construction, including all labor and material, shall be by them publicly let to the lowest responsible bidder, after due notice given of such letting by publication in one or more newspapers published or of general circulation in such road district and by posters judiciously posted.

(4757-11) SEC. 11. [Division of roads into sections for purpose of sale of work.] For the purpose of letting contracts such road commissioners shall cause each road about to be improved to be divided into suitable and convenient sections, and the sections shall be numbered from the point of beginning toward the outer line of such road district, and the same shall be let by sections. All contracts shall be let upon plans and specifications of the various kinds of labor required upon each section and also the materials which shall enter into the construction of the same.

[What required of bidders.] Bidders shall be required to separately state their bids for each class of work in such manner and upon such blank forms as such road commissioners may require.

(4757-12) SEC. 12. [Contractor's bond.] Each contractor shall be required to give bond in amount at least equal to the contract price with sufficient sureties for the faithful performance of his contract, payable to the state of Ohio for the use and benefit of such road district, with all necessary stipulations on the part of the contractor to carry out the provisions of such contract, the form of such contract and bond to be approved by the prosecuting attorney.

(4757-13) SEC. 13. [Superintendent of construction; compensation.] Such road commissioners may select, in addition to the civil engineer, when necessary, a superintendent to superintend the construction of such improvement whenever, in their opinion, such civil engineer may not have the time to perform such duties, whose compensation shall not exceed four dollars per day for the time actually employed and in any event not more than one hundred dollars per month.

[How payments made.] No payments for work or material shall be made except upon the estimates made by the engineer in charge, and by him duly certified of work actually performed and the materials actually furnished, and after reserving such per cent., not less than ten, as may be fixed by the parties to the contract to guarantee the performance thereof, and approved by the board of road commissioners or a majority thereof.

(4757-14) SEC. 14. [Roads improved to be free turnpikes; width of improved road; trustees may regulate width of tires.] All roads improved under the provisions of this act shall be free turnpikes, nor shall any road be improved under the provisions of this act which is less than forty feet in width, and the trustees of any township within such road district shall have the power to regulate the width of tires to

be used on such roads as is conferred upon county commissioners in section 4904 of the Revised Statutes, and the penalties provided by section 4905 of said statutes shall be applicable and imposed for any violation of the rule adopted by such trustees to regulate travel upon such improved roads.

(4757-15) SEC. 15. [Oath and bond of superintendent and engineer.] Such superintendent and engineer, before entering upon their duties, shall take and subscribe to an oath of office, and shall give bond in the sum of three thousand dollars each, payable to the state of Ohio, for the use and benefit of such road district, conditioned that they will faithfully and honestly discharge their duties all and singular as superintendent and engineer of improved roads of such road district.

(4757-16) SEC. 16. [Bonds.] For the purpose of providing the money necessary to meet the expense of improving said roads the said board of road commissioners, if in their opinion it be advisable, shall issue bonds of such road district, payable at such times as they may determine, not exceeding fifteen years, in sums of five hundred to one thousand dollars each, bearing interest at a rate not exceeding six per cent. per annum, payable semi-annually. But such bonds shall not be sold for less than their par value, and the aggregate amount of the bonds of any such road district at any one time outstanding shall not exceed one hundred and fifty thousand dollars.

[Advertisement of sale.] The sale of all such bonds shall be advertised for at least thirty days in two newspapers in such county, and the secretary of such board shall send marked copies of such advertisement to at least ten leading bond buyers in the state or other states, and such bonds shall be sold to the highest bidder. Said road commissioners shall have the right to reject any and all bids.

(4757-17) SEC. 17. [Levy to provide payment of improvement and redemption of bonds.] When the commissioners of any such road district have determined to improve any road or roads as herein provided, in order to provide for the payment of such improvement and to provide for the funds for the redemption of the bonds issued by them under the provisions of this act, together with the interest thereon, they shall report the same to the county commissioners who, in addition to the other road taxes authorized by law, shall levy annually, upon each dollar of the valuation of all the taxable property of said road district, an amount not exceeding three mills upon each dollar of such valuation, and shall continue such levy from year to year, until all the roads by such commissioners designated for improvement have been improved as herein provided, and the bonds issued for that purpose, together with the interest thereon, have been paid.

(4757-18) SEC. 18. [Commissioners to certify levy to county auditor.] Such county commissioners of any such county shall cause the amount of the taxes by them levied each year, under this act, to be certified to the auditor of the county in which it is located as other taxes are certified to him, and the same shall be by him placed upon the duplicate of taxable property of such road district, including all cities and villages therein situated, and the same shall be collected by the county treasurer in like manner as other taxes are kept.

(4757-19) SEC. 19. [Repair of roads.] Such roads so improved in said road district shall be kept in repair under the general statute as other roads are now repaired.

(4757-20) SEC. 20. [Receipts and disbursements of moneys.] The treasurer of the county in which any such road district is situated, shall receive and disburse all moneys arising from the provisions of this act on certificate and orders as herein provided.

(4757-21) SEC. 21. [Duty of prosecuting attorney.] The prosecuting attorney shall be the legal adviser of such board and approve all forms of contracts and bonds and approve all proceedings of such board.

TURNPIKES.

SEC. 4758.- [When and where commissioners may build turnpikes; repairs by commissioners of streets in municipalities.] The county commissioners of any county, when they become satisfied that the public interest of their county demands and justify special action for the improvement of the roads therein, may appoint three disinterested freeholders of their county as commissioners, to view, survey and locate one or more roads, beginning at and leading from the county seat of the county, or such other and eligible points as may be deemed proper, and running by such direct and eligible route as they may find best for the public convenience, and terminating at any point within or at the county line; but they are not authorized or required to construct any such road within the corporate limits of the town or city where the county seat is located, when according to the last federal census, more than one thousand inhabitants are contained in such corporate limits; and for the purpose of improving and repairing those streets in such towns or cities as are a continuation through the same, of the roads heretofore improved under the provisions of this section, the county commissioners shall cause to be expended, in the manner prescribed by law for repairing such roads, so much of the tax collected therein for turnpike purposes as may be necessary to keep such streets in good repair.

SEC. 4759. [The manner in which the road must be constructed.] The roads established and constructed under this chapter shall be opened not more than sixty nor less than forty feet wide, and at least twenty feet in width shall be turnpiked with earth so as to drain freely to the sides, and raised with stone or gravel not less than ten nor more than sixteen feet in width, nor less than twelve inches thick in the center, and not less than eight inches thick at the outer edges of such bed of stone or gravel, well compacted together in such manner as to secure a firm, even and substantial road; but the commissioners may, in their discretion, cause the road to be constructed wholly of earth, when stone or gravel is not accessible to the line of the road; in no case shall the grade of ascent or descent on the road be greater than seven degrees; the road shall be well provided with all necessary side drains, waste-ways, and underdraining, to prevent overflowing or washing by water, and with substantial bridges or culverts at all crossings of water-courses; and such roads shall be free to the public for travel.

SEC. 4760. [Powers of county commissioners.] The county commissioners may authorize the commissioners by them appointed to call to their assistance the county surveyor, with the necessary and proper assistance to lay out, survey and locate such turnpike road through or upon any improved or unimproved lands, on the best route between the

point of beginning and termination, and to obtain by grant, or take propositions for the purpose from the owners of land over which the road will pass, the right of way, and to take timber and other materials necessary to the construction and repair of the same.

SEC. 4761. [Compensation; filing amount to save costs; locating over other roads.] When said commissioners and the owner or owners fail to agree as to the amount of compensation and damages, then the same shall be ascertained and determined by the board of county commissioners, and if said board of county commissioners and the owner or owners fail to agree as to the compensation and damages, or when the owner is unknown, non-resident, or incapable of contracting, then the same shall be ascertained and adjusted by proceedings had in the name of the county commissioners, under the law providing for the appropriation of private property by corporations; provided, however, when any owner or owners not unknown, or not non-residents, or not legally incapacitated from entering into a contract, and said commissioners fail to agree as aforesaid, they shall cause to be filed with the proceedings brought in the name of the county commissioners the amount of compensation and damages by them tendered in writing to such owner or owners, and unless said owner or owners shall be allowed by the jury in said proceedings compensation and damages in excess of the amount allowed and tendered by said commissioners, then said owner or owners shall pay all costs made in said proceedings in the name of the board of county commissioners; and the county commissioners may authorize the viewers or commissioners by them appointed to locate the road upon the whole or any part of any state, county, or township road heretofore laid out and established within the county, and widen, alter, change, or vacate the same, or any part thereof, subject to the rules as to compensation or [for] property appropriated as aforesaid.

SEC. 4762. [County commissioners may require donations.] Before determining upon the location or establishment of any such turnpike road, the county commissioners may require donations of money, and written agreements on the part of taxpayers of the county subjecting their taxable property to taxation annually, to aid in the location and construction of the same during the term of years named therein, and at the rate therein specified, which agreements shall be filed and recorded in the office of the county auditor, and from the time of such filing and recording shall operate as a lien upon the real estate of the several parties joining therein as donors for the purpose therein provided; all revenues derived from donations in money and taxation shall be kept and held as a separate fund in the county treasury, and shall be applicable only to the purposes of locating and constructing such turnpike roads; and if the commissioners determine not to establish and construct such road, then any money received as donations shall be refunded, and the agreements for donations by taxation, shall become inoperative.

SEC. 4763. [Question of general tax for turnpikes must be submitted to electors.] The commissioners shall not levy any general tax, nor appropriate any money, except so far as may be necessary to pay the expense of preliminary surveys already commenced, or any other liabilities already incurred, to be expended in the construction of such turnpikes, without first submitting to the qualified voters of the county the question as to the policy of constructing such roads by general tax,

which submission shall be made at any annual spring or fall election; and the commissioners shall cause public notice of such vote to be given by publication in all the newspapers printed and of general circulation in the county, and also by causing hand-bills to be posted up, at the usual place of holding elections, in each township and ward throughout the county, at least fifteen days prior to such election; provided, that in any county in which such question has heretofore been submitted, under the authority of an act entitled "an act to authorize county commissioners to locate and construct turnpike roads," passed April 30, 1869, and acts amendatory thereto, and in which, at such election, the majority of the votes cast were in favor of such policy, no vote shall be again required to authorize the commissioners to continue such tax and improve roads as provided for in this chapter.

SEC. 4764. [Conduct of the election.] The judges of such election in the several townships and wards in any county in which such question is submitted, and such notice given, as aforesaid, shall open a poll for taking such vote, receive and count the ballots cast, and within three days thereafter return to the auditor of the county a full and correct abstract of the votes, and shall in all respects be governed by the laws regulating general elections, and be entitled to the same compensation for returning the poll-books, which shall be paid out of the county treasury on the order of the auditor; and the poll-books so returned shall, within five days from the day of holding such election, be opened, and the votes counted by the commissioners and auditor of the county, and a correct statement of the result shall be kept by the auditor on file in his office for public inspection.

SEC. 4765. [Question may be again submitted.] If at such election a majority of the votes so cast be against the policy of constructing such turnpikes, the commissioners shall not assess any tax for that purpose, but they may, on petition of not less than one hundred taxpayers of the county, again submit the same question at any regular annual election, either in the spring or fall, to the qualified voters of the county, notice of which shall be given and the election conducted in all respects in the manner prescribed in the two preceding sections.

SEC. 4766. [Effect of an affirmative vote.] If at any such election a majority be found in favor of the construction of such turnpikes, the commissioners may proceed to levy taxes, issue bonds, and appropriate and expend money in the construction of such turnpike roads, as in their judgment may be necessary to the public convenience, and promotive of the public interest.

SEC. 4767. [When an assessment may be made.] When the county commissioners receive or require donations of money, or written agreements on the part of taxpayers subjecting their taxable property to taxation annually, to aid in the location and construction of such roads, and a majority of the taxpayers within the boundaries of the road sign such subscription or agreement, the commissioners shall thereupon be authorized to levy the amount thereof upon all the taxable property within the boundaries of the road, according to the benefits to said property, taking into consideration any assessments that have been heretofore made; and the boundaries of the road shall not be taken to include any property that does not lie within two miles of such contemplated improvement.

SEC. 4768. [When a tax may be levied, and how much.] Upon the location and establishment of any such turnpike road by the county commissioners, and after an affirmative vote by the electors, they may, for the purpose of aiding in the construction, and to provide a permanent fund for the maintenance and expense thereof, levy annually, in addition to other road taxes authorized by law, a tax for turnpike road purposes of not more than four mills on the dollar of valuation on the grand duplicate of taxable property in the county, and to continue such levy from year to year, until the road or roads which have been commenced are completed.

SEC. 4769. [Restriction of the levy; county bonds may be issued.] No such taxes shall be levied on any lands which have heretofore been assessed for the construction of any free turnpikes, or improved road or roads, already constructed, or in the course of construction at the time of the levy of the tax unless the amount that would be ratably levied upon such lands exceed the amount of such assessment, and in such case such excess only shall be levied and collected; and for the purpose of raising the money necessary to meet the expenses of such improvements, the county commissioners may, if in their opinion the same be advisable, issue the bonds of the county, payable at such times as they may deem advisable, with interest not exceeding the legal rate per annum, payable semi-annually, and which bonds shall not be sold for less than their par value.

SEC. 4770. [Records to be kept, and how payments made.] The commissioners shall cause to be kept by the county auditor a full record of all the proceedings in the location, establishment, and construction of the road, together with accurate accounts of receipts and expenditures of money under the provisions of this chapter; and no money shall be drawn from the treasury except to pay liabilities already accrued, and then only in pursuance of orders caused by the commissioners whilst in session as a board, to be entered upon the record of their proceedings, and by orders drawn by the county auditor, upon the county treasury, in favor of the persons to whom such money is due.

SEC. 4771. [Letting the work.] The work of the construction of such roads shall be let publicly by the county commissioners to the lowest responsible bidder, after due notice given of such letting by publication in one or more newspapers published or of general circulation in the county, or by hand-bills, or both; for that purpose the commissioners shall cause the same to be divided into convenient sections, and each section numbered from the county seat, or other point named as the place of beginning, toward the termination, and shall let the same by sections, with proper specifications of the various kinds of labor required on each section; and bidders shall be required to separately state their bids for each class of work, in such manner as the commissioners shall provide, and each contractor shall be required to give bond, with sufficient sureties, for the performance of his contract, payable to the county commissioners, for the use and benefit of the county, and with the necessary specifications and stipulations on the part of the contractor inserted therein.

SEC. 4772. [Payments to be made on estimates.] In all cases the construction of such roads shall commence at the point of beginning, and no payment for work or material shall be made except upon estimates made by the surveyor or engineer employed by the commis-

sioners, and by him duly certified, of work actually done or materials actually furnished, or both, and after reserving such per cent. as may be fixed by the parties to the contract, to guarantee performance of the same.

SEC. 4773. [Compensation of viewers, etc.] The viewers, surveyor or engineer, and their assistants, shall be entitled to receive the same compensation for their services required under the provisions of this chapter, as is now allowed by law in the construction of county roads.

(4773-1) SEC. 1. [Construction of free turnpikes by county commissioners.] Whenever a majority of the landowners along any contemplated route, having given notice for thirty days by publication in some newspaper published in the county of their intention so to do, shall present their petition to the board of county commissioners of any county praying for the establishment and construction of a free turnpike road along such contemplated route, designating in the petition the place of beginning and terminus of such proposed road,

[Employment of engineer.] The commissioners of such county, if they deem the construction of such road advisable and of general public interest, are hereby authorized to call to their assistance a competent engineer who, with them, shall determine the line of location of such road connecting the beginning and terminus points designated, and the width of the road which shall not be less than thirty feet nor more than sixty feet;

[Engineer to furnish plans, etc.] And said engineer shall determine the full cost and expense of making said improvement, and furnish plans, profile and specifications for the construction thereof.

(4773-2) SEC. 2. [Security for cost; order of commissioners.] Upon the payment into the county treasury of, or securing by proper bond to the state of Ohio for the use of the county to the approval of the commissioners for the payment of twenty per cent. of the total cost of construction of said road, which cost shall include the cost of engineering, superintending, grading, macadamizing, and culverting said road, the said county commissioners are authorized to order the construction thereof.

(4773-3) SEC. 3. [Rights of way; how obtained.] Unless said road be constructed along some public highway, the petitioners therefor shall procure and furnish to the county, free of charge, grants of the right of way therefor. But if such grants and right of way cannot be obtained by the petitioners over any tract or tracts of land, the county commissioners, after ordering the construction of said road, may condemn the right of way over such tract or tracts of lands,

[Cost of condemnation proceedings to be paid by petitioners.] The costs and expenses of which proceedings and the amount to be paid as a compensation for the land appropriated and the damages sustained by reason thereof shall be paid by the petitioners for said road, and the right of way secured to said county free of charge to it before any contract for the construction of said road shall be entered into or any work thereon shall be done. And if the same be not paid within a time fixed by the county commissioners, and said right of way secured to the county free of charge to it, their order authorizing the construction of such road shall thenceforth be invalid.

(4773-4) SEC. 4. [What laws apply to construction of such turnpikes.] All of the provisions of the general laws of this state for the construction of free turnpikes, and the condemnations of rights of way, and of materials shall be applicable in this act when not herein specially otherwise provided for.

(4773-5) SEC. 5. [Levy to pay cost of construction; bonds.] The commissioners, for the payment of eighty per cent. of the total cost of said road, shall levy a tax not exceeding two mills on the dollar upon all the taxable property of the county, and if they deem it advisable may issue bonds for said payment, which shall be payable in not more than five years, and to bear not exceeding six per cent. interest per annum, interest payable semi-annually; but bonds so issued shall not be sold for less than their par value.

ONE-MILE ASSESSMENT PIKES.

SEC. 4774. [Petition for free turnpike, and notice of application.] Free turnpike roads shall be authorized, and commissioners appointed to lay out and establish the same in the following manner: a majority of all the landholders residing in the county, who own lands lying within the bounds of any free turnpike, as provided in this chapter, shall present a petition to the board of county commissioners at any regular or special session, asking the appointment of commissioners to lay out and establish a free turnpike road between any points within such county, and stating therein that they desire the county commissioners to levy an extra tax, the amount of which shall not exceed ten mills on the dollar valuation in any year, on the lands and taxable property within the bounds of the road, and also the number of years they desire the levy to continue, not exceeding eight years; and they shall satisfy the commissioners that public notice has been given by advertisement in some newspaper of general circulation in such county, of such intended application, for at least four consecutive weeks preceding the hearing of such application.

SEC. 4775. [Appointment of road commissioners.] Thereupon the commissioners shall appoint three judicious freeholders of the county resident within the bounds of said road, to be commissioners of such free turnpike road, who, by the name fixed by the county commissioners, shall be a body corporate, for the purpose of laying out and establishing a free turnpike road between the points within such county named in the petition, and the county commissioners shall appoint such persons to be commissioners of such free turnpike road as may have been recommended by petition of a majority of the land owners if any such recommendations be so made; the petition, and the appointment of such commissioners, shall be entered upon the minutes of the proceedings of the board of county commissioners, and a certified copy of such entry furnished to the road commissioners, by the clerk of the board, upon demand therefor; and the board of county commissioners may remove, for cause, any or all of the commissioners of any free turnpike road, when petitioned so to do, by a majority of all the land owners residing within the county, who own lands within the bounds of such road; but on the removal of any such commissioners, the vacancy shall be at the same time filled by the appointment of some other free holder of the county; and the commissioners shall appoint such persons as may have been recommended by petition of a majority of the land owners if any such recommendation be so made.

SEC. 4776. [Road to be laid out, and returns to county commissioners.] The commissioners, so appointed by the board of county commissioners, and who qualify as hereinafter provided, shall, within a reasonable time, proceed to lay out and establish such free turnpike road within the points named in the petition, and as soon thereafter as the same can be done return to the board of county commissioners a map and profile of such road, including upon the map, as near as can be done, the names of the landowners whose property may be liable to be taxed for its construction, as hereinafter provided, together with a statement of the probable cost of building and completing the road.

SEC. 4777. [Levy of taxes to construct and repair one-mile assessment pikes.] The board of county commissioners shall immediately thereafter transmit to the auditor of the county said map, profile and statement as returned to them by the road commissioners, and shall at the same time direct the auditor to levy upon the grand duplicate of the county, for the purpose of constructing, improving and repairing such road, the amount of the tax, and for the number of years petitioned for; and the auditor shall enter the same upon the duplicate for collection, on all the lands and taxable property within the bounds of the road, as laid out and established, in the same manner and subject to the same penalties and forfeitures as other taxes are entered thereon for purposes of collection; but no such tax shall be levied for an amount or for a term of years greater than that set forth in the petition, unless the petition be renewed, or the county commissioners order an extension of the levy for the purposes stated in section *forty-eight hundred and twelve*, and when an extension of the tax is granted on petition, such tax shall be levied for any number of years that may be set forth in the petition as, when added to the first levy, will not, in the aggregate, exceed ten years.

SEC. 4778. [Abatement of taxes.] If at any time after the first levy is made, the commissioners of any free turnpike road are satisfied that the road can be built with a less sum than is provided in the preceding section, the auditor shall, on the order of the commissioners of the road, reduce the extra tax, or abate it entirely.

SEC. 4779. [Collection of tax; definitions.] The county treasurer shall collect the extra tax in the same manner as state and county taxes are collected; provided, that the words "bounds of the road," and "line of the road," wherever used in this chapter, shall be held to include so much land on either side of such road as may be charged with such extra tax.

SEC. 4780. [Bond and oath of road commissioners.] The road commissioners shall severally execute a bond payable to the state, for the use of the county in which the road is located, with good and sufficient sureties, to be approved by the board of commissioners of the county, and in such sum as the board think proper, conditioned for the faithful performance of their duties as such road commissioners, and shall moreover each take an oath faithfully and honestly to discharge their duties, before they shall be authorized to do or perform any matter or thing under this chapter; and the commissioners after qualifying shall immediately meet, and organize their board by choosing one of their number as president thereof, and within a reasonable time thereafter proceed to view, locate, and establish such free turnpike road, in the manner provided in this chapter.

SEC. 4781. [**Powers and duties of road commissioners.**] The road commissioners may appoint superintendents, and such other agents as they may deem necessary to carry into effect the provisions of this chapter; a majority shall be a quorum, and have power to transact any business and exercise any power devolving upon or intrusted to them by this chapter, and they shall keep a record of their proceedings, which shall at all times be open for inspection, by any person interested, or desiring to inspect the same.

SEC. 4782. [**Further powers of such commissioners.**] The commissioners may receive subscriptions and donations, in money, or real or personal property, which shall be applied to the construction of the road; they may make contracts for constructing the road in a solid and durable manner, and keeping the same in repair; they may open and finish the road in the first instance, along such portions of the line thereof as are available for travel or transportation; they may purchase and procure all necessary implements and fixtures to preserve the road, and contract for and purchase such stone, gravel, and other material as may be necessary for its construction and repair; and if the commissioners and owners of such material can not agree on a price deemed fair and reasonable, the commissioners may apply to the judge of the probate court of the county to appoint appraisers to assess the value of such material.

SEC. 4783. [**Assessment of damages for material taken, etc.**] On the filing of such application the probate judge shall appoint three disinterested freeholders, who, after being duly sworn to impartially assess the value of the material, or any part thereof, shall enter upon the premises of the owner of such materials, and assess the value thereof, and the damages that will accrue to the owner by the removal thereof through his premises, and within ten days after appointment return their award to the court; thereupon the probate judge shall require the commissioners to pay for or give security for the payment of all material to be taken, and damages done to the owner of the premises, and in ten days after the return of the award, on application of the commissioners, furnish them a copy of the same; and they may thereupon enter upon the lands, either inclosed or uninclosed, and remove such stone, gravel, or other materials, unless an appeal has been taken as provided in the next section.

SEC. 4784. [**Appeal from the assessment.**] An appeal from the decision of the appraisers may be taken by either party to the court of common pleas, within twenty days after the rendering of the award, upon the appellant entering into an undertaking to the adverse party, in a sum not less than fifty dollars, and in all cases not less than double the amount of such award.

SEC. 4785. [**Road commissioners may sell donated land.**] The commissioners may receive donations of land to aid in the construction of the road, and sell and convey the same in fee simple, and they may take releases of the right of way.

SEC. 4786. [**Upon what property taxes to be assessed.**] Extra taxes, when levied as hereinbefore provided, shall be on real and personal property within one mile on each side of the free turnpike road, except where any road improvement or free turnpike road, or any toll road, or unimproved state or county road, being unconnected with the same, runs upon either side of such proposed road, within less than two miles, then

the extra taxes shall only be levied upon such lands and personal property as lie within one-half the distance of such roads.

SEC. 4787. [No division of territory or taxation to be made.] No division of territory, or division of taxation of lands or personal property, shall be made with any other road improvement, free turnpike road, or state or county road, except as herein provided for, nor with any township road; but if the road commissioners report to the county commissioners that the extra taxes levied within the bounds of the road are insufficient to make a good and substantial road, the county commissioners, if in their opinion the public interest requires it, may order the road commissioners to extend the bounds of the free turnpike road to one mile on either side of the same, when a majority of the resident landowners owning land within the bounds of the territory proposed to be extended sign a petition therefor; but if a turnpike road runs upon either side of such free turnpike road, within less than two miles, the taxes shall be levied upon such lands and personal property as lie within one-half the distance of such roads.

SEC. 4788. [How township road tax and labor applied.] So much of the taxes annually levied for road purposes by the trustees of township[s], which may be collected within the bounds of any free turnpike road, including the two days' labor authorized by law, shall be applied in the construction and repair of the road, under the direction of the road commissioners, or their agents, until the road is completed.

SEC. 4789. [When trustees fail to apportion road labor.] If, before the completion of the road, the trustees fail to direct the supervisors of any road district, the whole or any part of which is within the bounds of any free turnpike road, to apportion the labor provided for in the preceding section, annually, before the first day of May, and to give notice thereof in writing to the commissioners aforesaid, then all persons liable to do two days labor, annually, on the public highways, residing within the bounds of any free turnpike road, shall do the same under the direction of the commissioners or agents of such road.

SEC. 4790. [When road work to be done.] All such persons shall perform such labor, after being notified three days previous to the time of doing the same, between the first day of April and the first day of July; but they may pay to the superintendent the sum of three dollars, in lieu of said two days' work, if paid when notified to do the work; and in case of refusal or neglect to do the same, the person so offending shall pay a fine of one dollar, and shall further be liable, in case of non-attendance, to the amount allowed for two days' work, to be collected by the road commissioners, in the same manner that supervisors are authorized to collect in similar cases.

SEC. 4791. [Road tax paid into county treasury to be refunded.] So much of the taxes mentioned in the preceding section which is not discharged in labor, and which is paid into the county treasury, shall be paid by the treasurer, upon the warrant of the county auditor, to road commissioners, to be expended by them, [in] constructing such free turnpike road; when two or more free turnpike roads cross each other, the county commissioners of any county through or in which any such roads, or any part thereof, may be located, may make such equitable division or apportionment of the taxes, other than extra taxes, among such roads as they deem proper, the same to be discharged in labor, under the direc-

tion of the road commissioners, or paid to them in money, as hereinbefore provided.

SEC. 4792. [Road commissioners to make annual settlement.] The road commissioners shall, annually, on the first Monday in December, make a full settlement with the county commissioners of the several counties in or through which their respective roads are located, and shall file with them a statement of all their receipts and expenditures within the county, and deposit a copy thereof in the auditor's office of the county.

SEC. 4793. [Settlement to be enforced by action.] Should such commissioners fail to make settlement as provided by the preceding section, the county commissioners shall, at the next term of the court of common pleas, of the county, cause an action to be instituted against them in the corporate name of the road, to enforce such settlement.

SEC. 4794. [Duplicate is prima facie evidence.] Such action shall be conducted by the prosecuting attorney of the county, and such delinquent commissioners shall be held prima facie liable for the full amount of taxes and money which were applicable to the construction of the road as the same appears upon the tax duplicate of the county; and in all cases judgment shall be rendered against them for all the costs of the suit.

SEC. 4795. [The road commissioners are a body corporate.] The road commissioners and their successors shall be a body corporate, under such name as the commissioners of the county may designate, for the purpose of carrying into effect the provisions of this chapter; they shall prosecute for all obstructions to the road, or for injuries done to the same, or to bridges thereon; the amount recovered in each case shall be the amount of damages actually found by the court or jury, and the interest thereon; and in all cases the commissioners shall have a right to sue, either before a justice of the peace, or in the court of common pleas of the county, as in other cases, and the amount so collected in each case shall be used for the benefit of the road, and be paid over to the commissioners.

SEC. 4796. [One-mile assessment pike must be accepted by county commissioners.] When the road commissioners deem they have their road completed in a good substantial manner, by the bridges and culverts thereon having been built, and the road macadamized, they may make application to the board of county commissioners to receive the same; the county commissioners shall, within a reasonable time after the filing of such application, proceed upon actual view to examine the same, and if, upon such examination, it be their opinion that such road is in suitable condition to be received as completed, they may receive the same, and such road may be kept in repair as provided in chapter ten; and when the free turnpike road has been completed and received by the county commissioners, they shall enter such finding upon their journal, and the county auditor shall certify such finding to the trustees of the several townships through which any part or all of the road runs, giving the name and description of the same; and when such road is paid for, and its bonds and coupons, if bonds have been issued thereon, shall have been redeemed, the road commissioners shall, by order of the county commissioners, cease to be a body corporate.

SEC. 4797. [Pay of officers, and vacancies.] The commissioners, superintendents, and agents of the road shall be allowed one dollar and

fifty cents per day for every day actually employed on the business of the road; and when any vacancy occurs in the board of commissioners by death, resignation, or otherwise, the commissioners of the county shall, when notified thereof, fill the same.

SEC. 4798. [Certain expenses to be paid by county.] The expenses of surveying and locating the road shall be paid out of the county treasury, and the other expenses incident to the construction of the road shall be paid out of the funds appropriated by this chapter to the construction of the same; and the sum paid the surveyor and his assistants shall not exceed the customary wages per day for every day they may be actually employed in locating and surveying the road.

SEC. 4799. [Who may sign petitions.] All petitions to the county commissioners to appoint commissioners to lay out and establish free turnpike roads, and to levy an extra tax for the construction thereof, and all remonstrances against either, shall only be signed by freehold taxpayers, resident within the county in which the road is proposed or situated, owning lands within the bounds of the road, as described in section *four thousand seven hundred and eighty-six*; minors residing in the county, and owning lands in such bounds, shall not be counted for or against the road or extra tax, unless represented by their legal guardian; and all owners, either adults or minors, of any undivided estate, shall only be entitled to one vote for or against the road or tax.

SEC. 4800. [One-mile assessment pike; bridges; material for repairs.] The county commissioners shall build any or all of the bridges and culverts upon the roads provided for in this chapter, contract, and pay for all material used in the construction or repair of such roads, and in case the county commissioners and any owner of any material can not agree upon the amount to be paid therefor, then the county commissioners shall have all the rights and powers of applying to the probate court of the county to appoint appraisers to assess the value of such material and the damage accruing to lands by reason of the removal thereof, as are conferred on road commissioners by sections *four thousand seven hundred and eighty-two* and *four thousand seven hundred and eighty-three*.

SEC. 4801. [How road may be made toll road.] When two consecutive miles or more of any free turnpike road is made in good order for travel or transportation, and the taxes applicable thereto and the two days' labor will not keep the same in repair, and three-fourths of the resident freeholders on the road, as described in section *four thousand seven hundred and eighty-six*, after giving notice as required in section *four thousand seven hundred and seventy-four*, petition the county commissioners therefor it shall be their duty to authorize the commissioners of the road to place a gate or gates on their road, and charge such rate of toll, when added to the common tax of the grand levy and the two days' work, as will keep the road in good repair; but no greater rate of toll shall be charged than is allowed by law to turnpike roads; and the road commissioners shall continue to manage such free turnpike road, and have the benefit of all laws regulating turnpike roads, in the collection of tolls, and other matters pertaining to the maintenance and preservation of the road.

SEC. 4802. [How location of road may be changed.] The board of county commissioners of any county may change the location of any

part of any free turnpike road, in the same manner and on the same conditions that they are by law authorized to change the location of any part of a county road; and the same laws applicable to the alteration of county roads shall be applicable in such cases to free turnpike roads.

SEC. 4803. [How claims for damages to be settled.] All claims for damages arising out of the location of any free turnpike road shall be settled in the manner prescribed in chapter[s] *two* and *four* in like cases.

SEC. 4804. [When petitioners reside in different counties.] When the resident landowners along any road in this state, the bounds of which under the provisions of this chapter extend[s] into different counties, wish to improve the same under the provisions of this chapter, they shall petition the boards of county commissioners of their respective counties as required by section forty-seven hundred and forty-four [seventy-four]; and in such case, the commissioners of the different counties may join in carrying out the provisions of this chapter by severally appointing commissioners to lay out and establish a free turnpike road, in all respects as if said petitioners reside wholly in one county; provided, that when the free turnpike road sought to be laid out under the provisions of this chapter is on the line between two or more counties, then said extra taxes shall be levied on the real and personal property within one mile on each side of the free turnpike road without exception; provided, further, that when a free turnpike road sought to be laid out under the provisions of this chapter, lies wholly within one county, but within one mile of the county line upon either side of such proposed road, upon the petition of a majority of the resident landholders within said county as provided by section forty-seven hundred and seventy-four, then the extra taxes shall be levied on the real and personal property that lies in such county within the bounds of such proposed road as provided by section forty-seven hundred and eighty-six.

SEC. 4805. [Proceedings on such petition.] The commissioners so appointed shall qualify, as in this chapter provided, and shall immediately proceed to lay out and establish such free turnpike road and severally make return to the board of county commissioners of their respective counties, of a map, profile, and estimate of the cost of construction of the free turnpike road, as provided in section *forty-seven hundred and seventy-six*; and the board of county commissioners of each county shall immediately transmit such map, profile, and estimate, to the auditor thereof, and shall at the same time levy upon the grand duplicate of the county, for the period and under the limitations mentioned in this chapter, any amount of money that may be required, not exceeding ten mills upon the dollar valuation in any year, on all the lands and taxable property in the county within the bounds of such free turnpike road, as provided in section *forty-seven hundred and seventy-four*, and shall certify such levy to the county auditor in the manner provided in section *forty-seven hundred and seventy-seven*; and the respective county auditors shall be governed in all respects by the provisions of said sections in entering said levees upon the duplicate for collection, and in all other matters pertaining thereto, in conformity to this chapter.

SEC. 4806. [Petition for road on county line.] Such boards of road commissioners, in all of their subsequent joint acts pertaining to the construction and repair of [any] such free turnpike road, shall be governed in all respects by the provisions of this chapter, and to the same

extent as if the road were laid out and established wholly in one county; but when resident land owners desire to make a free turnpike road on a county line between two or more counties, and there are no resident land holders in one or more of such counties, within the bounds of the proposed road, a copy of the petition presented to the commissioners of the county in which there are resident land owners within the bounds of the proposed road, if the same be allowed, and the road be established by the commissioner[s] of such county, shall be presented to the commissioners of the county in which there are no resident land owners within the bounds of the road, and they shall act on the same in all respects as if the petitioners were residents of such county.

SEC. 4807. [The line of a state, county, or township road may be occupied.] In laying out and establishing free turnpike roads under and by virtue of the provisions of this chapter, it shall be lawful to lay out and establish the same, in whole or part, upon the line of any state, county, or township road, or upon any two or more of such roads.

SEC. 4808. [Road commissioners may issue bonds therefor.] The commissioners of any free turnpike road, whenever they deem it necessary for the purpose of constructing a free turnpike road, completing the same, or liquidating any indebtedness on account thereof, are authorized to issue bonds, payable at the county treasury, in installments, at intervals not exceeding the number of years for which the special tax provided for in this chapter has been levied, bearing interest not exceeding six per centum, payable semi-annually; which bonds shall not be sold for less than par, and shall be registered by the county auditor, previous to their issue, in a book by him kept for that purpose; such registry shall show the number of each bond issued, the amount for which issued, the rate of interest which it bears, and when the same is payable; and the extra taxes levied under the provisions of this chapter shall be divided in such manner as to meet the payment of the interest and principal of the bonds, and when collected the money arising therefrom shall be paid to the road commissioners, by the treasurer of the county, upon the warrants of the county auditor; and the road commissioners shall apply the money first to the payment of their bonds and interest, and next to the construction and improvement of such free turnpike road, and in discharging any indebtedness incurred on account thereof.

SEC. 4809. [How two or more roads may be consolidated.] It shall be the duty of the county commissioners to consolidate two or more free turnpike roads that are so situate that by one ending in another, or by one crossing another, or otherwise, they form continuous line or lines of travel, if they are satisfied the consolidation will be to the benefit of the roads and the public, and enter upon their minutes an order consolidating the roads, and appointing commissioners for the consolidated road, who shall have all the powers, and perform all the duties, in relation thereto, prescribed by this chapter; and from and after the organization and qualification of such commissioners, the powers of the commissioners of the several roads so consolidated shall cease, and the roads shall thenceforward constitute one free turnpike road, to which all the laws relating to free turnpike roads in force from time to time shall apply, the same as if such [road] had been originally so established.

SEC. 4810. [How existing levies to be applied.] Any levy of extra taxes for either of such roads existing at the time of such consoli-

dation shall be worked out, or collected and applied according to law, for the purposes of that part of such consolidated road for which they were made; and all money in the treasury or elsewhere, arising from any extra tax for either of such roads, shall be applied in like manner; but the commissioners of the consolidated road shall have the same powers as to reducing or abating such levies as are or may be provided by law for commissioners of free turnpike roads.

SEC. 4811. [Commissioners of consolidated road to have charge of all property.] Upon the organization and qualification of the commissioners of such consolidated road, the commissioners of the several roads forming the same shall settle their accounts with the county commissioners, and deliver up all money or other property, and also all records, books, and papers belonging or pertaining to such roads, to the commissioners of such consolidated road.

SEC. 4812. [Free turnpikes; completion of.] The provisions of this chapter shall extend and be applicable to all free turnpike roads heretofore built, now in process of construction, or hereafter to be constructed; and at any time when the county commissioners shall deem it necessary for the purpose of providing the means for completing the same and liquidating any indebtedness incurred on account of such road, they may continue the tax originally levied for constructing the same, for a period not exceeding, in the aggregate fifteen years, in addition to the levy made on petition, as provided in section 4777.

SEC. 4812a. [One-mile assessment pikes; when commissioners may issue new bonds.] If at any time it shall be ascertained by the road commissioners that the property upon the tax duplicate for the purpose of raising a fund for the construction of any free turnpike road, under the provisions of this chapter, heretofore built, now in process of construction, or hereafter to be constructed, has by any cause been reduced, so that said duplicate will not produce a sufficient fund to liquidate all bonds issued by the road commissioners under the provisions of this chapter, as the same shall become due, with the interest thereon, said road commissioners shall have power, and are hereby authorized to issue new bonds, for the purpose of paying off all such bonds and the interest thereon; provided, that the time for the payment of said new bonds shall not be extended beyond the time limited by the provisions of this chapter, for the levying of taxes for the construction of one mile assessment pikes.

SEC. 4813. [Certificates of labor receivable for road tax.] Certificates from the road commissioners to persons owing any free turnpike tax, for labor performed in discharge of the same, shall be receivable by the treasurer of the county, at the December collection of taxes, in payment of such tax; and such certificates shall specify the amount of tax so paid, and shall in no case exceed the amount of extra tax charged against such person upon the duplicate of the county.

SEC. 4814. [Unpaid indebtedness of free turnpike road company.] When the right of any free turnpike road company to levy special taxes to pay the orders, bonds or other indebtedness issued by it has ceased, leaving outstanding orders, bonds or other indebtedness unpaid, and their payment unprovided for, the commissioners of such road company shall immediately make out and deliver to the auditor of the county in which such road or any part thereof is situated, a complete

and perfect list of all such indebtedness for the payment of which they have no funds or means of payment with a description in detail of such indebtedness as to date, amount, rate of interest, if any, and when payable, which list shall be verified by said commissioners; and the county auditor shall lay the same before the county commissioners at their next regular session thereafter.

SEC. 4815. [Taxation to pay same.] At any regular session of the county commissioners, at which such list is laid before them, they shall immediately proceed to ascertain the aggregate amount of such indebtedness, including interest in case it draw interest, and adding thereto an amount sufficient to pay the expense of assessment and collection, and to cause the same to be assessed upon the same lands and lots as were subject to taxation for the construction of the road, or to pay for the same at the time when the right to tax such lands and lots ceased, according to their true value in money as shown by their valuation contained in the county duplicate.

SEC. 4816. [When different rates have been authorized.] When, by the laws in force immediately preceding the time when the right to levy taxes for the benefit of any such road ceased, different rates of taxation were authorized upon the lands adjacent to or lying near any such road, according to their proximity to such road, the amount authorized to be levied by the preceding section shall be so assessed upon those lands as to preserve the same relative proportions between the taxes on the several tracts as formerly; but the county commissioners may in their discretion divide the aggregate of such indebtedness into installments, not exceeding five in number, and order that one of those installments be assessed and collected annually, and the amount so assessed shall be collected in the same manner as state and county taxes.

SEC. 4817. [Payment of such indebtedness.] Immediately after the annual settlement of the county treasurer with the county auditor of any year next after that in which any assessment has been made, as provided in the two preceding sections, the county auditor shall proceed to ascertain the net amount of money collected on account of the indebtedness of such free turnpike road company, and if the amount so collected is sufficient to pay the whole of such indebtedness, he shall proceed to pay all indebtedness of such road company on presentation by his warrants drawn on the county treasurer, payable out of the proper fund, and shall cancel the evidences of such indebtedness and keep them on file in his office; but if the net amount so collected shall be insufficient to pay the indebtedness in full, or the amount of indebtedness has been ordered to be collected in annual installments, the county auditor shall divide the net amount so collected pro rata among the holders of the indebtedness, taking up and canceling the original evidence of indebtedness and issuing new vouchers for the balance unpaid.

SEC. 4818. [Special taxes to be applied to debts.] When a free turnpike road is finished according to law, with an outstanding debt unprovided for, and the right to levy special taxes for the benefit of such road has not ceased, such special taxes, when collected, shall be applied exclusively to the payment of such debt, till the same is paid in full.

SEC. 4819. [Road may be transferred to turnpike company.] The county commissioners, whenever in their opinion the public interest will be subserved thereby, may surrender to any turnpike company any

free turnpike or other road in the county, and direct that the taxes levied and collected for such road, and not otherwise appropriated by law, shall be paid over to such turnpike company, to be expended in constructing or repairing the road, to construct or repair which the same were levied.

SEC. 4820. [Tax-payers to have stock.] Any turnpike company receiving such surrender shall issue to the persons upon whose property taxes have been levied to construct or repair such road, certificates of stock for the amount of taxes by them respectively paid, upon which they shall be entitled to dividends, pro rata, as other stockholders may be, upon their stock.

SEC. 4821. [Toll-gates and toll.] When three consecutive miles of such road has [have] been constructed and finished, according to law, the directors of such company may establish a toll-gate thereon, and for every additional five miles finished as aforesaid an additional gate, and may demand and receive tolls thereat, at rates not exceeding the rates allowed by law to other companies.

SEC. 4822. [Elections of directors.] In elections for directors of such company each stockholder shall be allowed one vote for each share of stock by him held, and one vote for each fraction greater than half a share.

SEC. 4823. [Villages may assist in constructing such roads, and may issue bonds.] Councils of villages are authorized to levy a tax to construct free turnpike roads, or a part thereof, in counties wherein such villages are situate, and terminating or running through such villages, and for this purpose such councils are authorized to issue the bonds of the villages, payable with legal interest at such times as the councils may deem advisable, and such bonds shall not be sold for less than their par value.

SEC. 4824. [Tax to be submitted to electors.] For the purpose of paying such bonds, and the interest thereon, as the same become due, the councils are authorized to levy a tax upon the taxable property of such villages sufficient for the purpose, not exceeding five mills on the dollar in any year; but such tax shall in no case be levied, nor shall such bonds be issued, until at some regular election, held in such villages, the majority of the qualified electors thereof approve the tax; and in case the amount to be appropriated for any one road does not exceed the sum of five hundred dollars, the councils may appropriate and apply the same in money for said road improvement, out of any money on hand, or funds not otherwise appropriated, without issuing bonds or levying a tax, such appropriation to be made by an ordinance passed for the purpose, specifying particularly the amount; and for what road appropriated.

SEC. 4825. [When road may be extended to village.] When a free turnpike road in progress of construction terminates within one mile, by way of a public road, of any such village, the council of such village shall have the same power to levy a tax and issue bonds to aid in the construction of such free turnpike road that it would have if the road terminated in the village; and if the county commissioners having in charge the construction of such road accept such bonds, such free turnpike road shall be deemed to be extended, by way of the public road before mentioned, to the corporate limits of the village; and the commissioners shall make and publish an order to that effect, and thereupon

the commissioners shall improve such extension of such free turnpike road, in the same manner as the other parts of the same.

SEC. 4826. [Time for construction extended, and county to pay for bridges.] When the commissioners of a free turnpike road fail either for want of time or sufficient means, to complete such road, the county commissioners of the county or counties through which it [is] located may grant such extension of time for the completion of the same as to them may seem reasonable and proper; and in all cases of indebtedness for the erection of bridges upon the line of such free turnpike roads, the county commissioners may discharge such indebtedness, from the treasury of the county in which such bridge or bridges may be located.

SEC. 4827. [Road commissioners to make final report.] When the commissioners of a free turnpike road have completed the same, they shall immediately thereafter make a final report to the county commissioners of the total expenditures on the road, and deposit their books and papers with the county auditor, after which time the free turnpike road shall be kept open and in repair as provided in chapter ten.

SEC. 4828. [Vacation of free turnpike road.] When any part of a free turnpike road becomes useless, or remains unopened for the term of five years, after the same has been established, the commissioners of the county may, on application of twelve freeholders of the county, appoint three disinterested freeholders to view the same, and report whether such road is useless, or whether it would be of public advantage to vacate it; and if such freeholders report in favor of such vacation, the county commissioners may order the road to be vacated, and the same proceedings shall be had on such application as are provided on applications to vacate county roads.

TWO-MILE ASSESSMENT PIKES.

SEC. 4829. [County commissioners may construct or improve roads.] The county commissioners of any county shall have power, as hereinafter provided, to lay out and construct any new county road, or to improve any state, county or township road, or any part thereof, or any free turnpike road, or any part thereof not completed, or any free road, by straightening or altering the same, and by grading, paving, graveling, planking, or macadamizing the same, and by draining the same in any direction required to make the most convenient and sufficient outlet;

[Vacation of roads.] And for such purpose they may, upon further petition, when by them deemed expedient, vacate any state, county, or township road, or any part thereof, or any free turnpike road, or any part thereof not completed, or any free road, and may improve several roads or parts of roads, or free turnpike roads, or parts thereof not completed, or any free road, when the same may be united in one continuous road improvement.

SEC. 4830. [County commissioners may improve unfinished turnpike or plank-road.] They may improve, by grading, graveling, or macadamizing any unfinished turnpike road, plank road, or other graded road of five degrees or less, other than such as charge and receive tolls.

and when the grading has been already done, and the bridges and culverts already built, one-half of the cost of such improvements shall be assessed upon the landowners along and adjacent to the line of the road, as provided in this chapter, and one-half upon the grand duplicate of the county.

SEC. 4831. [Two-mile assessment pikes; petition for improvement of; viewers; how appointed, and duties of; proviso.] Upon the presentation of a petition stating the kind of improvement prayed for and the points between which the same is asked, signed by five or more of the landholders whose lands will be assessed for the expense of the same, and the filing of a bond signed by one or more responsible freeholders to whom the petitioners shall be responsible, pro rata, conditioned for the payment of the expenses of the preliminary survey and report, if the improvement be not finally ordered, the commissioners shall appoint three disinterested freeholders of the county as viewers and the county surveyor, to proceed upon a day to be named by the commissioners to examine, view, lay out, and straighten such road, as in their opinion public convenience and utility require. Provided, that in locating such improvements within the territorial limits of any incorporated village or town, the county surveyor and viewers shall be confined to the platted streets of such village or town.

SEC. 4832. [Notice and publication.] The county auditor shall notify the viewers and surveyor of the time and place of their meeting to make the view, and shall also give notice by publication, in a newspaper printed in the county, for three consecutive weeks prior to the meeting, which notice shall state the time and place of meeting, the kind of improvement asked for, the place of beginning, intermediate points, if any, and the place of termination.

SEC. 4833. [Duties of viewers and surveyor.] The viewers, and surveyor or engineer, shall meet at the time and place specified by the commissioners, and, after taking an oath faithfully and impartially to discharge the duties of their appointments, shall take to their assistance two suitable persons as chain-carriers, and one marker, and proceed to view, examine, lay out, or straighten such road, as in their opinion public utility and convenience require, and assess and determine the damages sustained by any person through whose premises the road is proposed to be laid out, straightened, or improved; but the viewers shall not be required to assess damages to any person except minors, idiots, or lunatics, in consequence of the appropriation of any private property for the making of the improvement, unless the owner thereof, or his agent, file a written application with the viewers, giving a description of the premises on which damages are claimed by them.

SEC. 4834. [Appeal from assessment.] All applications for damages shall be barred, unless they be presented as above required, and any person feeling aggrieved by the assessment made may demand of the commissioners to have the same assessed by a jury; in which case the claimant may appeal to the probate court of the county, and the same proceedings shall there be had, and like orders and judgments rendered, as are provided in chapter *four*; but the guardian of any minor, idiot, or insane person may act for his ward, and all his acts shall be binding upon the ward.

SEC. 4835. [Report of viewers to commissioners.] The viewers and surveyor or engineer, shall make a report to the commissioners at

their next regular session, showing the public necessity of the contemplated improvement, the damages claimed, and by whom, the amount assessed to each claimant, an estimate of the expense of the improvement, and the lots and lands which will be benefited thereby, and ought to be assessed for the expense of the same; but no lands shall be so assessed which do not lie within two miles of the proposed improvement, and the distance of two miles may be computed in any direction from either side, end, or terminus of the road; and lands that have once been assessed for the expense of any improvement made under the provisions of this chapter, shall not be re-assessed under subsequent proceedings for an extension of the same, unless the prior assessment be not deemed proportioned to the whole benefit resulting to such lands.

SEC. 4836. [Proceedings when report of viewers of two-mile assessment pike is filed.] When the report is filed, the commissioners shall, unless such report shows that there is no public necessity for the contemplated improvement, enter on their records and order that the improvement be made which order shall state the kind of improvement, the width, the extent of the same, and the lands which shall be assessed for the expenses thereof; but such order shall not be made until a majority of the resident landowners of the county whose lands are reported as benefited and ought to be assessed, and in counties containing a city of the first grade of the first class, in addition to such landholders, a majority in interest of the persons whose lands abut upon said proposed improvement, subscribe the petition mentioned in section *four thousand eight hundred and thirty-one*; in determining such majorities minor heirs shall not be counted for or against the improvement, unless represented by legal guardian, and the action of such guardian shall be binding upon such minor heirs; and all heirs or owners, either adults or minors, to any undivided estate, shall only be entitled to one vote for or against such improvement, and the name of any person who has acquired title to the same by gift, or in any other manner, for the purpose of making such person a petitioner for or remonstrator against such improvement shall not be counted in favor of the same, or against the same.

SEC. 4836a. [Commissioners of Lucas county may order roads improved; expense, how ordered paid.] In counties containing a city of the third grade of the first class, when a petition, as provided in section *forty-eight hundred and thirty-one* of the Revised Statutes, shall have been presented to the county commissioners, asking that a macadamized, stone, or gravel road be constructed on the roadway of any state; county, township, or free turnpike road, or any part thereof, and the viewers and surveyor or engineer shall have reported to the commissioners, as provided in section *forty-eight hundred and thirty-five*, if in the opinion of the commissioners public utility requires it, they shall enter on their records an order that the improvement be made, which order shall state the kind of improvement, the width and extent of the same, the material to be used, and such pertinent description of the same as they shall deem necessary by reference to plans, profiles and specifications, or otherwise, which shall be held to include all necessary grading, drains, under-drains, ditches and culverts to the proper completion and maintenance of such road; and at the same time, said commissioners shall order that a portion of the cost and expense thereof, which shall not be less than one-third nor more than one-half of the total cost and expense thereof, shall be paid out of the proceeds of any levy or

levies upon the grand duplicate of the county authorized by section *four thousand eight hundred and thirty six (a)* of this act; and shall also order that the balance of said cost and expense shall be assessed upon and collected from the owners of the lots and lands, and from the lots and lands benefited thereby, in proportion to the benefit to be derived therefrom by said lots and lands. Said order shall also state the lands which shall be subject to be assessed for the cost and expense of said improvement, and whether the estimated assessment therefor shall be made before the improvement is commenced, or after the same is completed.

SEC. 4836b. [Appointment and removal of engineer; plans, profiles, etc.; letting of the work.] After making such order for an improvement, the commissioners shall appoint a competent engineer to superintend the performance and completion of the work, who shall, under the directions and with the approval of said commissioners prepare and file the necessary plans, profiles and specifications of the work. After such plans and specifications as the commissioners deem necessary are adopted, the work shall be publicly let by the county commissioners to the lowest responsible bidder, who shall enter into bond with sufficient sureties, and in such amount as the commissioners shall approve and determine, conditioned for the faithful performance of said work. Notice of such letting shall first be published for at least four weeks in some newspaper printed in the county and of general circulation therein, stating the nature and extent of the work and the time when said letting will be made, or, if sealed bids are required, when the same will be opened. The commissioners may let the work as a whole, or in convenient sections, as they may determine. The commissioners may require a bond from each bidder in such sums as they may determine, with sureties to their approval, conditioned that if the contract be awarded on such bid, the bidder will enter into the contract and execute the bond, with approved sureties, for the faithful performance of the contract. The county commissioners may for cause remove the engineer herein provided for at any time, and appoint another in his place. And they may, in their discretion, if in their judgment no reasonable bid is made for said work, refuse to enter into such contract, but readvertise the same.

SEC. 4836c. [Estimated assessment of expenses; objections thereto; equalizing board, its powers and duties; assessment of life estates.] The said commissioners shall, either before the said improvement is commenced, or after the same is completed, as they shall have determined at the time of ordering the improvement, appoint three disinterested freeholders of the county, resident therein, to make, upon actual view, and to report to said commissioners, an estimated assessment of the proportion of the cost and expense aforesaid upon the lots and lands to be charged therewith, or upon such of the lots and lands included in the descriptions and boundaries aforesaid, as in their judgment should be assessed, in proportion as nearly as may be to the benefits which may result from said improvement to the lots or lands so assessed, which assessment shall be filed with the county commissioners, and kept in the auditor's office for public inspection. Before adopting the assessment so made and reported, the said commissioners shall publish notice for three weeks consecutively, in some newspaper of general circulation in the county, that such assessment has been made, and that the same is on file in the office of the auditor for inspection; and if no ob-

jections are filed thereto within two weeks after the expiration of said notice, the commissioners may confirm the same. If the owner of any property assessed objects to the assessment so made, he shall file his objections in writing with the said commissioners within two weeks after the expiration of the notice aforesaid; and thereupon the commissioners shall appoint three other disinterested freeholders, to act as an equalizing board, who shall meet at the county auditor's office at a time to be fixed by the county commissioners, with power to adjourn from time to time, who shall hear and determine all objections to said assessment, equalize the same, or approve the assessment already made, as they shall deem just. They shall report their action to said commissioners, who shall have power to confirm the same, or to set the same aside and cause a new equalizing board to be appointed, with like powers and qualifications. When said assessment is confirmed by the county commissioners, the same shall be final. The members of said assessing and equalizing boards shall, before entering upon their duties, take an oath before a proper officer to faithfully, honestly and impartially discharge their duties in making or equalizing said assessment, and in either case a majority of the board shall have power to determine any question or matter before them. The equalizing board, or any of its members, shall have power to administer oaths to witnesses, and said board shall hear any testimony for or against the parties filing exceptions as aforesaid. If any of the lands to be assessed are subject to a life estate, the assessment made thereon shall be apportioned between the owner of the life estate and the owner of the fee in proportion to the relative value of their respective estates, to be ascertained upon the principles applicable to life annuities.

SEC. 4836d. [Records and accounts; filing of profiles, plats, etc.; expenditure of money.] The commissioners shall cause to be kept by the county auditor a full record of all the proceedings herein provided for, together with accurate accounts of receipts and expenditures of money, under the provisions of this act; and all profiles, plats and specifications shall be filed and kept in the office of the county auditor; and no money shall be drawn from the treasury belonging to the fund raised under the provisions of this act, except to pay liabilities already accrued, and then only in pursuance of orders caused by the commissioners while in session as a board, to be entered upon the record of their proceedings, and by orders drawn by the county auditor upon the county treasury in favor of the person to whom such money is due.

SEC. 4836c. [When certain provisions shall not apply to improvements made under this act.] Whenever not less than one-third of the cost and expense of such improvement is by the commissioners ordered to be paid by levy upon the grand duplicate of the county as provided in this act, sections *forty-eight hundred and thirty-seven, forty-eight hundred and thirty-nine, forty-eight hundred and forty, forty-eight hundred and forty-one, forty-eight hundred and forty-two, forty-eight hundred and forty-three, forty-eight hundred and forty-four*, and all the prohibitions of *forty-eight hundred and thirty-six* against the commissioners, making an order for an improvement, until a majority of the resident landholders of the county, whose lands are reported as benefited and ought to be assessed, subscribe the petition therefor, shall have no force or effect in such county as to improvements made or ordered under the provisions of this act, but said commissioners may proceed to order and

cause said improvement to be made without other petition than that provided for in section *forty-eight hundred and forty-one*, and the letting of the work, the performance of the same, and the making and confirming the assessment therefor, shall be under the provisions of this act.

SEC. 4836f. [General tax levies for construction and repair of improved roads; proceeds of levies.] For the purpose of providing by general taxation a fund, out of which not less than one-third of the cost and expense of all improvements made under the provisions of this act can be paid, the commissioners of such county are hereby authorized to levy upon the grand duplicate of the county, not exceeding seven-tenths of one mill in any one year upon each dollar of the valuation of the taxable property in such county. And said commissioners shall at all times cause all necessary repairs to be made on such roads already constructed, or hereafter to be constructed or improved for their proper maintenance; and for such purpose may and they are hereby authorized to levy a tax upon the grand duplicate of the county, not exceeding two-tenths of one mill in any one year upon each dollar of the valuation of taxable property in such county. At their March session annually the commissioners shall divide each completed stone road in said county into sections of not more than two miles in length for the purpose of controlling the repairs of such roads. They shall at the same time make an estimate of the amount of materials required to keep each of said sections in proper condition during the next following year and decide upon the most convenient places for having said material delivered. They shall then fix a day on which they will let to the lowest responsible bidder the job of furnishing and delivering the said materials at the place decided upon and of keeping the said sections in repair for the period of one year according to specifications to be submitted to the bidders. They shall require and entertain separate bids for furnishing the material at the designated places of delivery, and for doing the necessary labor in keeping said sections in repair. When the necessary preliminary steps, as hereinbefore provided, have been taken, they shall cause three weeks' notice to be given by advertisement and hand-bills posted up on the lines of said roads, of the time when and place where bids for furnishing and delivering the said material and doing the said work will be received. They shall enter into contract with the successful bidder, and shall require good and sufficient bond of him for the faithful performance of the same, reserving the right to terminate each and every contract whenever in their opinion its provisions are not complied with. Before paying for any material furnished under contracts entered into in accordance with the provisions of this section it shall be the duty of the said board of county commissioners to inspect the same as to quality and quantity furnished. And said respective levies shall be in addition to all other levies authorized by law, notwithstanding any limitation upon the aggregate amount of such levies now in force. The proceeds of the levies hereby authorized to be made, shall be applied and used by the county commissioners in the construction and repair of such macadamized, stone, and gravel roads, as the case may be, and for no other purpose, and these funds shall not be subject to distribution to the townships, but shall be expended under the direct orders and supervision of the county commissioners. All the proceeds of such stone road building levies and of the sale of any bonds under the provisions of section *forty-eight hundred and forty-six*, shall be placed to the credit of a fund to be called "the stone road building fund,"

out of which shall be paid all the costs and expenses of said improvement, except the expense of the preliminary view and survey and the fees of the auditor and commissioners, but the auditor shall keep a separate account of each different improvement in a book to be kept for that purpose. The provisions of "An act to authorize certain cities to build bridges and issue bonds therefor," passed March 4, 1883 (80 Ohio laws, page 73), requiring all levies upon the property within any city of the third grade of the first class, made by the county commissioners for road purposes, to be paid into the treasury of said city, shall in no wise conflict with the provisions of this act, and shall not be applicable to the levies specifically authorized therein, the proceeds of which are to be applied and used by the county commissioners in the construction and repair of such roads.

SEC. 4836g. [Issue of bonds for construction and repair of improved roads.] The commissioners of any such county, containing a city of such third grade, first class, are hereby authorized, whenever, in their judgment, it is desirable, to issue and sell the bonds of such county to an amount not in excess of fifty thousand dollars (\$50,000), for the purpose of paying such county's share of the costs and expenses of contracting [constructing] macadamized, stone or gravel roads, as provided in said preceding supplemental sections to said section 4836; said bonds to state for what purpose issued, to bear interest at a rate not in excess of four and one-half per cent. per annum, payable semi-annually, to mature in not less than ten years nor more than twenty years after their issue, and not less than five thousand dollars nor more than twenty thousand dollars of said bonds shall mature in any one year, and they shall be sold according to law, and for not less than par and accrued interest; the proceeds of such bonds to be applied and used exclusively for the same purposes and in the same manner as the levy of seven-tenths of one mill provided for in said supplementary sections, and may be in addition to such levy or any part thereof; and the interest and principal of such bonds to be paid from said levy of seven-tenths of one mill, or any part of same.

SEC. 4836h. [Commissioners of Lucas county; bonds for repair of roads.] The commissioners of any such county containing a city of the third grade, first class, are hereby authorized to issue and sell bonds of such county to an amount not in excess of fifteen thousand dollars (\$15,000), for the purpose of paying for the repair of macadamized, stone, or gravel roads built under the provisions of the said section 4836 and sections supplemental thereto; said bonds to state for what purpose issued, to bear interest at a rate not in excess of five per cent per annum, payable semi-annually, to mature in not less than ten nor more than twenty years after their issue, and they shall be sold according to law and not for less than par and accrued interest; the proceeds of such bonds to be applied and used exclusively for the same purposes and in the same manner as the levy of two-tenths of one mill provided for in said supplemental sections; and the interest of such bonds is to be paid from the said levy of two-tenths of one mill, or any part of the same.

SEC. 4836i. [Commissioners in Lucas county may construct road without assessment upon private property.] If in the opinion of the county commissioners of any such county it is expedient and proper to construct any such road commencing at the intersection of sections

sixteen and twenty-one in Lucas county, and extending not more than one mile in length, without making an assessment upon private property for any portion of the cost thereof, said county commissioners may proceed to make such improvement in a manner by them deemed proper and pay for the same from the stone road building fund,

[**Bonds.**] And may issue bonds of said county in a sum not to exceed five thousand dollars to reimburse said fund in accordance with the provisions and under the restrictions of section 4836g.

SEC. 4837. [When remonstrant bound for costs.] If it appear that any person who signed the petition asking for such improvement afterward signed a remonstrance against the same, so that by counting such person remonstrator instead of petitioner the object and prayer of such petition will be defeated, the person who is both petitioner and remonstrator shall be held liable, and shall pay all costs growing out of the presentation of the petition, and the proceedings had thereon; and if the costs are not paid within thirty days after the dismissal of further proceedings in the case, the auditor shall tax the costs against such person, and if there is more than one such person, the auditor shall apportion the costs among such persons, in the proportion of the appraised value of their several lands for taxation that are within two miles of the route on which the improvement was prayed for, and shall place the same on the grand duplicate for collection, to become due and payable at the next December collection of taxes thereafter; and the same penalties shall attach, and the same proceedings shall be had in the collection, as in delinquent state and county taxes.

(4837-1) **SEC. 1. [Applicability of certain statutes to Ashtabula, Licking, Wood, Holmes, Medina, Ottawa and Wyandot counties; portion of cost to be paid by county.]** Except as otherwise herein provided, and so far as the same may be applicable, sections 4836a, 4836b, 4836c, 4836d, 4836f, 4836g, of the Revised Statutes, shall apply to, regulate and govern the laying out and constructing of all two-mile assessment pikes that may hereafter be laid out and constructed in all counties of the state having at the federal census of eighteen hundred and ninety, or that may at any subsequent federal census have a population of not less than forty-three thousand and not more than forty-five thousand, and in all counties of the state having at the federal census of eighteen hundred and ninety, or that may have at any subsequent federal census, a population of not less than twenty-one thousand and not more than twenty-two thousand; provided, in such counties not more than one-fourth of the total cost and expenses of such improvements shall be paid from the proceeds of levies upon the grand duplicates of such counties, and the bonds so authorized may bear interest at a rate not in excess of six per cent per annum, payable semi-annually, and may be made to mature in not less than three and not more than ten years from the date of their issue.

(4837-2) **SEC. 2. [All other sections relating to two-mile assessment pikes to be in force.]** All the other provisions of chapter eight, title seven, of the Revised Statutes regulating two-mile assessment pikes shall remain in full force and applicable to improvements made under this act except where inconsistent with the foregoing special provisions or with said sections 4836a, 4836b, 4836c, 4836d, 4836f, and 4836g.

SEC. 4838. [Changes in the improvement and assessments authorized.] If at any time after making such final order the commissioners find that there has been an omission of lots and lands within the territory sought to be assessed, or that there has been manifest injustice in the apportionment of taxes, or that public necessity requires any alteration in the manner of the improvement as ordered, they may make such addition and re-apportionment as they deem just and proper, and such change in the improvement as will conform the same to the public requirement.

SEC. 4839. [How proceedings abandoned before contract.] All proceedings relating to the construction of such improvements may be discontinued at any time before a contract is entered into for the improvement, by the filing of a notice with the county auditor, signed by a majority of the petitioners for the improvement, stating that they will not further prosecute the same and the payment of all costs that have accrued up to the time such notice is filed; and thereupon the auditor shall immediately notify the engineer, and cause all proceedings relating thereto to be discontinued, and the county commissioners, at their next regular or called session, shall place upon their records an order abandoning such proposed improvement, and vacate and set aside the order for the improvement.

SEC. 4840. [How abandoned after contract.] At any time after the contract for the improvement is made, the commissioners may, with the consent of the contractor for the improvement, or the part or parts thereof to be affected, and also the consent of a majority of the petitioners for the improvement whose lands lie within two miles of the part thereof to be affected, vacate and set aside the order for the improvement, or any part thereof, or abandon any part of such proposed improvement, if they deem it proper and advisable to do so; and in such case, if the order as to a part of such improvement be set aside and vacated, or a part of such proposed improvement be abandoned, such action shall not in any way impair or affect any order, contract, or proceeding relating to the remainder of the improvement; but no assessment shall be made for the remainder of any such improvement, upon any lands not lying within two miles of such remainder.

SEC. 4841. [Engineer to be appointed to make contract for improvement of two-mile assessment pike.] After making such order for an improvement, or for any change in the same, the commissioners shall appoint a competent engineer to superintend the performance and completion of the work, who shall enter into a good and sufficient bond, with surety to be approved by the county commissioners, conditioned for the faithful performance of his duties, in a sum to be fixed by said commissioners, and an action may be brought on such bond by any person aggrieved by a failure of the engineer to do his duty, in the name of such party, and recovery may be had for his use and benefit. The engineer shall, with the approval of the county commissioners, make a contract for the performance of the work, and the contractor may at once enter upon the performance of the work, under the superintendence of the engineer; but the improvement shall be let in sections of not less than one half-mile, by public out-cry, or sealed bids, and to the lowest and best bidders, who shall give such reasonable security for the proper performance of his contract within the time and in the manner described, as the county commissioners may deem expedient. The county com-

missioners may, for cause, remove the engineer and appoint another in his place.

SEC. 4842. [Commissioners to apportion estimated expense of improving free turnpikes.] The commissioners, when any such improvement is ordered, shall immediately appoint three disinterested freeholders of the county, who shall, upon actual view of the premises, apportion the estimated expense thereof upon the real property embraced in the order, according to the benefit to be derived therefrom, and report the same to the county auditor; and in making such apportionment, they shall take into consideration all previous special assessments, or special taxes made upon such real property for the improvement of any road, and any benefit which will accrue to any land by reason of drainage resulting from the making of the improvement; and if any of the lands to be assessed are subject to a life estate, the assessment made thereon shall be apportioned between the owner of the life estate and the owner of the fee, in proportion to the relative value of their respective estates, such proportion to be ascertained upon the principles applicable to life annuities.

SEC. 4843. [Notice and proceedings on report.] When the report of the committee is returned, the county auditor shall give notice thereof by publication in some newspaper published and of general circulation in the county, for at least three consecutive weeks, of the time when the commissioners will meet at the county auditor's office to hear the same; and on the day named in the notice the commissioners shall meet, and if no exceptions have been filed to the report, shall confirm the same; but if exceptions in writing have been filed by any of the owners of the lands affected thereby, they shall first proceed to hear such exceptions, and for that purpose shall hear any testimony offered by any party interested, and either of the commissioners may administer oaths to witnesses; and after such hearing they may either confirm the report, change it, or refer it to a new committee of three disinterested freeholders.

SEC. 4844. [Proceedings on a re-reference.] If the report be referred, the new committee shall, upon actual view of the premises, report a new apportionment, or recommend the confirmation of the former report; upon the return of such report to the county auditor, the same proceedings shall be had as upon the return of the first report, except that there shall not be a re-reference to another committee; and the final action of the commissioner[s] shall be entered upon their records, together with the report as confirmed, showing how the estimated expense has been apportioned upon the lands ordered to be assessed.

SEC. 4845. [Assessment may be increased or diminished.] After the work is completed, the county auditor, before placing the assessment upon the duplicate, shall add to or deduct from the estimate, pro rata, the amount that the actual expense may be found to be more or less than the estimate; all assessments on lands, under the provision of this chapter, shall be placed upon a special duplicate, to be provided by the county auditor, at the expense of the county; and the costs and expenses of the preliminary survey, proceedings, and report of the improvement, shall be paid out of the county treasury.

SEC. 4846. [Commissioners may issue bonds to meet expenses of road improvements.] For the purpose of raising the money necessary to meet the expense of the improvement, the commissioners of the county may issue the bonds of the county, payable in installments,

or at intervals not exceeding in all the period of twenty years, bearing interest at the rate not to exceed six per cent. per annum, payable semi-annually, which bonds shall not be sold for less than their par value; the assessment shall be divided in such manner as to meet the payment of principal and interest of the bonds; be placed upon the duplicate for taxation against the lands assessed, and collected in the same manner as other taxes; and when collected, the money arising therefrom shall be applied for no other purpose than the payment of the bonds and interest; but the county commissioners shall build all bridges and culverts on the improvement, and pay for the same out of the bridge fund of the county; and no bonds shall be delivered, or money paid to any contractor, except on the estimate of work done, as the same progresses, or is completed.

SEC. 4847. [When assessment is insufficient.] If it be ascertained by the county auditor that the assessments on land upon the duplicate are not sufficient to pay for the construction of any such road, he shall add to the assessments, pro rata, the amount that the actual expense is found to be more than the assessments on the duplicate, and the additional assessments shall be placed upon the same duplicate with previous assessments for the construction of the same road, and shall be collected in like manner.

SEC. 4848. [How excess of assessments on two-mile turnpikes distributed.] Any balance of assessments made for the construction of any such road remaining in any county treasury, after the payment of all expenses incurred on account of the road, shall be certified by the county auditor into the treasuries of the townships through which the road is located, proportionately to the amount paid for the making of the same in each of the townships, to be expended under the order of the township trustees in repairing the road; but in counties where the county commissioners are constituted a board of turnpike directors, such unexpended balance shall be transferred to the general improved road repair fund of such county.

SEC. 4849. [Compensation and fees.] The compensation of persons employed under this chapter shall be fixed by the county commissioners, and shall not exceed three dollars per day; but the surveyor or engineer and the county auditor shall receive such compensation for their services as is fixed by law for the compensation of the county surveyor and county auditor respectively for like services in other cases.

SEC. 4850. [Cities and villages may assist in constructing improved road.] When any road to be improved under and by virtue of this chapter begins or terminates in a city or village, the corporate authorities thereof may, upon the recommendation of the county commissioners, if they deem the same expedient, agree to pay in the bonds of such city or village, in the manner and proportions described in sections *forty-eight hundred and forty-six*, in addition to any amount that may be assessed upon the real property within such corporation by virtue of the provisions of this chapter, an amount not exceeding one-fifth of the entire cost of the road; but the entire tax to be imposed for road purposes, by virtue of this section, shall not in any year exceed five mills on the dollar of the taxable property in the corporation.

SEC. 4851. [Cities in adjoining counties may aid.] When it is desirable or expedient to continue any road contemplated under this

chapter, into or through an adjoining county, the city council of any city of the first or second class may, upon the application and recommendation of the county commissioners of such county, if the council deem the same promotive of the general interests of such city, aid in the construction of the road to an extent not exceeding one-fifth of its cost, the payment of the same to be provided for in the manner and proportions described in section *forty-eight hundred and forty-six*.

SEC. 4852. [Plats, profiles, and surveys to be preserved.] All plats, profiles, and surveys, on applications for road improvements, when the application fails, and the county commissioners refuse to order the construction of the road, shall be carefully preserved in the office of the county auditor, and the county commissioners are authorized to use the same, if practicable, on any new application for the same road, or any part of the same road; and upon such use of plats, profiles, or surveys, or any part thereof, the persons originally charged with the cost of the same shall be paid therefor, or such part thereof as may be so used, in the manner provided by law.

SEC. 4853. [Commissioners may receive donations, and contract for material.] The commissioners may receive subscriptions and donations, in money, or real or personal property, which shall be applied to the construction or improvement of the road, and may contract for and purchase such stone, gravel, or other material as may be necessary for the construction and repair of the road.

SEC. 4854. [Appointment of appraisers of material.] If the commissioners and owners of such stone, gravel, or other material can not agree on a price deemed fair and reasonable, the commissioners may apply to the judge of the probate court of the county, or if such material is located in another county than that in which the road is located, then to the judge of the probate court of the county in which such material is located, to appoint appraisers to assess the value of the material; thereupon an order shall be entered of record in the office of such probate court, directing that notice in writing be served by the commissioners, upon the person whose property is sought to be appropriated, not less than ten days before the further proceedings herein provided for shall be had; and such notice shall contain a brief description of the property sought to be appropriated, and state the use to which it is to be put, and the time when further proceedings shall be had.

SEC. 4855. [Their duties and their award.] Upon the day so fixed, the probate court, before whom such application is filed shall appoint three disinterested freeholders, who, after being duly sworn to impartially assess the value of the material, or any part of the same, shall enter upon the premises of the owner and assess the value thereof; and they shall also assess the damages that will accrue to the owner by the removal of the material through his premises, and shall, within ten days after their appointment, return their award to the probate court.

SEC. 4856. [Affirmance of the award.] The judge of the probate court shall, upon the return of the award, furnish the commissioners, on application, a copy of the same, and also furnish a copy to the owner of the material; and thereupon, if neither party signify an intention to appeal to the court of common pleas, the probate court shall at once render judgment for the amount of compensation and damages awarded by the appraisers, and order that, upon payment of such sums

and costs, the commissioners may enter upon the lands, either inclosed or uninclosed, and remove such material as may be required to make the road.

SEC. 4857. [Appeals to the common pleas.] An appeal from the decision of the appraisers to the court of common pleas may be allowed, if taken within thirty days after the rendering of the award; either party desiring to appeal shall give notice at the time, or within three days thereafter, of his intention to appeal to the court of common pleas, and thereupon the probate court shall require such appellant to enter into a bond, in a sum not exceeding the value of the property sought to be appropriated, conditioned that the appellant shall perform the judgment of the court of common pleas, and pay all costs and damages adjudged or ordered by such court; when such bond is filed, the probate court shall send all the original papers in the proceeding, with a certified copy of the journal entries made in the cause, to the clerk of the court of common pleas; and in that court a jury of twelve men shall be impaneled according to law, to try and determine the amount of compensation and damages that shall be awarded, and such proceedings shall be had as are provided by law to appropriate private property for public use; but such appeal shall not prevent the immediate entry upon the premises by the commissioners, for the purpose of taking material.

SEC. 4858. [When the road is in more than one county.] When any proposed road improvement contemplated by this chapter is in more than one county, application shall be made by petition to the commissioners of each of the counties, and the commissioners of such counties, upon the petition and bond being filed in their respective counties, shall meet in joint session, at such time and place as the auditor of the county in which there is more of such proposed improved road located than in any other county shall appoint, in a notice to the auditors of each of the counties in which the petition has been filed. The auditor of the county in which the joint board meets shall be the clerk of the board, and furnish a certified copy of the proceedings to each of the counties interested. The said joint board shall not order such improvement made until the said petitions are respectively signed by a majority of the resident land owners of the county wherein such petition is filed, whose lands will be assessed to pay the expenses of said improvement. The petitioners shall have the qualifications required in section four thousand eight hundred and thirty-six (4836). The viewers, surveyors and engineers, persons to apportion the estimated expense of the improvement shall have the qualifications required, when the improvement is confined to one county. And the viewers and persons to apportion the estimated expense shall be appointed so as to allow one at least to each county, if there are not more counties than there are persons to be appointed. There shall be separate reports of the viewers and of the persons to apportion the expenses, for so much of such improvement as lies in each county, which shall be filed with the clerk of the joint board. If any person appointed to perform duty under the provisions of this chapter shall be unable to perform such duty, the commissioners, or joint board of commissioners, as the case may be, shall appoint another person to fill the vacancy. The assessments shall be paid into the county treasury of the county where the lands assessed are located; and the money shall be paid out on the order of the joint board. A majority of the joint board shall have power to make findings and orders necessary to carry out the provisions of this section; but

such majority shall be composed of at least one commissioner from each county in which the improvement is located. In all matters not herein provided for the joint board shall proceed according to the provisions of this act. But proceedings already commenced shall be continued as if this act was not passed.

SEC. 4859. [Appeals in such cases.] Applications may be made by the joint board, to the probate judge of the county in which stone, gravel, or other material is located, to appoint appraisers to assess the value thereof, and damages, and like proceedings shall be had thereon as are provided in other cases; and any person feeling aggrieved by any decision of such appraisers may appeal from such decision to the probate court of such county, and such proceedings shall then be had as are provided for appeals in section *forty-eight hundred and thirty-four*, and such orders and judgments be rendered as are there provided for, and the necessities of the case may require.

SEC. 4860. [Assessments for two-mile assessment pikes, how enforced; issue of bonds to the amount of delinquencies.] When an assessment, made upon any real estate by virtue of proceedings had under this chapter, remains unpaid for the period of one year after the same is placed upon the special duplicate, the auditor of the county in which such real estate is situate, shall, unless otherwise ordered by the county commissioners, place the same upon the general duplicate for collection, together with a penalty of six per cent. per annum as county improved road taxes, and the amount of delinquent tax thus placed on the general duplicate shall be charged, respectively, to the several improved roads on account of which such assessments have been made as a transfer from the county improved road fund. And the commissioners of the county are hereby authorized to issue county improved road bonds not exceeding the amount of such delinquencies after each semi-annual settlement between the auditor and treasurer for a term of years, not exceeding three, at a rate of interest not exceeding six per cent., payable semi-annually, and for the payment of which both the principal and interest, the faith of the county shall be pledged, and the money arising from the sale of the same shall be charged to the county improved road fund; and the commissioners, in their annual report to the court of common pleas, shall fully set forth the amount of tax transferred and bonds sold as provided in this section.

SEC. 4861. [Improved roads may be surrendered to county commissioners.] Any road, or part thereof, constructed or improved by any corporate body, or otherwise, may, after the completion thereof, with the consent of the stockholders or contributors thereto, be relinquished and transferred, without consideration, to the commissioners of any county in or through which it is located, together with all rights and privileges appertaining thereto—such transfer or relinquishment to be evidenced by a written declaration, executed by the president and secretary of such corporate body, or by the other owners; and upon the deposit of such instrument of writing, duly executed, with the county auditor, the commissioners, if satisfied that such road has been built in such manner as to make a good and lawful turnpike, and that there are no debts against the same for the construction thereof, shall, by a proper order, cause the road to be entered of record as a free turnpike, within the meaning of this chapter, and thereafter such road or part thereof transferred shall be a free road, and shall be kept in repair as provided in chapter [ten].

SEC. 4862. [County may purchase roads.] The county commissioners of any county may purchase and make free any turnpike road, or part of such road, within the limits of their respective counties, on the conditions and by the procedure which are provided for the construction or improvement of roads in this chapter.

SEC. 4863. [Who may take advantage of errors.] No person shall be permitted to take advantage of any error committed in any proceeding to lay out, construct, or improve a road under and by virtue of this chapter, nor of any error committed by the county commissioners or county auditor, or by the engineer or surveyor, or other person, in the proceeding to lay out, construct, or improve such road, nor of any informality, error, or defect appearing in the record of such proceeding, unless the party complaining is affected thereby.

SEC. 4864. [How far proceedings may be declared void.] But the court in which any action is now pending, or may hereafter be brought to enjoin, reverse, or declare void the proceedings by which any such road has been laid out, constructed, or improved, or ordered to be laid out, constructed or improved, or to enjoin the collection of any tax or assessment levied or ordered to be levied, for the purposes aforesaid, or of either, may, if there be manifest error in such proceedings affecting the rights of the plaintiff in such action, set the same aside as to him, without affecting the rights or liabilities of the other parties in interest; the court shall, on the final hearing, make such order in the premises as may seem equitable and just, and may order the tax assessment levied against the plaintiff to remain on the duplicate for collection, or to be again levied in whole or in part, or may perpetually enjoin the same, or any part thereof; the costs of such action, and of the proceedings had therein, shall be apportioned among the parties, or paid out of the county treasury, in whole or in part, as justice may require and the court direct; and this and the preceding sections shall govern actions or proceedings now pending, so far as the same are applicable.

CONVERTING TOLL ROADS.

SEC. 4865. [Owners may propose to commissioners to sell toll road.] The duly constituted officers of any incorporated turnpike company may, after obtaining the written consent of the owners of a majority of its stock, make a proposition to the county commissioners of the county in which its road, or any part thereof, is located, for the sale of such road, or any part thereof, in order that the same may be converted into a free road as hereinafter provided.

SEC. 4866. [Appraisalment of the road and bridges.] The county commissioners, upon the receipt of such proposition of sale, shall appoint three competent disinterested freeholders of the county appraisers, who shall, upon actual view of the road, make and return to the commissioners, under oath, their appraisalment of the actual cash value thereof, and the actual cash value of the bridges and culverts which have been built thereon by such company.

SEC. 4867. [The commissioners may propose to buy.] The commissioners, at their next regular meeting after the receipt of the report of the appraisers, shall, if they deem the valuation reasonable, make a proposition to such officers for the purchase of the road, or any part thereof, at the value reported by the appraisers, on the condition

that a majority of the resident land owners along and adjacent to the line of the road, whose lots and lands will be assessed for the purchase of the same, shall petition the county commissioners for an assessment, as provided in section *forty-eight hundred and sixty-nine*.

SEC. 4868. [Company may accept proposal.] The officers of such company may, after obtaining the written consent of the owners of a majority of the stock of the company, accept the proposition of the commissioners for the purchase of the road, or any part thereof, situate in the county; and such acceptance shall be binding upon the company for the space of six months succeeding the date thereof.

SEC. 4869. [Petition of land-owners for purchase.] After the filing of such acceptance with the commissioners, the resident land-owners along and adjacent to the line of the road, whose lots and lands will be assessed for the purchase of the same, may petition the county commissioners of the county through which the road or any part thereof runs, for the purchase of the road at the appraised value, that the bonds of the county be issued to such company according to its acceptance, and that a sum sufficient to pay the amount with which they will be charged, together with the interest, may be assessed upon the lots and lands which would be benefited by the conversion of the road into a free road, within no greater distance than two miles thereof.

SEC. 4870. [County to pay for bridges.] The cash value of the bridges and culverts which have been built by the company, as appraised by the appraisers, shall be paid by the county commissioners out of the bridge fund of the county, less any amount they may have theretofore appropriated.

SEC. 4871. [How assessments made.] In ascertaining what lots and lands are benefited, and to what extent each piece shall be assessed for the purchase, and whether a majority of the owners thereof have petitioned therefor, the county commissioners, auditor, and treasurer shall have the same power and authority provided in chapter *eight*, and be governed in the assessment and collection of taxes to pay for the road so purchased, and in all other respects, so far as the same may be applicable, by the provisions of that chapter.

SEC. 4872. [How put in proper condition and kept in repair.] After the purchase of any such road by the commissioners it shall immediately become a free road, to be kept in repair as provided in chapter *ten*; but if the county commissioners are of opinion that such road is not in repair and condition equal to free turnpikes in the vicinity thereof, they are authorized, at their discretion, to assess on the lands taxed for the purchase thereof an amount which will, in their judgment, put it in repair equal to the free turnpikes; such assessment shall be made upon the lands taxed for the conversion of the toll road into a free road, and in the same proportion, be placed upon the same special duplicate, and collected at the same time and in the same manner as the taxes for the purchase of the toll road are collected, and when collected be applied by the county commissioners in the repair of the road, and for no other purpose.

SEC. 4873. [Fees of officers and others.] The officers and other persons who perform service under this chapter shall be allowed the same fees as they are allowed for like services in other cases, and may be paid out of the fund created by this chapter, or out of any funds in the county treasury not otherwise appropriated.

SEC. 4874. [Owners of certain roads may sell the same.] A person owning the right to take toll on any toll road, or the road of any incorporated turnpike company, which right has been purchased under the provisions of the act of the general assembly passed February 8, 1826, entitled "an act for the regulation of turnpike companies," may sell such right to the county commissioners of the county in which the road or any part thereof is located, in conformity with the provisions of this chapter, so far as the same may be applicable.

SEC. 4875. [To be a free road.] After the purchase of such right by the commissioners, the road shall immediately thereafter become a free road, for the period over which such right extends.

REPAIR OF IMPROVED ROADS.

SEC. 4876. [Improved roads to be repaired.] All macadamized or graveled roads which are free roads, whether constructed under general or local laws by taxation or assessment, or both, or converted by purchase or otherwise from a toll road into a free road under any law, and all turnpike roads, or parts thereof, unfinished or abandoned by any turnpike company, and appropriated or accepted by the commissioners of the county, shall be kept in repair as provided in this chapter.

SEC. 4889. [Townships in certain counties made road districts.] Each township in the counties of Belmont, Butler, Carroll, Champaign, Clermont, Clinton, Columbiana, Cuyahoga, Darke, Delaware, Erie, Franklin, Geauga, Greene, Hamilton, Harrison, Licking, Lucas, Montgomery, Muskingum, Ottawa, Preble, Portage, Pickaway, Ross, Stark, Summit, Trumbull, Tuscarawas, Washington, Warren and Wayne in which any such free road is located, shall be a road district for the care and maintenance thereof.

SEC. 4889a. [Certain repairs in Pickaway county.] In Pickaway county, the county commissioners shall repair all embankments or levees, on which free turnpike roads are located, which have been constructed to prevent overflows and inundations of said free turnpikes, and the expense of repairing such embankments or levees, or free turnpikes constructed thereon, shall be paid out of the money raised by taxation for road or bridge purposes in said county.

SEC. 4890. [Auditor to give notice to township clerk.] Unless such notice has heretofore been given, the auditor of each of said counties shall immediately give notice to the clerk of each township in which any such road is located, that the trustees are required to take the charge and control thereof; and the auditor shall give the like notice upon the acceptance or appropriation of any other macadamized or graveled road by the county commissioners.

SEC. 4891. [Township trustees charged with the repair of improved roads.] The township clerk, on receipt of such notice from the auditor, shall immediately notify the township trustees of such fact, who shall, upon receipt of the notice, have full charge and control of all such roads as are herein provided for within their townships; and the trustees shall divide such road, or roads, into sections of not less than one-half mile each, and shall keep them in repair, and in good

condition for all kinds of public travel, and for that purpose they are invested with all necessary powers as to drainage, the purchase of stone, gravel, or other material, or if necessary, the condemnation of such material for the repair of the roads within their townships, as are, or may be conferred by law upon county commissioners.

SEC. 4892. [Trustees may assign roads to supervisors.] The trustees may at their regular March session each year apportion and assign to the several supervisors of roads in their townships, or to other suitable persons, such road or roads, or any part or parts thereof in the road districts of such supervisors respectively, to be by such supervisors, or by such other suitable persons kept in repair as required in section *forty-eight hundred and ninety-one* and under the control and supervision of the trustees. And all money paid out of the township treasury for the repair or improvement of such roads shall be paid to the person performing such labor, on the order of the trustees of such township.

SEC. 4893. [Trustees to report annually to commissioners.] The trustees shall transmit to the commissioners of the county, prior to their regular quarterly meeting on the first Monday of June in each year, a statement showing the number of miles of free gravel roads in their township, the amount of levy made for road purposes, and the pro rata of the same set apart for keeping such roads in repair and expended on the same, and the conditions in which such roads are for public travel.

SEC. 4894. [Trustees shall set off persons and districts for repair of roads; labor on roads; improved road fund; use of tools owned by township; transfer of certain funds to be used for such repairs.] The trustees shall provide means for keeping in repair all such roads within their township, and for that purpose shall set off persons and districts; such persons shall perform their two days' labor as required by law, and also labor in commutation of taxes, the same to be worked out under the direction of such supervisors or such other suitable persons, as provided in sections *forty-eight hundred and ninety-one* and *forty-eight hundred and ninety-two*, and under the control and supervision of the trustees, and such supervisors or other suitable persons shall be authorized to give receipts therefor; and such trustees shall set off, from the common road fund of their township, such amount as to them shall seem equitable, to be an improved road fund, especially applicable to the care and improvement of such roads, and may also allow the use of any plows, scrapers, or other implements owned by the township for road purposes, and in any county in which said improved roads have been placed under the control of the county commissioners, any funds set apart or collected in any township for the repair of such roads, or any balance thereof remaining in any township treasury, may, by the township trustees, be transferred, and used for the repair of any roads in the township, as said trustees may deem necessary.

SEC. 4895. [County commissioners may levy additional tax for road purposes.] If the tax levied by the township trustees and the road-labor where applied to such improved roads are found by the county commissioners to be insufficient to keep such roads in good repair, they may determine and levy an additional per centum of extra road tax, to be levied upon the taxable property of the county, not exceeding two mills on the dollar in any year; and the same shall be collected as other taxes, and when collected, shall be paid by the county treasurer to the township treasurers, upon the order of the county commissioners in

such proportion as they may determine to be just and equitable between the several townships in which the roads are located, and shall be expended upon such improved roads, in accordance with the foregoing provisions; or the county commissioners shall, in any townships within their respective counties, in which such roads are not kept in good repair as heretofore provided, levy an additional tax to that levied by the trustees thereof, on all the taxable property of the township, on the basis of the number of miles of improved road or roads, within the township, sufficient to keep the same in good repair, to be collected as other taxes are, and paid over to the treasurer of the township on which such levy is made, and shall be expended by the trustees thereof on the improved roads within their township, so as to keep the same in good repair.

SEC. 4895a. [Road districts created in Champaign county.] Each township in all counties which at the federal census of 1880 had, or at any subsequent federal census shall have, a population of not less than 27,817 nor more than 27,825, or at the federal census of 1890 had, or at any subsequent federal census shall have, a population of not less than 26,950 nor more than 27,000, is made a road district for the care and maintenance of all public highways, all macadamized or graveled roads which are free roads, whether constructed under general or local laws by taxation or assessment, or both, or converted by purchase, or otherwise from a toll road into a free road under any law, and all turnpike roads or parts thereof, unfinished or abandoned by such turnpike company and appropriated or accepted by the commissioners of the county, and the same shall be kept in repair as herein provided.

SEC. 4895b. [Notices by auditor.] Unless such notice has already been given, the auditor of each of said counties shall immediately give notice to the clerk of each township that the trustees are required to take the charge and control thereof; and the auditor shall give the like notice upon the acceptance or appropriation of any other such roads.

SEC. 4895c. [Township trustees to appoint road superintendents on receipt of notice.] The township clerk, on the receipt of such notice from the auditor, shall immediately notify the township trustees of such fact, who shall, upon receipt of the notice, have full charge and control of all such roads as are herein provided for within their township. The trustees shall divide the township into such number of districts not to exceed eight, as the best interests of the public roads in their judgment may demand, and shall appoint for each of such districts a suitable person, not one of their own number, who shall be a resident of the district, and shall be known as road superintendent.

SEC. 4895d. [Oath, etc., of road superintendents.] Each person so appointed shall, before entering upon the duties of his office, take an oath to faithfully discharge the duties thereof, and give bond to the state of Ohio in a sum satisfactory to the trustees of the township, not less than five hundred dollars, with sureties as the trustees shall require, which bond shall be filed with the township clerk. His appointment shall be for one year and he may be removed or dismissed at the will of the trustees or a majority thereof at any time.

SEC. 4895e. [Powers and duties of superintendents.] When properly qualified the road superintendent shall have full control under the trustees of all such roads within his district, and shall keep them in good repair and condition for all kinds of public travel, and for this

purpose he shall have all the powers and privileges of road supervisors for drainage, and for the removal of timber, logs, cordwood or other obstructions found within the limits of the road from time to time. He may, subject to the will of the trustees, contract for all material necessary for repairs, and in cases of floods or freshets, giving rise to breaks in the road-bed, or washing off large quantities of gravel, he may contract for repairs, either by day or job work, and shall certify the same with itemized account to the trustees, who, upon finding the accounts correct and satisfactory, shall pay them out of the township treasury from funds raised for road purposes. The trustees shall furnish such superintendent with plows, scrapers, or other implements as are necessary for the proper and economical care of the roads. The road superintendent shall, at the regular March meeting of the trustees each year, make an itemized report of the receipts and expenditures in his district for road purposes the preceding year; the number of persons in his district who are required by law to perform two days' labor on the public highway, and the number who have performed such labor; the number of miles and the condition for public travel of all roads in his district, and the probable wants of such roads for the ensuing year. The township clerk in his annual statement shall specify the amount of money received and expended for road purposes in each district of the township. The road superintendent shall receive for his services under the preceding sections, not exceeding two dollars per day as the trustees may determine, for the time actually employed in the care of such roads, which shall be paid out of the road funds of such township. The superintendent shall not, either directly or indirectly, work out any of the taxes herein provided for in this act; nor shall he receive any compensation for the work of any team of which he is the owner, on any such roads, nor shall he employ any member of his own family in such work by which he shall himself be financially benefited. And the trustees shall not certify any account to the township clerk in favor of any superintendent for work on such roads, other than is herein provided for superintending and caring for such roads.

SEC. 4895f. [Penalty for violation by superintendent.] Any such road superintendent who neglects or refuses to perform the duties enjoined on him herein, or who, under any pretense whatever, gives or signs any certificate for labor or work performed, or material furnished, when the labor has not been performed or material furnished before the giving or signing of such certificate, shall forfeit for every such offense not less than five dollars nor more than fifty dollars, to be recovered by an action before a justice of the peace within the township where such superintendent resides, and the trustees of the township shall prosecute all offenses against the provisions of this section.

SEC. 4895g. [Levy of tax.] The township trustees shall provide means for keeping in repair all such roads within their township, and in addition to the two days' labor required by law, but which shall not be required to be performed during the days of corn-planting and wheat-harvesting, which shall be worked under the direction of the road superintendent in their respective districts, they shall levy upon the taxable property of the township, a sum sufficient for said purpose, not to exceed two mills on the dollar in any one year, and the same shall be collected as other taxes, and when collected shall be paid by the county treasurer to the township treasurer upon the order of the county auditor. The trustees, in determining the division of the fund, shall be governed,

not by the number of miles of road in each district, but by the necessities of the roads, the convenience of getting material, the quality of the material necessary to make substantial repairs, and shall make a just and equitable division of the fund between the districts. In expending the funds provided in this section, the road superintendent shall give preference to those from whom the tax is collected, and it shall be the duty of the trustees to see that this provision is observed, so far as practicable for the best interests of the roads and of the taxpayers. For day work the superintendent shall pay such amount as shall be fixed by the trustees, which shall be uniform throughout the township.

SEC. 4895h. - [Repair of culverts and bridges.] The superintendent shall keep in repair all culverts necessary for the travel and convenience of such roads; his authority shall extend to the repairing and rebuilding of bridges and culverts in all cases wherein the expenditure of money shall not exceed fifty dollars. He shall have power to contract for the necessary material and labor therefor, and, when approved and endorsed by the township trustees, shall certify the same, together with an itemized account of the expenses incurred to the county auditor, who, upon finding the account proper and correct, and in conformity with the provisions of this section shall, upon the order of the county commissioners, issue an order on the county treasurer for the amount of such certificate, or so much thereof as may be allowed by them in favor of the party to whom such certificate was issued. But any repairs or rebuilding, the estimated cost of which exceeds ten dollars on any one culvert or bridge, shall first be authorized by the township trustees in writing, and the superintendent shall accompany his account to the auditor with a copy of the trustees' authorization. Nothing in this section shall be construed to prevent the superintendent himself, from doing the work of repairing or rebuilding; but repairing and rebuilding culverts and bridges or overseeing the same shall be considered wholly distinct and separate from his duty as superintendent of roads, and in no case shall he receive any compensation for the duties required in this section except as the commissioners may allow.

SEC. 4895i. [Office of road supervisor abolished, etc.] In the counties enumerated in section 4895a, the office of road supervisor is abolished, and the trustees in their notice of election for township officers, each year shall omit the office of road supervisor in their notice. The road superintendent, as provided for in section 4895c, is invested with all the powers and privileges that are conferred by law upon supervisors; and section 4889 of the Revised Statutes, so far as it relates to the counties mentioned in section 4895a of this act, is void.

SEC. 4895j. [Issue of certificates of indebtedness, and levy of tax.] Townships, that, during 1890, did not borrow money or issue certificates of indebtedness as authorized by original section 4895j of the act passed April 15, 1890, are hereby authorized to borrow or issue certificates of indebtedness for a sum not exceeding \$1,000 for purposes of road improvement during the year 1891, and in addition to the sum already levied, may make a levy sufficient to provide for the payment of the sum herein authorized to be borrowed.

SEC. 4896. [In certain other counties.] In every other county the county commissioners are hereby constituted a board of turnpike directors, in which the management and control of all such roads therein shall be exclusively vested.

SEC. 4897. [Board of turnpike directors.] The directors, at their first meeting, shall divide the county into three districts, as nearly equal in number of miles of turnpike, and conveniently located, as may be practicable, and each director shall have the personal supervision of one of such districts, subject to all rules and regulations that may from time to time be agreed upon by the board; and the directors shall hold a meeting as such board at least once in three months, at their office at the county seat, and shall be governed in all transactions by the rules governing county commissioners.

SEC. 4898. [Duties of directors of improved roads.] They may appoint suitable persons to superintend the work of repairs on the several roads, who shall be required to give bond and security to the satisfaction of the commissioners for the faithful performance of their duties, and take and subscribe an oath also, which shall be endorsed on the back of the bond, and the same shall be filed in the auditor's office of the county. The auditor of the county shall serve as clerk of the board, and shall record the proceedings of the board in a book to be provided for such purpose by the county commissioners, which shall be open for examination to all persons interested, and they shall cause notice to be published in at least one newspaper of general circulation in the county, of such rules as may be adopted for the regulations of labor and travel on such roads, notice of the regular meetings of the board, and on or before the third Monday in the month of September in each year shall make a detailed statement of receipts and expenses to the court of common pleas, and the same shall be examined and published as provided in section *nine hundred and seventeen* of the revised statutes of Ohio.

SEC. 4899. [May contract for labor and material.] They may contract for labor and material, either at public sale or private contract, as will best subserve the interests of the different roads, and shall certify to the county auditor, on or before the first Monday in June each year, the amount of money necessary for the purpose of keeping such roads, including the bridges and culverts thereon, in good repair; and they may, where hills have not been brought to the grade, as defined in section *four thousand seven hundred and fifty-nine* Revised Statutes, when the road was originally constructed, and where public safety and convenience demands it, cut down the same, regrade and regravels, as may be found necessary, the cost of same to be paid for in [the] same manner as general repairs; and when in the opinion of the board the interests of any of the roads require it, they may enter upon any lands in the county, and take the gravel or other material necessary for the repair of the roads, and shall give a certificate to the owner of such material so taken, which shall state the value thereof, together with the amount of damage to the lands by reason of the removal of such material; and the county auditor, upon the presentation of such certificate, shall issue an order on the county treasurer for the amount so certified, who shall pay the same out of the turnpike fund.

SEC. 4900. [Appeal from assessment of damages.] If an owner be dissatisfied with the value so certified by the board, he may appeal to the probate court of the county, subject to all the provisions of the statutes relating to the appropriation of material for road purposes, but notice of such appeal shall be filed with the probate judge of the county within ten days after the delivery of the certificate.

SEC. 4901. [General levy for repairs.] Upon the issue of such certificate to the county auditor he shall levy upon all the taxable property of the county such sum, not to exceed three-twentieths of one mill for every ten miles of turnpike completed in the county, the receipts thereof to constitute a turnpike fund in the county treasury, to be paid out only upon the order of the county auditor, issued upon the certificate of the board of turnpike directors, properly attested by the clerk of the board; but in all counties wherein a levy is made for turnpike repair purposes, as provided in this section, the county commissioners shall make no further levy for general road purposes, and in such case the township trustees in such counties may make such levy for common road purposes in their several townships as they may deem proper, not to exceed in amount the combined levy that would have been authorized by county commissioners and township trustees in case no levy had been made under the provisions of this section.

SEC. 4902. [Township trustees to apportion road labor.] In townships wherein such roads are located, and placed under the control of turnpike directors under the provisions of this chapter, the township trustees shall, at their annual meeting in March, designate and set off such portion of the two days' labor as they may deem just and equitable, to be performed under the control of the board of directors or their superintendents, subject to all the rules and regulations of law for its performance under the direction of road supervisors.

SEC. 4903. [Compensation of directors and others.] The compensation for services as such director shall be the same in all respects as county commissioners, and the services of superintendents and clerk of the board shall be subject to the agreement of the board, but not to exceed two dollars and fifty cents per day for time actually employed, and to be paid out of the turnpike fund.

SEC. 4904. [Regulation of burdens on improved roads.] It shall be unlawful for any person or persons, firm or corporation, in any county having free or toll macadamized, graveled or stone roads, to transport over such roads, in any vehicle having a tire of less than three inches in width, a burden of more than two thousand pounds. The county commissioners of every county shall constitute a board of directors for their respective counties, with power to prescribe the increased weight in quantity greater than two thousand pounds that may be carried in vehicles having a width of tire three inches or upwards and cause such regulations to be recorded in their journal. All persons violating this act or any regulations duly prescribed by the aforesaid board of county commissioners made in pursuance hereof, shall be guilty of a misdemeanor, and on conviction shall be fined not less than five dollars nor more than fifty dollars, and shall be imprisoned until the fine and costs of prosecution are paid, or said person so convicted duly discharged according to law. The board of trustees or any one of them, or any pike superintendent or commissioner within their respective jurisdiction, or any owner or president of any turnpike company owning or operating a turnpike road within any county, and the county commissioners within their respective counties, shall cause to be prosecuted all persons violating this act or violating any regulations prescribed by the board of county commissioners, made in pursuance of the authority herein conferred. The county commissioners within their respective counties are hereby empowered to appoint some suitable person or persons to enforce the require-

ments of this act and such regulations as are made in pursuance of the authority herein conferred; and the person or persons so appointed shall receive, upon any conviction for an offense by them prosecuted under this act, such portion of the fine or penalty as the commissioners may deem just and proper; and on complaint of any freeholder, and if, in the opinion of the board, owner or president of any such turnpike company, the complaint is well founded, the said board, owner or president of any such turnpike company may also enjoin any person or persons who are engaged in the business of transporting heavy loads over such roads in violation of the requirements prescribed under it, and the court in any such action may render judgment against the defendant or defendants for any damage done.

SEC. 4905. [Penalties for violation of rules.] Any person who violates, either by himself or agent, any of the rules or regulations adopted by the board, and recorded in their book of records, shall, upon conviction thereof before any justice of the peace of the county or any court having competent jurisdiction, be fined in any sum not less than ten dollars for each offense; and all such fines shall be paid into the county treasury for the use of the turnpike fund.

SEC. 4906. [Parts of roads in cities and villages to be repaired.] The commissioners shall keep in repair such portions of such roads within their respective counties as have since their completion been included, or may hereafter be included, within the corporate limits of any city or village in such counties, to points therein where the sidewalks have been curbed and guttered, and no further.

SEC. 4907. [Certain funds apportioned.] In each county wherein the commissioners have been, by virtue of their office, constituted a board of directors for keeping in repair the turnpike roads therein, and who are not now by law such board, and who will not by the passage of this chapter be made such board, and wherein there is an accumulated fund in the hands of the treasurer thereof for the purpose of keeping in repair such roads, the commissioners shall apportion such fund to the different townships within their county, according to the number of miles of turnpike roads therein contained; and they shall direct the county auditor to draw warrants on the county treasurer, payable to the treasurers of the respective townships, for the amount so apportioned, to be used in keeping in repair the turnpikes therein contained, in accordance with law, and for no other purpose.

MISCELLANEOUS PROVISIONS.

SEC. 4908. [How certain roads may be vacated.] When a road has been dedicated by private persons to public use, a majority in interest of the proprietors of lands adjoining the road may, after having given thirty days' notice by advertisement in one or more newspapers published in the county in which the road is located, and having given notice in the township or townships where the road is located, by having posted up copies of such notice in three or more public places therein, at least thirty days previous, petition the commissioners of the county for the vacation of the road or any part thereof; and if the commissioners are satisfied that the notice has been given, and that no injustice will be done thereby, they shall declare the same vacated; but all costs and expenses accruing upon any petition under this section shall be paid by the petitioners.

SEC. 4908^b. [Land may be dedicated for use as public highways.]

That any person or persons may dedicate any tract or strips of ground to the public use as a highway, either by plat or deed of gift to the county or township, filed with the commissioners or trustees, and by them recorded as road surveys and other plats; and the county commissioners, or in a proper case the township trustees, may, if they deem such road of sufficient public utility, accept the same, by entry to that effect on their record, and recording as aforesaid. Upon such acceptance, said tract or strip shall become and be a legally established highway.

SEC. 4909. [Sidewalks along roads authorized.] Any person or board of education, the council of any village, the trustees of any cemetery association, or any agricultural or religious society may appropriate on any public road of sufficient width on either side thereof, sufficient land to construct thereon a public sidewalk not exceeding six feet in width, and may construct such sidewalk thereon; but such sidewalks shall not obstruct any private entrance or public highway.

(4909-1) [Sidewalks along highways.] It shall be lawful for any land-owner owning land abutting upon any highway, not within a municipal corporation, to improve the same as follows: When approved by the township trustees, he may build an[d] improve a sidewalk of such width as the trustees shall determine, not exceeding six feet, and at his own expense, and when completed and approved by the trustees, any person who maliciously injures the same, shall be liable to the owner thereof in double the amount of damages that may be assessed against him, before any court of competent jurisdiction.

SEC. 4910. [Township trustees may borrow money for certain purposes; when question of issue shall be submitted to vote.] The trustees of any township in which there is now or may hereafter be located any cemetery, when it becomes necessary to make or repair roads, or build or improve sidewalks, from any public road, or from any town or village to such cemetery, may borrow money and issue bonds not exceeding fifteen hundred dollars, and at a rate of interest not exceeding six per cent. per annum, for the purpose of making, repairing or building such roads or walks from such public highway, or town or village, to such cemetery. Provided, further, upon petition of a majority of the owners of real estate abutting on said road or sidewalk, the trustees shall submit the question of borrowing money and issuing bonds for the purpose of making, repairing or building such roads or walks to the cemetery to a vote of the qualified electors of said township, at any special or general election, of which at least ten days' notice shall be given. If a majority of the voters of said township vote in favor of issuing said bonds, then the trustees of said township shall issue said bonds as provided for in this section.

SEC. 4911. [May levy tax to pay same.] If the trustees of any such township borrow money and issue bonds, as provided in the preceding section, they shall levy a tax from year to year on all the taxable property of the township, not exceeding one-fourth of a mill on the dollar in any one year, and the amount so raised shall not be applied to any other purpose than that which is specified in said section: but if there be a surplus after paying the sum borrowed, it shall be appropriated to the current expenses of the township.

SEC. 4912. [When commissioners may transport material by rail.] When county commissioners, in contracting for the construc-

tion of turnpike roads, under any law, find it necessary, by reason of the inconvenient location of gravel or stone for the construction or repair of such roads, to have the gravel or stone transported to convenient points by rail, they may make such contract for transportation, at public sale, as will best subserve the public interest; the cost of such material, and the transportation of the same, shall be paid from the county treasury, by order of the commissioners, from any funds applicable to the construction of such roads, and the same shall be taken into the estimate of any contract price, at the time of the sale of such roads; and contracts heretofore entered into for the purpose above named, and remaining uncompleted, shall be held to fall within the provisions of this section.

SEC. 4913. [County commissioners may appropriate certain roads.] The county commissioners of any county through which any turnpike or plankroad, or part of the same passes, are authorized to appropriate as county roads any part of such roads that may remain unfinished for five years; and they may proceed at any time after any such road has become a county road, under the provisions of this section, to improve the same under the provisions of any law, and shall have the benefit of all work done on such road or parts thereof, by any company or corporation, without any compensation for the same; but this section shall not be construed to authorize the appropriation of any part of such road already finished.

SEC. 4914. [What roads may be declared abandoned, and when.] Any turnpike or plankroad in the state upon which toll has been or may be authorized to be taken, which has been or may hereafter be out of repair for the period of six months, shall be deemed and held abandoned; and upon such abandonment being declared, as hereinafter provided, it shall be unlawful for any company or person owning or claiming to own such road, or any person owning or claiming to own the right to take tolls thereon, or any person in behalf of such company or person, to take, demand, or receive toll for the use of such road, or so much thereof as may be so declared abandoned.

SEC. 4915. [Petition to have same declared abandoned.] Any twelve or more freeholders of a county in or through which any toll, turnpike or plankroad, or any part thereof, has been or may hereafter be constructed, may present to the probate court of any county in which such road or part thereof is situate, their petition, stating that such road or part thereof has not been kept in repair for the preceding six months, and praying that the same may be declared abandoned and vacated as a toll road; to which petition the company or persons owning or claiming to own such road, and all persons owning or claiming to own the right to take toll thereon, shall be made defendants.

SEC. 4916. [Notice, and hearing on petition.] On the filing of such petition the court shall fix a time for the hearing thereof, not less than thirty days nor more than forty days thereafter, and issue a notice in writing to the defendants, stating the filing of such petition, and the day fixed for hearing thereof, and requiring the defendants to appear and answer, which notice shall be served in the same way as a summons in civil cases; and on the hearing of such petition, if the court find that the road or part thereof has been out of repair as aforesaid, the court shall declare the same abandoned and vacated as a toll road.

SEC. 4917. [Publication against non-residents.] If any one of the defendants is a non-resident of the state, and this fact is made to appear by affidavit on the filing of the petition, the court shall order notice to be given by the petitioners to such non-resident, by publication for three consecutive weeks, in some newspaper printed and of general circulation in the county, stating the time when such petition will be for hearing, and the object and prayer thereof, which publication shall be deemed sufficient service.

SEC. 4918. [Abandoned toll road to become free road.] When a toll road, or part thereof, has been heretofore or shall be hereafter declared abandoned and vacated as aforesaid, it shall thereafter become a free road, to be kept in repair as provided in chapter *ten*.

SEC. 4919. [Tax to repair damaged highways.] When any one or more of the principal highways of any county, or any part thereof, have been destroyed or damaged by freshet, land-slide, wear or water-courses[,] or any other casualty, or by reason of the large amount of traffic thereon, or from neglect or inattention to the repair thereof have become unfit for travel or cause difficulty, danger or delay to teams passing thereon, and the commissioners of such county are satisfied that the ordinary levies authorized by law for such purposes will be inadequate to provide money necessary to repair such damages, or to remove obstructions from, or to make the changes or repairs in such road or roads as are rendered necessary from the causes herein enumerated, said commissioners may annually thereafter levy a tax at their June session of any sum not exceeding five mills upon the dollar upon all taxable property of the county, to be expended under their direction in such manner as may seem to them most advantageous to the interest of the county for the construction, re-construction or repair of such road or roads or any part thereof. Provided, that this section shall not be so construed as to authorize the commissioners to refuse to make a levy for a road fund under the provisions of section 2824 of the Revised Statutes; and provided further, that in any county, when the valuation of the taxable property shall not exceed ten millions of dollars, if the commissioners shall fail in any year to make a levy of at least one mill upon each dollar of taxable property within that county, to be used and expended as a road fund as authorized by law under said section 2824, one-half of all taxes charged for road purposes under the provisions of this section (4919) for said year on the property within the limits of any municipal corporation in said county, and collected by the county treasurer, shall be paid over to the corporation treasurer, to be specially appropriated by the council thereof to street and road purposes as is provided by law.

SEC. 4919a. [Provisions of preceding section inapplicable to Van Wert, Defiance and Paulding counties.] The provisions of section *forty-nine hundred and nineteen* (4919) of the Revised Statutes of Ohio shall not apply to any county of this state, which at the last federal census had or which at any subsequent federal census may have a population of not less than twenty-nine thousand and fifty (29,050) and not exceeding twenty-nine thousand and eight hundred (29,800), nor in any county which at such last federal census had or which at any subsequent census may have a population of not less than twenty-five thousand seven hundred (25,700) nor more than twenty-six thousand (26,000), and the property included within the limits of any such county shall not be subject to such levy as is provided for in said section 4919.

SEC. 4920. [Such tax may be anticipated; contract to improve parts of road; certificate of amount of compensation due; rights of holder of certificate.] To anticipate the receipts which may come into the county treasury by virtue of such tax, the commissioners may borrow from time to time, such sums of money as shall not exceed in the aggregate four-fifths of the tax levied; but the money so borrowed in any one year shall not exceed four-fifths of the taxes levied in such year, and shall be paid with lawful interest, at the county treasury, out of the taxes so levied. In addition to the power to borrow money, as herein granted, said commissioners are authorized, upon the written petition of one or more persons interested, describing the road or part thereof proposed to be improved, to contract in writing with any person or persons living upon or near, or owning land abutting upon any such road within the county, to improve such part of such road as may be described in said petition, within such time and in such manner, and for such compensation, payable as hereinafter provided, and not otherwise, as said commissioners may direct; and as soon as such road or part thereof is fully improved and completed, to the satisfaction of said commissioners, they shall give to the person, his administrator or executor, with whom they have contracted to repair the same, a certificate, specifying the amount of compensation due for work performed under said contract, stating when authority was given for the improvement of such road, and when the same was completed and accepted by the commissioners. In case of any dispute between the person or persons making such improvement and the commissioners, the judgment of the commissioners therein shall be final. The holder of such certificate shall be entitled to have the amount of compensation therein specified credited on any road tax levied on the property of such person situate within the township within which such road or part of road may have been improved, as aforesaid. If such road tax levied in any one year on such property is not sufficient to cover the amount named in the certificate, the same shall, in like manner, be so credited from year to year, until the certificate is fully paid without interest; and until such certificate shall be paid in full, the county auditor shall issue, each year on demand, to the holder of such certificate, a warrant, addressed to the treasurer of the county, specifying the amount of road tax which is chargeable against the property of the holder of such certificate, in such year, in said township, and directing the treasurer to receive the same as cash in payment of such road tax. And the holder of such certificate may transfer the same [and] any balance due thereon to any subsequent purchaser of the property owned by him in such township, when such certificate was issued; and whenever any road or part of road shall have been improved in pursuance of contract made with the county commissioners, as provided in this section, it shall be lawful for the county commissioners or the trustees of the township in which such road or part of road improved as aforesaid, shall be situated, to enter into an agreement with any responsible person or persons for the repair of such improved road or part of road from year to year, and upon such terms as may be agreed upon, and the amount so agreed to be paid for the repair of such road or part of road, shall be paid out of the county road fund in case said agreement shall have been made with the county commissioners, or out of the township road fund in case said agreement shall have been made with the township trustees.

SEC. 4921. [How surplus of tax to be disposed of.] All money assessed and collected under the provisions of section *forty-nine hundred and nineteen*, which remains in the hands of the county treasurer, unexpended and unappropriated, for a period of six months after the annual September settlement for [the] fiscal year during which the tax was collected, shall be paid to the treasurer of the township or municipal corporation from which the same was collected, and shall be expended on the public roads, under the direction of the trustees of the proper township or municipal corporation, in such manner as may seem to them most advantageous to the interest of the township or corporation, for the construction, reconstruction, or repair of roads, and in building or repairing bridges.

SEC. 4922. [When commissioners may build embankments.] When any of the principal public roads in any county, except turnpike roads, over which tolls are collected, are subject to overflow or inundation, so as to render the same at any time unfit for public travel, or hinder free and necessary transportation, the commissioners of such county may repair or reconstruct such roads by changing the beds of small streams to avoid crossing, or to change roads to avoid bridges, where the public travel would be better accommodated, or by building embankments or levee sufficiently elevated above all such overflows or inundation; and the expenses of such embankment, changes, or levee shall be paid out of the money in the county treasury, or that may be hereafter raised by taxation, for road or bridge purposes.

SEC. 4923. [When the road belongs to adjoining counties.] When any such road has been constructed by adjoining counties, the commissioners of such counties, conjointly, may repair or reconstruct such road above an elevation of such overflow or inundation, and the expense of the same shall be paid from any money which may be in or shall hereafter come into the treasury of such counties for road or bridge purposes, in proportion to the aggregate amount of the tax duplicate of their respective counties.

SEC. 4924. [When commissioners may establish a ferry.] When any county bridge has been destroyed by fire, flood or any other case [cause], the county commissioners may establish or cause to be established, a free ferry in lieu of such bridge. They may also establish or cause to be established a free ferry over any of the interior streams of the state of Ohio where it is not expedient to build a bridge. But the cost of maintaining such free ferry shall not in any case exceed the interest on the probable cost of constructing a bridge across the stream.

SEC. 4925. [When county auditor may levy extra road tax.] When two-thirds of the resident freehold taxpayers living on the line of any state road, county road, or turnpike road, file a petition with the auditor of any county for an extra tax for the purpose of constructing, improving, or repairing such road, he shall levy such tax, of any amount that may be required, not exceeding six mills on the dollar valuation, in any year, on all the lands and taxable property for any distance on each side of such road not exceeding one mile, and in no case more than half the distance from such road to any other state, county, or free turnpike road running parallel or nearly parallel thereto.

SEC. 4926. [How long such tax to continue.] When any such tax is levied it shall continue for the term of three years and no longer, unless

at the expiration of three years the petition or request be renewed; and in that event such tax may be levied for the term of three years longer.

SEC. 4927. [When such tax may be levied in a township.] The auditor of any county shall levy such tax on the lands and property on the line of any such road, in any township, when petitioned for by three-fourths of the resident freehold taxpayers on such road, in such township only.

SEC. 4928. [Such tax may be paid in labor.] All taxes arising under the provisions of the three preceding sections may be discharged by labor on the proper road, under the direction of the supervisors within whose jurisdiction such road is located, as provided by law in other cases; and the rate of labor shall be one dollar and fifty cents per day, and a ratable proportion for teams and implements.

SEC. 4929. [Supervisors to give receipts.] If such taxes be discharged by the supervisors shall receipt therefor, as in other cases for like services, and their receipts shall be received by the county treasurer in discharge of such tax.

(4929-1) [Abatement of tax of him who constructs watering trough.] The township trustees of the several townships in this state, shall annually abate three dollars from the highway tax of any inhabitant of a road district, who shall construct on his own land, and keep in repair, a watering trough beside the public highway, well supplied with fresh water, the surface of which shall be two or more feet above the level of the ground, and easily accessible for horses with vehicles, but the said trustees respectively may designate the number necessary for the public convenience in each road district, and no other than those designated shall be allowed this abatement of tax.

SEC. 4930. [Disbursement of tax when paid in money.] All taxes arising under the provisions of sections *four thousand nine hundred and twenty-five, four thousand nine hundred and twenty-six and four thousand nine hundred and twenty-seven* and not discharged by labor, shall be collected as other taxes by the treasurer of the county, and by him paid to the treasurers of the townships in which such roads are situate, and be disbursed by the trustees of such townships upon the roads for which the same were levied; but if any road, for the benefit of which any tax is so levied is on a township line, the county treasurer shall pay to each of the township treasurers the portion of taxes collected belonging to his township.

SEC. 4931. [National road in charge of county commissioners.] The commissioners of counties through which any part of the National Road passes shall take under their care and control, in behalf of their respective counties, so much of said road as lies within the limits of their counties respectively, except such parts thereof as are or may be by law under the control of cities or villages; said road shall be kept in such repair, by each county so taking possession thereof, as is contemplated by the acts of congress ceding to the state the jurisdiction and control of such portion of said National Road as lies within the limits of this state; and such commissioners shall be governed in all respects by the laws in force relating to said road, except as hereinafter provided; but they shall not assess or levy any tax for the repair or preservation of said road, except as provided in the general statutes for the repair and preservation of county and state roads.

SEC. 4932. [Their powers and duties in relation thereto.] The commissioners may cause gates and toll-houses to be erected on said road within their respective counties, at such places as they shall designate, for the collection of tolls, appoint the necessary collectors of tolls, and remove them at pleasure, and pay them reasonable compensation for their services; the collectors shall pay into the treasuries of their respective counties, at the end of each month, all money collected and remaining in their hands after deducting the compensation allowed for their services, and the commissioners shall apply such money to the keeping in repair of said road within their respective counties; and in the collection of tolls the collectors shall be governed in all respects by the laws in force relating to the collection of tolls; but no toll shall be charged or collected for travel on the part of said road situate in Madison county, or on the part lying between the city of Columbus and the Columbus asylum for the insane; and all persons shall be permitted to travel on said parts of said road free of toll.

SEC. 4933. [May collect toll between toll-gates.] The commissioners, if they deem it for the best interest of the road may require the collection of toll from persons who may travel with horses and all kinds of carriages and wagons between toll-gates, or between the county line and the nearest gate thereto, at the same rate per mile as may be charged for like travel on said road to persons traveling or hauling through the toll-gates thereof, and may make such rules and regulations with regard to the collection of such intermediate tolls as they may deem just and proper.

SEC. 4934. [Special provision for Madison county.] When the consent of the congress of the United States shall have been obtained thereto, the commissioners of any county through which said road passes may, if they deem it for the best interest of the road, or the people whom the road accommodates, submit to the legal voters of the county, at any regular or special election, the question, "Shall the National Road be a free turnpike road;" and when the question is submitted, if a majority of all those voting thereon vote "Yes," the commissioners shall sell the gates, toll-houses, and any other property belonging to the road, to the highest bidder, apply the proceeds of the sale to the repairing of the road, and declare so much of the road as lies within their county a free turnpike road, to be kept in repair in the way and manner provided by law for the repair of free turnpikes.

SEC. 4935. [Unfinished portions of National road.] The commissioners of such counties in which said road has never been completed, and in which no toll-gates are erected, or toll collected, may proceed in accordance with the provisions of chapter seven to make and declare such unfinished parts of the road a free turnpike or county road.

SEC. 4935a. [Road records, how restored; publication and notice of; costs of; how paid.] Whenever an application shall be filed in the court of common pleas of any county by the commissioners thereof, showing that the records of any specified road or roads of said county were lost or destroyed by fire, riot or civil commotion, and that copies thereof or of some of them are in existence, and praying that the verity of such copies as may be produced shall be ascertained and declared by the court, said court shall require notice to be given by publication for six weeks, upon such days, not less than once a week, and in such newspapers as said court shall direct, of the filing and prayer of said applica-

tion, and that the same will stand for hearing upon some day fixed by the court, and requiring all persons interested to appear on said day and show cause, if any they have, why said application should not be granted, and shall also cause a copy of said publication to be served at each house which is occupied on the premises abutting on said road or roads, upon any person dwelling therein, and upon the owner of each lot or tract of land abutting on said road or roads, or his agent, if the same be found in said county, at least one week before the day fixed for such hearing. Upon the day fixed for said hearing, and upon such days thereafter as said court by entry on its journal may direct, said court shall proceed to hear and determine whether the papers produced before it or any of them, are accurate or substantial copies of said records fairly and honestly made, in considering which it shall hear any evidence which in its judgment throws light upon the question without regard to the ordinary rules of evidence; and if, and as often as, said court shall find any of said papers to be accurate or substantial copies of such records, it shall so enter upon its journal and direct transcripts of such copies to be made by such persons as it may select. As often as any of said transcripts shall be completed to the satisfaction of the court, an entry of that fact shall be made upon its journal and thereupon the clerk shall certify upon such transcripts that they have been approved by the court, and shall deliver them to the commissioners of said county, and thereafter said transcripts so certified shall *prima facie* have the same force and effect as the originals from which said copies were made. The costs of making said transcripts shall be fixed and allowed by the court, other costs under this and the following sections shall be the same as now fixed by law for similar services, and all costs for restoring such lost road records shall be paid by the county, except as hereinafter provided.

SEC. 4935b. [Proceeding when copies of records, etc., are in existence.] Upon its appearing to the court at any time after the filing of said application and before the final determination thereof that any person has in his possession or under his control papers purporting to be copies of said record, or the originals from which the same were made and refuses to produce the same to the court, the said court shall issue a rule requiring such person to show cause why he does not produce such papers and enforce the same by proceedings for contempt as in other cases, and in case the production of such papers is ordered by the court, the party ordered to produce the same shall pay all the costs under this section.

SEC. 4935c. [County roads.] As to all county roads whose records have been lost or destroyed as aforesaid, and are not reproduced under the foregoing sections, *prima facie* the center of the road as now fenced shall be taken as the true center, and *prima facie* the width of the said road shall be sixty feet.

(4935-1) [Conditions upon which mine and quarry operators permitted to undermine or cross public roads.] An act entitled "An act to permit mine, quarry operators to cross roads," passed February 17, 1893, be amended so as to read as follows: That any individual, partnership or corporation in Ohio, who may now or hereafter own any land or any interest either in fee or otherwise, containing any coal, clay or stone, and over any portion of which shall pass any state, county or township road or public highway, with the consent of the board of county

commissioners in case of state or county roads or township trustees in case of township roads, shall have and are hereby authorized to excavate, mine, quarry through or under any such road; provided, however, that before said work shall be commenced, said individual, partnership or corporation shall execute and deliver to the board of county commissioners of any such county, a bond with good and sufficient surety, in such an amount as shall be by said board considered sufficient to cover all damages that may accrue by reason of excavating, mining or quarrying through or under any such road, the same to be approved by said board; conditioned, that while crossing over or mining or quarrying under any such road, a safe and unobstructed passageway or road shall be kept open by such individual, partnership or corporation for public use, and as soon as practicable the said road shall be fully restored to its original safe and passable condition.

(4935-2) [Owner of land abutting on public road may lay pipe-line for water, etc., within line of road.] It shall be lawful for any land-owner owning land abutting upon any public road, not within a municipal corporation, when approved by the county commissioners, if upon a state or county road, and when approved by the township trustees if upon a township road, to lay a pipe line within the line of the road for the purpose of conveying water for public and other purposes; providing that the laying of such pipe-line shall in no way interfere with public travel or damage such road, and under such regulations as the commissioners or trustees may prescribe.

BICYCLE SIDE-PATHS.

SEC. 4935-3. [Board of side-path commissioners.] The probate judge of any county shall upon the petition of five resident wheelmen of such county, appoint from the resident citizens thereof, five persons, giving to each city and to each rural district in the county a representation on the board, as near as possible, in proportion to the probable number of cyclists residing in such localities, each of whom shall be a cyclist, who shall constitute a board of sidepath commissioners for such county. The terms of such commissioners shall be one, two, three, four and five years, from and including the first day of January of the year in which the appointment is made, to be determined by such commissioners by lot within one month after their appointment. A commissioner thereafter appointed for a full term, shall hold office for five years from and including the first day of January of the year in which the appointment is made. A commissioner appointed to fill a vacancy occurring otherwise than by expiration of term, shall be appointed for the unexpired term of his predecessor in office. Whenever a vacancy shall occur in the office of such a commissioner by expiration of term or otherwise, the chairman and secretary of the board shall file a notice with the probate judge, specifying the name of such commissioner, the city or town in which he resided, and the term for which his successor should be appointed. Upon the receipt of such notice, the probate judge shall appoint a person to fill such vacancy and file such appointment in the office of the county clerk. The county clerk shall forthwith notify such person of his appointment, and he shall take office immediately upon filing his written acceptance thereof with the county clerk and taking the constitutional oath of

office. If any person so appointed fails to file such acceptance with the county clerk, or to take the constitutional oath of office, within ten days after receiving notice of his appointment, or if any member of the board fails to attend three consecutive, regular meetings without being excused by a vote of the board, the board of sidepath commissioners may declare the place vacant by a majority vote of the board. Such commissioners shall serve without compensation, but shall be repaid their actual and necessary disbursements, out of the sidepath fund.

SEC. 4935-4. [Power to construct and maintain side-paths.] Such board of sidepath commissioners is hereby authorized and empowered to construct and maintain sidepaths along any public road or sections thereof, of the county, outside the limits of incorporated cities and villages, or outside the corporation tax district thereof. No sidepath shall be constructed upon or along any regularly constructed or maintained sidewalk, except by the consent of persons owning the abutting lands. Such paths shall not be less than three feet wide in any case nor more than six feet wide, without the consent of the owners of the abutting lands, and shall be constructed within the outside lines and along and upon either side of such public roads. The term "sidewalk," as used in this act, means any sidewalk constructed and maintained as such by the public authorities or the owner of the abutting lands, which is reserved by custom for the use of pedestrians; but not including footpaths or portions of the public road which are worn only by travel. No member or any number of members of a sidepath commission shall begin or in any way authorize the construction of a sidepath, to be built from the sidepath fund until the record of the proceedings of the board shows that it has voted to construct such a path.

SEC. 4935-5. [License upon bicycles.] Such board of sidepath commissioners shall at their first meeting or within a reasonable time thereafter, and in each succeeding calendar year, adopt a form of license to consist of an inscription, tag, badge, emblem or device suitable to be affixed to a bicycle and to be known as a bicycle sidepath license. Any person, upon the payment of a fee of one dollar, shall be entitled to receive such license, which shall be good during the calendar year for which it is issued, and for no longer. Every such license to be valid must be issued by the sidepath commissioners of the county wherein the bicyclist resides, except that any bicyclist who resides in another state or in some county of this state where there is no sidepath commission, may secure a license in any county where a side path commission has been lawfully appointed by a probate judge, and such license shall be valid for the use of the person so purchasing for the calendar year for which it is issued and no longer. No person shall ride a bicycle on any sidepath in any county of this state where a sidepath commission has been or at any time hereafter may be appointed, unless a valid bicycle license is attached or affixed to the left side of the front fork, or upon the lower tube of the frame within six inches from the head so that the license device will show on the left side of the lower tube of such bicycle.

SEC. 4935-6. [License fee to be paid to county treasurer.] The license fees authorized by the said boards of sidepath commissioners shall be paid on or before the first day of July in each year to the county treasurer of their respective counties, by whom they shall be credited to a special fund, to be called "the sidepath fund." No claims against the sidepath commissioners shall be paid otherwise than upon the allowance

of the said sidepath commissioners or a majority thereof. Upon the proper certificate of the allowance of any claims by the said commission the county auditor shall draw his warrant upon the treasurer for said sum. But no money shall be disbursed by the said commissioners, or any of them, but the same shall be disbursed by the county treasurer, upon the warrant of the auditor specifying the name of the party entitled and upon what account; but no warrants shall be so drawn in excess of the amount actually on deposit, nor shall any contract or purchase be made exceeding the amount of such funds at the time of making such contract or purchase. All bills shall be made out in duplicate.

SEC. 4935-7. [Disposition of fees.] The said boards of sidepath commissioners shall devote the moneys so collected to the repairing of existing paths in their respective counties; to the construction of new sidepaths, and to the maintaining of order on the paths.

SEC. 4935-8. [Penalty for wrongful use of path.] No person shall lead, stand, hitch, or drive any horse, cattle, sheep, swine or other animals upon any sidepath now constructed or hereafter to be constructed in this state, except for the purposes of access to, and egress from, lands abutting on the highway.

SEC. 4935-9. [Obstructing, destroying, etc., of path.] No person shall obstruct, injure or destroy any sidepath or any portion thereof, now constructed or hereafter to be constructed in said state.

SEC. 4935-10. [Speed upon path.] No person shall ride a bicycle at a greater speed than ten miles per hour when passing another cyclist or a pedestrian on any sidepath in said state.

SEC. 4935-11. [Sidepaths heretofore constructed to be placed under control of sidepath commissioners.] The sidepaths heretofore constructed and hereafter to be constructed in said state are hereby placed under the control and direction of the boards of sidepath commissioners of the various counties in which they are located.

SEC. 4935-12. [May remove tree limbs, etc.] Any board of sidepath commissioners may remove limbs of trees overhanging any sidepath or any other obstruction in the county wherein said board has jurisdiction, when in the judgment of said board, the same may interfere with the free passage of bicycles along said path.

SEC. 4935-13. [Penalties.] Any person who rides a bicycle on any sidepath in this state in violation of any of the sections of this act, or does any of the acts by the provisions of this law forbidden, is guilty of a misdemeanor, and shall be punishable by a fine of not less than five nor more than twenty-five dollars, and in case of failure to pay any fine that may be imposed such person shall be committed to jail not exceeding one day for each dollar of such fine.

SEC. 4935-14. [Security for appearance in court.] Any person arrested for the violation of any of the provisions of this act, or of any ordinance or by-law adopted as provided in this act, may tender, at the time of his or her arrest, or at any time before the hearing thereon either five dollars in current money, or his or her bicycle or similar vehicle, as security for his or her appearance in court to make answer to the charge of violating the provisions of this act or any ordinance or by-law adopted as provided in this act; and the officer making the arrest, shall accept the security, which the rider may offer, as aforesaid, for his appearance,

before the most convenient court or magistrate, to be specified by said officer at a time to be fixed by him not less than one day in said city, village or town having jurisdiction of the offense, and such security shall be forthwith delivered, by such officer, to such court or magistrate. In case the person arrested shall fail to appear and answer to such charge at the time so specified or at such other time to which the matter shall have been adjourned, such security shall be forfeited, and if money, shall be disposed of in the same manner as other fines are disposed of by such court or magistrate, and, if a bicycle or similar vehicle, it may be sold under the direction of such court or magistrate at public sale, a notice of which shall be posted in three public places in such city, town or village, and a copy thereof served personally or by mail upon the person who tendered the same at least six days before such sale, and after the payment of legal costs five dollars of the money received upon such sale shall be disposed of in the same manner as other fines collected by such court or magistrate, and the remainder of the money received upon such sale shall be paid to the owner of such bicycle or other similar vehicle on demand.

SEC. 4935-15. [Notice.] But no person shall be arrested or fined for the violation of any of the provisions of this act, pertaining to any municipality, or of any ordinance or by-law of any municipal corporation unless such municipality shall have placed at the corporate limits of such municipal corporation in at least four prominent thoroughfares, signs inscribed "sidewalk riding prohibited."

BRIDGES.

SEC. 4936. [County commissioners to build bridges over canals.] The commissioners of any county through which any canal or feeder of a canal of this state passes, except such as are built by incorporated companies, shall, at the cost of such county, keep in good repair all bridges, where any state or county road crosses such canals.

SEC. 4937. [Swing bridges may be built over canals.] When it is deemed necessary to construct a bridge upon any street, road, or public highway, across any of the canals or feeder of the canals in this state, in any city or village, the council of such city or village, or the commissioners of the county in which such city or village is situate, and having lawful authority to construct or erect a bridge on such road, street, or public highway where the same crosses any such canal or feeder of the canal, may erect and maintain for public use, a swing bridge, or self-closing bridge upon any such street, road or public highway, at such place; but no such bridge shall be so constructed or erected without first obtaining for the model and location thereof, the consent, in writing, of the board of public works.

SEC. 4938. [Commissioners must build bridges in certain cities and villages.] The commissioners of the several counties shall cause to be constructed and kept in repair, in the manner prescribed by law all necessary bridges in villages and cities not having the right to demand and receive any portion of the bridge fund levied upon the property within such corporations, on all state and county roads, free turnpikes, improved roads, transferred and abandoned turnpikes and plankroads, which are of general and public utility, running into or through any such village or city.

SEC. 4939. [Joint county and railroad bridges.] The commissioners of any county may contract with any railroad company for the construction, use, and maintenance of wagon tracks in connection with railroad bridges.

SEC. 4940. [Construction of approaches to county bridges; purchase of materials; appropriation of materials; lighting of bridges; duty of township trustees.] The commissioners of any county shall cause to be constructed without unnecessary delay, good and sufficient approaches or ways to bridges which have been or may hereafter be erected by them; and they shall contract for the construction thereof in the same manner as is provided by law for contracting for the erection of bridges by county commissioners; and the county commissioners of any county may contract for and purchase such stone, gravel, earth, dirt or other material as may be necessary for the construction of such approaches or ways to such bridges, or for keeping the same in repair; provided, that if the commissioners and the owner or owners of such stone, gravel, earth, dirt or other material can not agree on a price deemed fair and reasonable, like proceedings shall be had and with like effect as are provided by law for the procurement of material by the commissioners in like cases under the two-mile assessment pike law; and the cost of constructing such approaches and procuring such material shall be paid from the bridge fund of the county, on the order of the county commissioners; and said county commissioners may, when in their opinion the safety of the public travel requires it, contract for the proper lighting of any of said bridges, when the span or two or more spans of which cross the same stream or streams and which spans are connected by levees, and when such span or spans and levees taken together have a combined length of not less than five hundred feet; and the cost of such lighting shall be paid from the bridge fund of the county on the order of the commissioners; but the trustees of the several townships shall cause to be built and kept in repair all bridges and culverts except upon improved and free turnpike roads, when the cost of construction does not exceed fifty dollars, and shall keep in repair all bridges constructed by the commissioners; provided, however, such repair by said trustees of any such bridge, in any year, shall not exceed ten dollars, and they are authorized to levy a tax for the payment of the same.

As to further duties of county commissioners and township trustees, regarding approaches to bridges, see § 861.

SEC. 4941. [They may purchase toll bridge.] The commissioners of any county in which there is a toll-bridge may purchase the same at such price as may be agreed upon by them and the owners of such bridge.

(4941-1) SEC. 1. [Guard rails on county bridge.] It shall be the duty of every board of county commissioners in this state to, within two years after the passage of this act, erect or cause to be erected and maintained where the same has not already been done, one or more guard-rails on each end of every county bridge, viaduct or culvert, the same being more than five feet high; and also erect or cause to be erected, where the same has not already been done, one or more guard-rails on each side of every approach to each and every county bridge, viaduct or culvert wherever said approach or embankment is more than six feet high; and also within five years after the passage of this act, to protect, by suitable guard-rails, all perpendicular wash-banks more than eight

feet in height, where the same shall have any immediate connection with a public highway, or is adjacent thereto, in an unprotected condition; provided, that in such cities and villages as by law have the right to demand and to [do] receive part of the bridge fund levied within the same, such guard-rails shall be erected by such municipality;

[Hedge fences.] And provided, further, that it shall be a sufficient compliance with the provisions of this act, if said commissioners shall cause to be erected and maintained, a good stock-proof hedge fence where a guard-rail is required by this act; such guard-rails or hedge fence shall be erected in a substantial manner, having sufficient strength to serve a protection to life and property, the expense of same to be paid out of the county bridge fund of each county.

(494I-2) SEC. 2. [How paid for.] Said guard rails shall be erected in a substantial manner, having sufficient strength to serve as a protection to life and property, and shall be paid for out of the county bridge fund in each and every county of this state.

(494I-3) SEC. 3. [Penalty.] Each and every failure to comply with the provisions of this act shall render the county liable for all accidents or damages as a result of such failure, which may occur after a period of five years from the passage of this act.

SEC. 494Ia. [County commissioners may purchase toll bridge; proceedings when price not agreed upon; proviso.] The commissioners of any county in which there is a toll bridge, or any bridge owned by any person or corporation authorized by law to charge and collect toll for crossing the same, may purchase such bridge together with the approaches at such price as may be agreed upon by them and the owners of such bridge; and in case they are unable to agree with the owners thereof, upon such purchase and sale, the commissioners may appropriate the same; and for this purpose they shall cause an accurate survey and description of such bridge and approaches, and the land occupied by the same, to be made, and shall file the same with the probate judge or court of common pleas of the county, and thereupon the same proceedings shall be had, which are now provided by law for the appropriation of private property for municipal corporations; and upon payment of the agreed price, or payment into court of the compensation assessed, the right to charge or collect toll shall thereupon cease. Provided however that in case any such bridge sought to be purchased or appropriated is a part of the plankroad, and is located within one-fourth of a mile from the end thereof, as then existing, said commissioners shall also be required to purchase, or appropriate, in connection with said bridge, all of said plankroad lying between said bridge and the end of the said plank road, not exceeding one-fourth of a mile, together with any toll-house used in connection with said bridge, but said sale or appropriation shall in no way affect the right of said plank road company to collect toll on the unsold or unappropriated part of its said plank road.

SEC. 494Ib. [Right to bridge forfeited.] When the commissioners make an appropriation of any bridge as specified in the last preceding section, and fail to pay for the same within three months after the assessment of compensation shall have been made as hereinbefore provided, the right of the commissioners to make such appropriation on the terms of the assessment so made, shall cease and determine; and the bridge so appropriated shall be relieved from all incumbrance on account

of the proceedings in such case, and the judgment or order of the court, directing such award or assessment to be paid, shall cease to be of any effect, except as to the cost adjudged against the commissioners.

SEC. 4942. [Bonds may issue therefor.] For the purpose of paying such agreed price, or any part thereof, or the award or assessment and costs of appropriation, the commissioners may issue the bonds of the county in sums of not more than five hundred dollars each, payable in installments, during a period not exceeding ten years from the date thereof, with interest not exceeding the legal rate, payable semi-annually, which bonds shall not be sold at less than their par value.

SEC. 4943. [And levy tax to pay same.] The commissioners may also cause to be levied and collected such tax, not exceeding one mill on each dollar of valuation of the taxable property of the county in any year, as will be necessary to pay the bonds issued in pursuance of the last section as they become due, together with the interest thereon.

SEC. 4944. [Must put up caution notices.] The commissioners of the several counties shall cause to be painted in large letters, and conspicuously placed at each end of every free county bridge which they may deem proper to protect by the provisions of this chapter, a notice cautioning all persons against driving on or over the bridge faster than a walk, or driving on or over the bridge at any one time a greater number of cattle or horses than twenty head, under penalty of a fine not to exceed ten dollars nor less than one dollar.

SEC. 4945. [Arrest of certain persons on view authorized.] A constable of any township, or the marshal of any city or village, may arrest upon view, and without any process, any person violating the provisions of the preceding section.

SEC. 4946. [How prosecuted.] Prosecutions under the preceding section shall be in the name of the state, and shall be commenced within three months after the offense is committed; and nothing contained in this chapter shall be construed to take away from the county commissioners' any right of action for changes [damages] which they may have against any person for injury done to such bridge.

STRAYS AND DRIFTS.

SEC. 6627. [Who may take up estrays, and when not to be taken up.] It shall be lawful for any person holding land in this state, by deed, title bond, or lease, for three or more years, and being in possession thereof, to take up any strays running at large within the township where such taker-up resides; nor shall any compensation or fees be allowed to any person for taking up any stray animal from the range where such animal usually runs at large, or when the owner of such stray is known to the taker-up, except as is provided in section *sixty six hundred and thirty eight*.

SEC. 6628. [Description of stray; its record by township clerk; advertisement; its record by clerk of court; fees of clerks; oath of taker-up.] Every person taking up any stray or strays shall, within three days thereafter, make an accurate description of the marks, brands, size, color, and supposed age of such stray or strays, and if any alter-

ation has been made in such marks or brands, within his knowledge, the same shall be particularly described, and said taker-up shall leave a copy thereof with the clerk of his township, who shall record the same in a book, to be kept for that purpose, and post up a copy thereof on the door of his office, or some other conspicuous place near thereto; and said taker-up shall, within five days, advertise the same in writing, by posting up a copy thereof, at three public places in said township; and if said stray or strays shall be of any other kind than hogs or sheep, it shall be the duty of the taker-up, within five days from the time of taking up such stray or strays, to transmit a copy of the description of such stray or strays, to the clerk of the court of common pleas of the county, who shall enter the same on his stray-book which books of the clerks of the county and township shall be subject to public inspection at all reasonable times; and each of said clerks shall be entitled to receive and demand from the taker-up of such stray or strays the sum of twenty-five cents for the services he may be required to perform by this chapter, and if no person shall claim and prove his or her right to any such stray or strays, within twenty days after such advertisement, the taker-up shall go before a justice of the peace within the township, and make oath when and where he found such stray or strays, and that he hath neither trimmed, docked, nor altered the brands or marks of such stray or strays, or suffered the same to be done; and if any such alteration has been made within his knowledge he shall state the same.

SEC. 6629. [Appraisement.] The said justice shall issue an order to two respectable freeholders or householders, to be named in such order, commanding them, forthwith, to view and appraise such stray or strays, and to return to him, upon oath, their appraisement, with a true and accurate description of the marks, brands, size, color, and supposed age of such stray or strays; and the taker-up shall give notice of such order to the persons therein named.

SEC. 6630. [Its record by justice; his fees and clerk's; list of strays made by clerk of court.] Upon return being made of the appraisement and description as aforesaid, such justice shall record the same in his stray-book, together with the names of the taker-up and appraisers; and, in all cases, the taker-up of any stray or strays as aforesaid, shall pay to the justice for his services under this chapter, the sum of fifty cents: provided, that if two or more strays, of the same species, shall be taken up by one person at the same time, they shall be included in the same entry; and, in such case, the justice and clerk aforesaid, shall receive no more than for one of such species; and the clerk shall cause a list of all strays, with the description thereof, given as aforesaid, to be affixed at the door of the court-house, on the first day of the court, next holden after such returns have been made to his office.

SEC. 6631. [Proceedings when taker-up not a freeholder, etc.] If any person or persons, other than those authorized in section *sixty six hundred and twenty seven*, shall take up any stray or strays, it shall be the duty of any justice of the peace of the township in which such stray or strays may have been taken up, on complaint of any freeholder of said township, to issue his warrant for the removal of such stray or strays from the possession of such taker-up, and for the delivery of the same into the custody of any resident of such township, having the qualifications required by section *twenty-six hundred and twenty-seven*: provided, that if no resident of such township, legally qualified as afore-

said, shall be found willing to receive such stray or strays, and to proceed therewith, in all respects, as is required by law, it shall be the duty of the officer who may have served such warrant, to suffer such stray or strays immediately to go at large, subject, however, to be taken up by any person legally qualified, at any subsequent time.

SEC. 6632. [Strays outside of settlement.] It shall be lawful for any person to take up any stray or strays, found running at large, without the bounds of any settlement in this state; and the taker-up of any such stray or strays shall forthwith go before the nearest justice of the peace, and make the oath required by section *sixty-six hundred and twenty-eight*, and that he hath neither trimmed, docked, nor altered the brands or marks thereof; and if the taker-up be a freeholder or householder within the county where such justice resides, then the justice and taker-up shall be governed by the rules and regulations prescribed in the preceding sections; but if it shall appear to the satisfaction of such justice that the taker-up is not a resident of the county, and a freeholder or householder as aforesaid, he shall require the taker-up to give sufficient security to such justice, for the safe-keeping and delivery of such stray or strays, agreeably to the provisions of this chapter; and on producing such security, the justice shall make a record thereof in his stray-book, and proceed in the same manner as if such stray had been taken up by a freeholder or householder; but if the taker-up should fail or refuse to give such security, the justice shall issue his warrant to any constable of the township to take into his charge, or deliver to any freeholder or householder who will take charge of such stray or strays, and proceed in the same manner as if such stray or strays had been taken up within the settlement.

SEC. 6633. [Proceedings by owner to reclaim strays; sale in default of payment of costs.] The owner or owners of any stray or strays taken up as aforesaid, on making satisfactory proof of his or their right thereto before any justice of the township, within four months after the same was taken up, shall be entitled to demand and receive such stray or strays, with the increase, if any, having first paid as a reward to the taker-up for each horse kind, the sum of one dollar; for every head of neat cattle, fifty cents; for every sheep, hog, or goat above six months old, twelve and a half cents, together with the legal fees paid by the taker-up, and reasonable charges for keeping such strays; but if the taker-up and the owner should disagree on the sum to be paid for keeping as aforesaid, it shall be lawful for either party to apply to a justice of the peace within the township to nominate three disinterested freeholders, whose duty it shall be to make such allowance for keeping such strays as to them shall appear just, and forthwith certify the same under their hands to such justice upon oath, and if the owner shall fail or refuse to pay the sum adjudged, together with the fees as aforesaid, within forty days thereafter, it shall be lawful for the taker-up to deliver such stray or strays to any constable of the township, who shall, after giving ten days' notice by advertisement at three of the most public places in the township of the time and place of sale, proceed to sell the same for ready money to the highest bidder, to satisfy the costs and charges aforesaid; and the constable, after paying to the taker-up the fees awarded and charges aforesaid, and deducting one dollar for his own fees, shall pay the remainder to the owner of such strays.

SEC. 6634. [What strays shall vest in taker-up; sale of animals not vesting in taker-up; duty of justice and constable.] When the

appraised value of any stray or strays of the same species, taken up as aforesaid, does not exceed seven dollars for the whole number taken up and reported at one time, and no person shall appear within four months after such taking up, and prove his or her right thereto, the right to such stray or strays shall vest in the taker-up; but if the valuation shall exceed seven dollars, and no owner appear as aforesaid, the taker-up shall apply to the justice to whom the return was made of the appraisement, marks, brands, size, color, and supposed age of such stray or strays, for a copy of such return, which copy said justice is hereby required to give from his stray-book, and the taker-up shall forthwith deliver the same to a constable of the township, and the constable shall immediately advertise such stray or strays for sale at three public places within the township, mentioning the time and place of sale, which shall be at least ten days from the time of advertising, and which sale shall be made at some public place in said township, if of the horse kind, but if of any other kind of strays, the same shall be sold at the residence of the taker-up between the hours of ten o'clock a. m. and four o'clock p. m., at which time and place the taker-up shall deliver such stray or strays to the constable, and take his receipt therefor, and transmit the same to the township treasurer.

SEC. 6635. [Sale and adjustment, etc., of proceeds, etc.] The constable shall proceed to sell the same to the highest bidder, upon a credit of nine months, for the residue of the purchase money, after paying the expense of taking up, posting, and keeping; which expense shall be ascertained in the manner directed in the preceding sections of this chapter, and also reserving for his fees the sum of one dollar; and it shall be the duty of the constable after paying the above expenses and fees, to take an obligation from the purchaser for the balance due, with one or more sufficient sureties resident within the township, payable to the township treasurer, or his successor in office, and to deliver the same to the said treasurer, for the use of the township in which the stray or strays are taken up; and it shall be the duty of such constable to take duplicate receipts for the same, one of which he shall file with the township clerk, together with his certificate stating to whom said property was sold, and the amount for which it was sold; and it shall be the duty of said clerk to charge said treasurer with the amount of said obligation, designating by whom the same was given; and it shall also be the duty of said clerk to file said receipt and certificate in his office.

SEC. 6636. [And how collected, etc.; and when to be paid to the owner of the stray.] Each treasurer to whom an obligation is given as aforesaid, is hereby authorized and empowered to sue for, recover, and receive, for the purpose aforesaid, all moneys due thereon: provided, that when any property is sold as aforesaid, and the owner shall claim the same within two years, from and after such sale, and prove his, her, or their right thereto, to the satisfaction of a justice of the peace for the proper township, the justice shall issue his order to the treasurer, requiring him to assign the obligation, or any judgment thereon, to such claimant for his own use, or, if the money shall have been paid into the treasury, on such bond, requiring said treasurer to refund the same to such claimant.

SEC. 6637. [Penalty, etc., for working, selling, abusing, etc., strays.] If any person, taking up any stray as aforesaid, shall sell

the same, abuse, or suffer it to be abused, either by working, riding, neglecting to feed, or in any other manner, so that such stray shall, in consequence thereof, die, or be lessened in value, or shall take, or cause such stray or strays to be taken out of the township more than two days at any one time, or shall, by his or her neglect, suffer such stray or strays to escape; or if any person shall knowingly purchase any stray or strays, contrary to the provisions of this chapter, the person so offending shall be liable to the action of the party injured, or the trustees of the township, as the case may be, and, upon conviction thereof, shall pay the full amount of damages sustained, and costs of suit; and if any person, who may have taken up any horse, mare, or gelding, shall in any manner work or use the same, such person shall be debarred from receiving any compensation for keeping such stray.

SEC. 6638. [Stallion deemed a stray, etc.; may be gelded.] If any stallion, one and a half years old, or upward, shall be found running at large out of the inclosed ground of the owner or keeper of said horse, it shall be lawful for any person to take up such horse, and forthwith give notice to the owner or keeper thereof, if the said owner or keeper be known; and if the owner or keeper, do not appear within three days thereafter, and pay to the said taker-up two dollars as a compensation for his trouble, the taker-up shall proceed to advertise said horse; and the same proceedings shall be had, in every respect, as hereinbefore provided in cases of stray horses: provided, that the taker-up may, after the expiration of twenty days from the time of advertising, geld, or procure to be gelded, the said horse, which shall be done at the risk and expense of the owner.

SEC. 6639. [Boat, raft, etc., adrift may be taken up; description and appraisement thereof.] It shall be lawful for any person or persons, finding any boat, watercraft, raft, or piece of raft, or other valuable property gone or going adrift, within this state, or any of the waters adjoining thereto, to take up and secure such boat, watercraft, or piece of a raft, or other valuable property; and if no person shall claim and prove his right to such boat, watercraft, raft, or piece of a raft, or other valuable property, within thirty days thereafter, the taker-up shall cause such boat, watercraft, raft, or piece of a raft, or other valuable property, to be viewed by two freeholders or householders of the township, who shall, after viewing the same, give a description thereof, in writing, together with the value of such boat, watercraft, raft, or piece of a raft, or other valuable property, and certify the same under their hands; which certificate the taker-up shall deliver within five days, to some justice of the peace within the township.

SEC. 6640. [Its record, disposition, etc., and fees of justice and clerk; when taker-up may be required to give security, and proceedings in such case.] The justice to whom such certificate shall be delivered, shall make a record thereof in his stray book; and the taker up shall, at the same time, pay to the justice the sum of twenty-five cents for his services, and deposit the sum of twenty-five cents in the hands of said justice, to be by him transmitted, together with the certificate aforesaid, within fifteen days, to the clerk of the court of common pleas, and the clerk shall enter the same in his stray book, and file the original in his office: provided, always, that if the taker up is not a freeholder or householder, within the county, the justice may, if he deem it necessary, require him to give security, as in the case of stray animals, taken

up under this chapter; and on neglect or refusal to comply with such rule, the justice may take such boat, watercraft, raft, or piece of a raft, or other valuable property, into his own possession, or deliver it to any freeholder in the township, who shall take charge thereof; and the same proceedings shall be had as in case of persons taking up stray animals under this chapter.

SEC. 6641. [How owner of drift may reclaim it.] The owner of such boat, craft, raft, or piece of a raft, or other valuable property, on proving his right thereto, within the time hereinafter limited, and paying to the taker-up, for each flat or keel boat, scow, or lighter, and for each skiff, pirogue, or other valuable property, such reward or compensation as shall be deemed reasonable, at the discretion of the justice of the peace, together with the fees allowed by this chapter, shall be entitled to demand and receive such boat, craft, raft, or piece of a raft, or other valuable property, so taken up, as aforesaid.

SEC. 6642. [When drift shall vest in taker-up, and what sold, and how.] If the appraised value of such boat or craft, raft or piece of a raft, or other valuable property, does not exceed five dollars, and if no person shall appear within two months after the taking up thereof, and prove his right thereto, the right of such boat or craft, raft, or piece of a raft, or other valuable property, shall vest in the taker-up; but if the value shall exceed five dollars, and the owner does not appear and prove his right thereto, within two months, then the taker-up shall deliver the same to any constable of the township, and take his receipt therefor; and the constable shall proceed to advertise, sell, and pay over the money arising therefrom, in the same manner as is directed in the case of stray animals, by the preceding sections of this chapter; and the owner of such boat, craft, raft, or piece of a raft, or other valuable property, sold as aforesaid, shall be entitled to receive the amount thereof, out of the township treasury, in the same manner as is provided in the preceding sections, in the case of stray animals: provided, that if the appraised value of any boat or craft, taken upon the shores of Lake Erie, shall not exceed eight dollars, and no person shall appear and prove his right thereto, within the time provided by this section, such boat or craft, or other property, shall be vested in the person taking up the same.

SEC. 6643. [Township treasurers to deliver moneys, books, etc., to successors; proceedings as to strays when new township laid off.] The several township treasurers shall pay over all moneys, in their hands, belonging to the treasury, and also deliver all books, and all bonds deposited in their hands, to their successors in office; and when any new township shall be set off, within the bounds of which there shall be any stray of [or] drift, which, agreeably to this chapter, ought to be sold, it shall be the duty of the justice to whom the return of the appraisement of such stray or drift was made, or his successor in office, to furnish a copy of such appraisement to the constable whose duty it would have been to sell such stray or drift, had not such township been so set off; and the constable, furnished with such copy, shall proceed to advertise and sell such stray or drift in the same manner as hereinbefore provided; and the proceeds of such sale, after paying the incidental expenses, shall be paid into the treasury of the township so set off, for the use of such township.

SEC. 6644. [Justice's stray-book; to deliver it to successor, who may give copies, etc.] It shall be the duty of each justice of the peace,

to keep a book of sufficient size for the purpose of recording all strays, the appraisement of which shall be returned to his office; and when the office of such justice becomes vacant, by his term of service expiring, resignation, or otherwise, he, or his legal representatives, shall deliver the said book to the clerk of the township; and it shall be the duty of such clerk to deliver over such book to the person who shall succeed said justice in office, whose duty it shall be to furnish a copy of such appraisement, in the same manner as if he had been in office at the time the return of such appraisement was made.

SEC. 6645. [Penalty for neglect of duty, etc., under this chapter; township treasurers to sue, etc.] If any person shall neglect to perform any of the duties required by this chapter, or shall do anything contrary thereto, such person shall forfeit and pay a sum not exceeding one hundred dollars, nor less than one dollar, to be recovered by action before any court having cognizance thereof, and shall, moreover, be liable to the action of the party injured; and it is hereby made the duty of each township treasurer to sue for, and collect and pay over, all moneys arising by virtue of any forfeiture incurred as aforesaid.

SEC. 6646. [In name of trustees.] All suits brought in behalf of the township under the provisions of this chapter, shall be prosecuted by the treasurer thereof, in the name of the trustees of the township, anything in this chapter to the contrary notwithstanding.

SEC. 6647. [Fees of freeholders.] In every case, when any freeholders or householders perform any services under the provisions of this chapter, they shall each be entitled to receive the sum of fifty cents for each day they may be actually employed, to be paid at the time of service, by the person or persons taking up such stray or strays.

SEC. 6647a. [Abandoned or stolen property; how disposed of.] That whenever any property abandoned, stolen or supposed to have been stolen, shall come into the possession of any sheriff, constable or other person, except a policeman or city marshal, and shall remain in the possession of said officer or person for a period of thirty days without being reclaimed by the owner, said property, if an animal, shall be disposed of as provided in said chapter in regard to estrays; if other than an animal, it shall be disposed of as provided in said chapter in regard to drifts.

DOMESTIC ANIMALS.

SEC. 6850. [Altering ear-marks or brands of domestic animals.] Whoever maliciously alters or defaces any artificial ear-mark or brand, upon any horse, mare, foal, filly, jack, mule, ass, sheep, goat, cow, ox, steer, bull, heifer, or swine, the property of another, shall be fined not more than fifty dollars, or imprisoned not more than twenty days, or both.

SEC. 6851. [Killing or injuring domestic animals.] Whoever maliciously kills or injures any animal mentioned in the last section, the property of another, shall, if the value of the animal killed, or the injury done is thirty-five dollars or more, be imprisoned in the penitentiary not more than five years nor less than one year, or, if the value is less than that amount, be fined not more than two hundred nor less than twenty dollars, or imprisoned not more than three months, or both.

SEC. 6852. [Administering poison to domestic animals.] Whoever maliciously administers poison, of any sort whatever, to any animal mentioned in section *sixty-eight hundred and fifty*, the property of another, with intent to injure or destroy such animal, shall be fined not more than two hundred nor less than fifty dollars, or imprisoned not more than thirty days, or both.

SEC. 6853. [The last two sections not to apply to trespassing animals.] The last two sections shall not extend to a person who kills or injures, or attempts to kill or injure, any animal mentioned therein while endeavoring to prevent it from trespassing upon his inclosure, or while it is trespassing therein, or thereafter driving it away from his premises; provided, within fifteen days payment shall be made in full for all damages done to such animal by such killing or injuring, less the amount of actual damage done by such animal while so trespassing, or a sufficient amount be deposited with the nearest justice of the peace within said fifteen days to cover all such damages. Otherwise the provisions of the two preceding sections shall be and remain in full force. Any such money so deposited with a justice of the peace to remain in his charge and custody until a determination of the amount of damages resulting from such killing or injury, and the damages from such trespassing, and while in the custody of such justice he and his bondsmen shall be responsible for its safe keeping and proper payment of such as for money collected on a judgment, and such justice shall be entitled and draw a fee of five per cent. for his services in becoming such custodian.

SEC. 6854. [Taking, using, etc., horse, mule, etc., without leave.] Whoever wrongfully takes or unhitches any horse, mare, gelding, foal, or filly, ass, or mule, from the stable or lot of another, or from any other place where any such animal has been lawfully hitched or placed, without the consent of the owner of the animal so taken or unhitched, with intent to injure, set at large, or use such animal, shall be fined not more than two hundred dollars, or imprisoned not more than ninety days, or both.

SEC. 6854a. [Wrongful taking of bicycle, etc., with intent to injure same.] Whoever wrongfully takes any bicycle, tricycle or tandem bicycle from the house or lot of another person, or from any other place where any such bicycle, tricycle or tandem bicycle has been lawfully placed, with intent to injure or use such bicycle, tricycle or tandem bicycle, shall be fined not more than one hundred dollars or imprisoned not more than sixty days, or both.

SEC. 6854b. [Maliciously altering, etc., name or number of bicycle, etc.] Whoever maliciously alters or defaces any number on, or removes any number-plate from any bicycle, tricycle or tandem bicycle the property of another, or who maliciously alters, defaces or removes any name placed on any bicycle, tricycle or tandem bicycle the property of another, shall be fined not more than fifty dollars or imprisoned not more than thirty days, or both.

SEC. 6854c. [Maliciously injuring part of bicycle, etc.] Whoever maliciously injures (or removes) the tire on any bicycle, tricycle or tandem bicycle, the property of another, either by puncturing, cutting, defacing or in any manner destroying any tire on any bicycle, tricycle or tandem bicycle, or who maliciously removes or destroys or defaces any

part of any bicycle, tricycle or tandem bicycle the property of another, shall be fined not more than fifty dollars or imprisoned not more than thirty days, or both provided that said bicycle, tricycle or tandem bicycle has been listed for taxation.

SEC. 6854d. [Unlawfully placing upon public way substance liable to injure pneumatic tire.] Whoever purposely places or causes to be placed in or upon any avenue, street, alley, road, highway, or public way, any tack, nail, piece of iron, broken glass, bottle, brier, thorn, or other substance, except such substance as may be placed on any avenue, street, alley, road, highway, or public way by proper authority for the repair or construction of the same, which may injure, cut or puncture any pneumatic tire, shall be guilty of a misdemeanor and shall be fined not more than fifty dollars, nor less than five dollars.

SEC. 6854e. [Disposition of fines.] Such fines when collected shall be paid into the road or street fund of the township or municipal corporation in which they were collected.

SEC. 6855. [Selling diseased animals, allowing same to run at large or come in contact with other animals.] Whoever, being the owner, or having the charge of any animal mentioned in section *sixty-eight hundred and fifty*, knowing the same to have any infectious or contagious disease, or to have been recently exposed thereto, sells, barter, or disposes of such animal, without first disclosing to the person to whom the same is sold, bartered or disposed of, that such animal is so diseased, or has been so exposed, as aforesaid, or knowingly permits such animal to run at large, or, knowing such animal to be diseased as aforesaid, knowingly permits the same to come into contact with any such animal of another person without his knowledge or permission, shall be fined not more than five hundred nor less than twenty dollars, or imprisoned not more [than] thirty days, or both.

SEC. 6864. [Malicious destruction of trees and crops.] Whoever maliciously cuts down, or destroys, or by girdling, or any other means, injures, any standing or growing vine, bush, shrub, sapling or tree, not his own, or maliciously injures or destroys or severs from the land of another, any product standing or growing thereon, or any other thing attached thereto, shall, if the value of the thing destroyed, or the amount of the damage done to any such thing, or to the land, is thirty-five dollars or more, be imprisoned in the penitentiary not more than three years nor less than one year, or, if the value is less than that sum, be fined not more than one hundred and fifty nor less than five dollars, or imprisoned not more than thirty days nor less than one day.

SEC. 6865. [Altering or removing landmarks.] Whoever knowingly and maliciously cuts, fells, defaces, alters, or removes, any landmark, corner, or bearing-tree, properly established, or any monument lawfully placed on the line between this state and Pennsylvania, shall be fined in any sum not more than five hundred dollars, or imprisoned not more than thirty days, or both.

SEC. 6866. [Removing township corner posts.] Whoever dis-places or removes any monument placed by the county surveyor, or by the direction of the county commissioners, at the corner of any originally surveyed township, shall be fined not more than one hundred dollars, or imprisoned not more than thirty days, or both.

SEC. 6868. [Throwing down fences or opening gates.] Whoever wantonly or maliciously throws or lays down, or opens, prostrates, or injures, any fence enclosing any land, the property of another, or any bars or gate in any such fence, shall be fined not more than one hundred dollars, or be imprisoned not more than thirty days, or both. Prosecutions under this section shall not be commenced after one year from the time the offense was committed.

SEC. 6869. [Malicious injury of toll-gate.] Whoever willfully or maliciously cuts down, demolishes, destroys or injures any turnpike or plank road, toll-gate or toll-board or any toll-gate erected on, or any fence which has lawfully been erected across, or partially across any turnpike or plank road, or the national road, or whoever, with intent to evade the payment of toll, passes through any private gate or bars or along any other ground near a turnpike or plank road, or the national road toll-gate erected in pursuance of law, or practices any fraudulent or forcible means with intent to evade or lessen the payment of toll, shall be fined not more than fifty dollars nor less than five dollars.

SEC. 6870. [Fast driving, etc., over bridges.] Whoever rides or drives faster than a walk on or over any toll bridge erected across the Ohio river, or any other toll bridge having placed upon it, by the owner thereof, a caution notice according to law, or any free county bridge, having placed upon it, by the commissioners of the county, a caution notice according to law, or drives on or over any such bridge more than twenty head of cattle at one time, or, with intent to defraud, fails or refuses to pay the usual toll for crossing any such bridge, shall be fined not more than ten dollars nor less than one dollar.

SEC. 6877. [Injuring and committing nuisances in buildings.] Whoever maliciously injures or defaces any church edifice, school house, dwelling house, or other building, its fixtures, books, or appurtenances, or commits any nuisance therein, or purposely and maliciously commits any trespass upon the inclosed grounds attached thereto, or any fixtures placed thereon, or any inclosure or sidewalk about the same, shall be fined in any sum not more than one hundred dollars.

SEC. 6878. [Destroying or defacing newspapers, etc., belonging to libraries.] Whoever intentionally defaces, obliterates, tears, or destroys, in whole or in part, any newspaper, magazine, or periodical, on file in any reading-room belonging to another person, or cuts therefrom any article or advertisement, shall be fined not more than one hundred nor less than ten dollars, or imprisoned not more than thirty days, or both.

SEC. 6879. [Demolishing guide-boards, etc.] Whoever maliciously demolishes, throws down, alters, or defaces, any mile-stone, mile-board, mile-post, guide-board, or guide-post, standing on any public road, shall be fined not more than fifty dollars, or imprisoned not more than ten days, or both.

SEC. 6880. [Trespassing by destroying trees and crops.] Whoever wrongfully, and without lawful authority, cuts down or destroys, or by girdling, or any other means, injures any vine, bush, shrub, sapling, or tree, standing or growing upon land not his own, or severs from the land of another, or injures, or destroys any product standing or growing thereon, or other thing attached thereto, shall be fined in any

sum not more than one hundred and fifty dollars, or imprisoned not more than thirty days, or both.

This section applies to injuring trees in the line of a highway by a person constructing a line of telegraph under United States laws who injures them against the owner's protest: *Daily v. State*, 51 O. S., 348.

SEC. 6880a. [Trespassing, cutting timber, etc.; how punished.] Whoever shall saw, bore, or cut down any timber, tree, or trees of whatever size, or any poles commonly called hoop-poles, standing or growing upon the lands of another, or lands of the state of Ohio, or shall unlawfully take, carry, or haul away from the lands of another person, or lands of the state of Ohio, any timber, saw-logs, rails, rail-cuts, tan-bark, hoop-poles, railroad ties, hoops, staves, stave-bolts, or blocks, butts, or any timber of any value whatever, or shall unlawfully dig up, pluck off, or carry away from the lands of another person, any cultivated root or roots, plant or plants, fruit, or any other vegetable production or productions, with intent in each or any of the above recited cases to injure the owner of said lands in his property, or to defraud him or them, if the value of the property so severed or taken is of the value of thirty-five dollars or more, shall be guilty of a felony, and be imprisoned in the penitentiary not more than three years not less than one year, and shall pay the costs of prosecution. And, if any person shall be convicted of either or any of the offenses mentioned in this section, and the value of the property severed, or in any manner taken from the lands in violation of this section, shall be less than thirty-five dollars, he shall be guilty of a misdemeanor, and be fined in any sum not less than twice the value of the property severed, or carried away from lands as aforesaid, or imprisoned in the jail of the county not exceeding thirty days, or both, at the discretion of the court, and pay costs of prosecution.

SEC. 6880b. [Penalty for buying timber cut unlawfully.] Whoever shall buy any of the property mentioned in section *six thousand eight hundred and eighty(a)*, or any lumber, timber, bark, rails, hoops, or hoop-poles, railroad ties, made or taken, knowing that the same had been severed or taken from the lands of another, or from the lands of the state in violation of section *six thousand eight hundred and eighty (a)*, with intent to defraud the owner of such property, shall be fined not less than twice the value of the property bought or received as aforesaid, or imprisoned in the jail of the county not exceeding thirty days, or both, at the discretion of the court, and shall pay the costs of prosecution.

SEC. 6880d. [How judgment collected and paid over.] The court trying any cause arising under the last four preceding sections, shall instruct the jury to find the value of the property severed or taken from the land, bought, received or sawed or manufactured, as the case may be, in violation of any of the provisions of said sections, and shall render judgment against the party convicted for the amount of fine assessed and costs of prosecution, and the sheriff, or other officer collecting said judgment, shall, after paying all costs of prosecution, pay over to the owner of said property severed or taken as aforesaid, twice the value thereof, as returned by the jury.

SEC. 6880e. [Trespassing upon lands of another; penalty.] Whoever, being about to enter unlawfully upon the inclosed or unin-closed lands or premises of another, and shall be forbidden so to do by the owner or occupant, or his agent or servant, or who, being unlawfully

upon the inclosed or uninclosed lands or premises of another, shall be notified to depart therefrom by the owner or occupant, or his agent or servant, and shall thereafter enter upon such lands or premises, or neglect or refuse to depart therefrom, except persons who are crossing said lands or premises for some lawful purpose, with the consent of the owner of such premises, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one nor more than five dollars, and shall pay the costs of prosecution.

SEC. 6881. [Trespassing while mining.] Whoever, in mining for coal, or other minerals, willfully and without lawful authority, trespasses upon the lands of another, shall be fined not more than one hundred nor less than five dollars, or imprisoned not more than ten days, or both; and any continuation of such trespass for twenty-four hours after the commencement of any prosecution under this section, shall be deemed a separate offense; and all prosecutions hereunder shall be commenced within one year from the time the offense becomes known to any owner of the property injured.

SEC. 6881a. [Trespass by owner of shanty-boat; penalty.] Whoever being the owner of any shanty-boat, anchors, ties or beaches said boat upon the real estate of another along a creek or river, unless in case of distress or for a longer period than thirty-six hours, without the permission of the owner or agent of the said real estate upon which said boat is anchored, tied or beached, shall upon conviction be fined not more than fifty dollars or imprisoned not more than thirty days.

(6881-1) SEC. 1. [Forbidding trespasses by employes of telephone and telegraph companies.] *Be it enacted by the General Assembly of the state of Ohio,* That any person engaged either for himself, or as an officer, clerk, agent, servant, or other employe of any corporation, company, firm, or person doing business wholly or partly in the state of Ohio, as receivers and transmitters of messages or other communications, either by telegraph, telephone, or other similar means, or of any electric light, district telegraph, or other company, person, firm or corporation, who shall enter into or upon the premises, building or buildings of another for the purpose of constructing, altering, repairing, or examining the wires, poles, insulators, frames, or other appendages belonging to such corporation, company, firm or person, without the written consent of the owner or agent of such premises, building or buildings, or shall attach thereto any wire, pole, insulator, frame, or other appendage whatsoever, without such consent, shall be fined not less than ten nor more than one hundred dollars.

SEC. 6882. [Defacing or destroying advertisements or notifications set up by authority of law, or by bridge owners.] Whoever intentionally defaces, obliterates, tears down, or destroys, in whole or in part, any copy or transcript of any law of the United States, or of the state of Ohio, or any proclamation, publication, advertisement or notification whatsoever, set up in any public place, for the public information of any citizen, by the authority of any law or act of this state, or any sign, notice, card, or tables of rules or rates or any other notice, affixed or pasted upon any bridge, by any owner or keeper thereof, for the information of the public, shall be fined not more than twenty dollars, or imprisoned not more than twenty-four hours, or both.

SEC. 6883. [Posting bills, etc., on buildings, etc., without consent of owner.] Whoever paints, prints, pastes, stencils, or otherwise

marks upon, or in any manner places upon or affixes to, any building, fence, wall, or tree, without the consent of the owner thereof, any word, letter, character, figure, sentence, or device, or any handbill, or notice, shall be fined not more than fifty nor less than ten dollars; but this section does not apply to the posting of any handbill or notice of any public sale of property by any sheriff, administrator, executor, or licensed auctioneer, or any notice required by any law to be posted.

SEC. 6884. [Setting up obstruction on public sidewalk.] Whoever sets up any table, stand, tent, wagon or other article, to use or let for profit, on a public footwalk or sidewalk constructed according to law, by any person, or any board of education, the council of any municipal corporation, the trustees of any cemetery association, the trustees of any township, or any agricultural or religious society, or rides, drives, leads, or hitches any horse or other animal on such footwalk or sidewalk, or in any other way obstructs the same, or digs up or removes any of the material of which the same is composed, shall be fined not more than twenty-five nor less than five dollars, or imprisoned not more than ten days, or both.

(6884-1) [Unlawful camping on public highways or adjacent lands.] It shall be unlawful for any band of gypsies, wanderers, travelers, or other person or persons, to camp in tent, wagon or otherwise, on the public highway, or lands adjacent thereto, for a longer period than twenty-four hours without consent of the owners of such adjacent land, or consent of owner of land abutting on the highway where such camping place is made.

(6884-2) SEC. 2. [Penalty.] Any person or persons violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not exceeding ten dollars, or imprisoned in the county jail not exceeding thirty days, or both.

SEC. 6885. [Breaking open pound, etc.] Whoever interferes with, breaks open, destroys, or injures, any pound erected under authority of any law, or sets at liberty any animal impounded therein, shall be fined not more than fifty dollars, or imprisoned not more than ten days, or both.

NUISANCES.

SEC. 6921. [Nuisances.] Whoever erects, continues, uses or maintains, any building, structure, or place for the exercise of any trade, employment, or business, or for the keeping or feeding of any animal, which, by occasioning noxious exhalations, or noisome or offensive smells, becomes injurious to the health, comfort, or property of individuals, or the public, or causes or suffers any offal, filth, or noisome substance, to be collected, or to remain in any place, to the damage or prejudice of others, or the public, or obstructs or impedes, without legal authority, the passage of any navigable river, harbor, or collection of water, or corrupts or renders unwholesome or impure, any water-course, stream, or water, or unlawfully diverts any such water-course from its natural course or state, to the injury or prejudice of others, or obstructs or incumbers, by fences, buildings, structures, or otherwise, any public ground, or highway, or any street or alley of any municipal corporation, shall be fined not more than five hundred dollars.

SEC. 6922. [Creating artificial ponds, and stagnant waters.] Whoever builds, erects, continues, or keeps up, any dam or other obstruction, in any river or stream of water, and thereby raises an artificial pond, or produces stagnant water, which is manifestly injurious to the public health and safety, shall be fined not more than five hundred dollars.

SEC. 6923. [Unlawful deposit of dead animals, offal, etc., into or upon land or water.] Whoever puts the carcass of any dead animal, or the offal from any slaughter-house, or butcher's establishment, packing-house, or fish-house, or any spoiled meat, or spoiled fish, or any putrid substance, or the contents of any privy vaults, upon or into any lake, river, bay, creek, pond, canal, road, street, alley, lot, field, meadow, public ground, market space or common, and whoever being the owner or occupant of any such place, knowingly permits any such thing to remain therein, to the annoyance of any of the citizens of this state, neglects or refuses to remove or abate the nuisance occasioned thereby, within twenty-four hours after knowledge of the existence of such nuisance upon any of the above described premises, owned or occupied by him, or after notice thereof in writing, from any supervisor, constable, trustee, or health officer of any municipal corporation or township in which such nuisance exists, or from a county commissioner of such county, shall be fined not more than fifty dollars nor less than ten dollars, and pay the cost of prosecution, and in default of the payment of said fine and costs, be imprisoned not more than thirty days, but the provisions hereinafter made shall not prohibit the depositing the contents of privy vaults and catch-basins into trenches or pits not less than three (3) feet deep, excavated in any lot, field or meadow, the owner thereof consenting, outside the limits of any municipal corporation, and not less than thirty rods distant from any dwelling, well or spring of water, lake, bay or pond, canal, run, creek, brook or stream of water, public road or highway; provided, that said contents deposited in said trenches or pits are immediately thereafter covered with dry earth to the depth of at least twelve inches; nor shall said provisions prohibit the depositing of said contents into furrows situate and distinct, as specified for said trenches or pits; provided, the same are immediately thereafter wholly covered with dry earth by plowing or otherwise; and provided, also, that the owner or occupant of the land in which said furrows are plowed consents, and is a party thereto; provided, also, that the board of health of any municipal corporation may allow said contents to be deposited within corporate limits into trenches or pits or furrows, situate, distant and to be covered as aforesaid.

SEC. 6923a. [Bodies of animals dying from contagious diseases must be burned or buried.] The bodies of all animals dying from contagious diseases shall be burned, or buried at least four feet below the surface of the ground by the owner thereof. Any owner permitting such dead animals to remain unburned, or unburied, or neglecting, or refusing to comply with the provisions of this section within twenty-four hours after having knowledge of the existence of such dead animals, or after notice thereof, in writing from the trustees of the township in which such dead animals may be found, it shall be the duty of said trustees to proceed to dispose of such dead animals as provided in this section, and such owner, so neglecting or refusing shall be fined in any sum not less than five dollars, nor more than twenty dollars, together with the cost of suit, and all necessary expenses incurred by said trustees in disposing of such animals. Action to recover fines, costs, and expenses as

herein provided shall be brought upon complaint of said trustees before any justice of the peace, in the township in which such owner resides. Provided, that the dead bodies of such animals may be removed to a fertilizing establishment, if removed in a water-tight tank.

SELLING UNWHOLESOME PROVISIONS.

SEC. 6928. [**Selling unwholesome provisions.**] Whoever sells, or offers for sale, or has in his possession with a view to sell any kind of diseased, corrupted, adulterated, or unwholesome provisions, whether for meat or drink, without making the condition of the same known to the buyer, and whoever kills for the purpose of sale, any calf less than four weeks old, or sells, or has in possession with intent to sell, the meat of any calf which he knows to have been killed when less than four weeks old, shall be fined not more than fifty dollars, or imprisoned twenty days, or both.

SEC. 6928-1. [**Feeding unwholesome offal or flesh to swine, etc.**] Whoever feeds to swine, or animals of any kind used for human food the flesh of any old horse, or the flesh of any animal which has become old, decrepit, infirm or sick, or of one that has died from such cause, or any offal or flesh that is putrid or unwholesome, shall be fined not more than two hundred dollars nor less than fifty, or imprisoned for the first offense not more than thirty days, or both, and for a second offense not more than six months, or both.

SEC. 6946. [**Prohibiting sale of intoxicating liquors and keeping of houses of ill-fame at certain places; abatement as nuisance.**] Whoever sells intoxicating liquors or keeps a house of ill-fame at or within twelve hundred yards of the administration or main central building of the Columbus state hospital, Dayton state hospital, Athens state hospital, Toledo state hospital, soldiers' and sailors' orphans' home, or any other orphans' home in this state, except in cities of the first class, or within two miles of the boundary line of the boys' industrial school, south of Lancaster, Fairfield county, or within two miles of the place where any agricultural fair is being held, or within one mile of any county children's home of any county of the state, situated within one mile of any incorporated village or city in which the sale of intoxicating liquors is prohibited by an ordinance of such village or city, made in pursuance of the act entitled "An act providing against the evils resulting from the traffic in intoxicating liquors," passed March 11, 1897, shall be fined not more than one hundred nor less than twenty-five dollars, or imprisoned not more than thirty days, or both, and on conviction of the owner or keeper thereof the place wherein such liquors are sold, shall, by order of the court, be shut up and abated as a nuisance, but nothing in this section shall be so construed as to prevent a regular dealer in intoxicating liquors from doing business and selling the same, at his usual place of business within two miles of the place where any agricultural fair is being held.

CRUELTY TO ANIMALS.

SEC. 6951. [**Cruelty to animals.**] Whoever overdrives, overloads, tortures, deprives of necessary sustenance, or unnecessarily or cruelly beats, or needlessly mutilates or kills any animal, or impounds or

confines any animal in any place and fails to supply the same during such confinement with a sufficient quantity of good, wholesome food and water, or carries in or upon any vehicle, or otherwise, any animal in a cruel or inhuman manner, or who keeps cows or other animals in any inclosure without wholesome exercise and change of air, or feeds cows on food that produces impure or unwholesome milk, or abandons to die any old, maimed, sick, infirm or diseased animal, or works the same, or, being a person or corporation engaged in transporting live stock, detains such stock in railroad cars, or in compartments for a longer continuous period than twenty-four hours after the same are so placed, either within or beyond this state, without supplying the same with necessary food, water and attention, or permits such stock to be so crowded together as to overlie, crush, wound or kill each other, shall be fined not more than two hundred nor less than five dollars, or imprisoned not more than sixty days, or both.

[**Dehorning of cattle.**] Provided, that nothing herein contained shall be construed to prevent the dehorning of cattle.

[**Disposition of fines collected.**] And that all fines collected for violations of this section shall be paid to the society or association for the prevention of cruelty to animals, if any such society or association is organized in such county, township, village or city where such violation occurred.

(6951-1) [**Docking tail of horse; penalty.**] Whoever, being the owner or having the custody, control or possession of any horse, mare, gelding, foal or filly, or who shall be an agent or employe of any such owner or person, having the custody, control or possession of any horse, mare, gelding, foal or filly, shall cut off or cause to be cut off or amputated the skin, flesh, muscles, bone and integuments of the dock or tail of any such horse, mare, gelding, foal or filly, in order to shorten the natural length or proportions of such dock or tail, or shall pull out or cause to be pulled out the hairs of the foretop, mane or withers of any such horse, mare, gelding, foal or filly, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined, for the first offense not less than twenty-five dollars nor more than two hundred dollars, or be imprisoned in the county jail or workhouse not exceeding six months, or both, at the discretion of the court; and for any subsequent offense under this act, such person on conviction, shall be punished by a fine not exceeding the sum of five hundred dollars, and by imprisonment in the county jail or workhouse for the period of one year.

[**Lawful docking.**] Provided, that in case it shall be necessary in case of any accident, malformation or disease, which may affect the dock or tail of any horse, mare, gelding, foal or filly, to cut or amputate the same, such cutting or amputation shall be deemed lawful.

SEC. 6952. [**Dog-fighting, cock-fighting, etc.; who deemed aiders and abettors.**] Whoever engages in or is employed at cock-fighting, dog-fighting, bear-baiting, pitting one animal against another of the same or of a different kind, or any similar cruelty to animals, or receives money for the admission of any person to any place kept for any such purpose, or uses, trains, or possesses a dog or other animal for the purpose of seizing, detaining, or maltreating, any domestic animal, shall be fined not more than one hundred and fifty nor less than five

dollars, or imprisoned not more than thirty nor less than ten days; and [any] one who knowingly purchases a ticket of admission to any place mentioned in this section, or is present thereat, or witnesses such spectacle, shall be deemed an aider and abettor.

SEC. 6958. [Depositing poison in thoroughfares.] Whoever leaves or deposits any poison, or any substance containing poison, in any common, street, alley, lane, or thoroughfare of any kind, or any yard or inclosure other than the yard or inclosure occupied by such person, shall be fined not more than fifty nor less than five dollars, or imprisoned not more than thirty nor less than five days, or both, and shall be liable to the person injured for all damages sustained thereby.

BIRDS AND GAME.

SEC. 6960. [Catching, killing, injuring, pursuing or destroying eggs or nests of certain birds; penalty.] No person shall, at any time, kill or injure, or pursue with such intent, any sparrow, nuthatch, warbler, flicker, viroe, wren, robin, catbird, tanager, bobolink, bluejay, oriole, grosbeak or redbird, creeper, redstart, waxwing, woodpecker, hummingbird, bunting, starling, redwing, purple martin, brown thrasher, American goldfinch, chewink or ground robin, pewee or phoebe bird, chickadee, fly catcher, gnat catcher, mouse hawk, whippoorwill, snowbird, titmouse or eagle. No person shall, at any time, destroy the eggs or nest of any of the birds named in this section. Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and on conviction thereof, shall be fined as provided in section 6968;

[House-sparrow and American robin.] Provided further, that nothing in this act shall prohibit the killing of the house or English sparrow at any time, by anybody, or prohibit the killing of the American robin and bluejay, by the owner or tenant of any premises where such birds are found destroying berries or fruit growing on such premises.

SEC. 6960a. [Permits to take birds, nests and eggs for scientific purposes; how obtained; fee.] The provisions in section 6960 of this act shall not apply to any person holding a permit giving the right to take birds or their nests and eggs for scientific purposes, as herein provided. Permits may be granted by the president of the fish and game commission to any properly accredited person, permitting the holder thereof to collect birds, their nests and eggs for strictly scientific purposes. In order to obtain such permit the applicant for the same must present to said president of the fish and game commission written testimonials from two well-known scientific men or teachers of science, certifying to the good character and fitness of said applicant to be entrusted with such privilege, and pay to said president one dollar to defray the necessary expense attending the granting of such permit, and must file with said president a properly executed bond in the sum of one hundred dollars, signed by at least two responsible citizens of the state as sureties. The bond shall be forfeited to the state and the permit become void upon proof that the holder of such permit has killed any bird or taken the nests or eggs of any bird for any other than that named in this section, and shall further be subject for each offense to the penalties provided in this act.

[Permit in force but two years; non-transferable.] The permits authorized by this act shall be in force for two years from the date of their issue and shall not be transferable.

SEC. 6961. [Catching, killing, injuring or pursuing game, destroying eggs or nests, hunting, shooting, trapping, etc.] No person shall, on any place, catch, kill or injure, or pursue with such intent, any quail, except between the tenth day of November and the first day of December, inclusive; or any woodcock, squirrel or rabbit, except between the tenth day of November and the first day of December, inclusive; or any ruffed grouse, or pheasant or prairie chicken, except between the tenth day of November and the first day of December, inclusive; or any rail, snipe, killdeer or plover, except between the tenth day of November and the first day of December, inclusive; or any coot or mud hen, or wild duck, except between the tenth day of November and the first day of December, inclusive, and the tenth day of March and tenth day of April, inclusive. No person shall, at any time, catch, kill or injure, or pursue, with such intent, any wild duck or wild goose, by the aid or use of any swivel or punt gun, or any other gun but a common shoulder gun; or with the aid of or from any sink boat or battery, or by the use or aid of any steamboat, naphtha launch, electric launch, sailboat, steam launch or any kind of boat whatsoever, except a common rowboat propelled by oars. No person shall, at any time, catch, kill or injure, or pursue with such intent, any of the birds, game or animals mentioned in this act, with or by the use of any trap, net or snare, or destroy any of the eggs or nests of any of the birds named in this section. No person shall kill any wild duck on Sunday or Monday of any week, or on any of the reservoirs belonging to the State of Ohio, or upon the waters of Lake Erie and the estuaries and bays thereof, or on the rivers, creeks, ponds, or other waters or bodies of water in this state. No person shall hunt, shoot or trap or have in possession in the open air for such purpose, any of the implements for the hunting, shooting or trapping of the same, on the first day of the week, commonly called Sunday. No person shall shoot at or kill any wild duck before five o'clock in the forenoon, or after six o'clock in the afternoon of any day upon which it shall be lawful to kill the same. Any person violating any of the provisions of this act, shall be guilty of a misdemeanor, and on conviction thereof, shall be fined as provided in section 6968.

[Injurious squirrel or rabbit.] Provided, that nothing herein shall be construed so as to prohibit the killing of squirrels or rabbits by the owner or tenant of any premises where such animals may be found injuring grain, fruit trees, shrubbery or vegetables.

SEC. 6962. [Discharging fire-arms on lawns, etc.] Whoever discharges any fire-arms on any lawn, park, pleasure-ground, orchard, or any other ground directly appurtenant to, or within gunshot of, any occupied dwelling-house, the property of another, or any charitable institution, shall be fined not more than twenty nor less than five dollars, or imprisoned not more than thirty days, or both.

SEC. 6963. [Killing of wild deer and pheasants in certain seasons; penalty.] No person shall catch, kill or injure, or pursue with such intent, any wild deer, Mongolian, English or ring-neck pheasant, before the 10th day of November, 1900; or after said date, except between the 10th day of November and the 15th day of December, inclusive. Provided, that nothing herein shall prevent persons from hav-

ing in possession Mongolian, English or ring-neck pheasants, or deer in private enclosure for the purpose of domestication or propogation. And any person violating any of the provisions of this act, shall be guilty of a misdemeanor, and, on conviction shall be fined as provided in section 6968.

(6963-1) **SEC. 1. [Unlawful killing or transportation of quail, etc.; evidence.]** No person shall at any time kill any quail, ruffed grouse or pheasant, or any Mongolian, English, or any ring-neck pheasant, for the purpose of conveying the same beyond the limits of this state, nor for the purpose of sale in the markets of this state, or shall transport, or have in possession with intent to procure the transportation beyond said limits, any of such birds killed within this state. The reception by any person within this state of any such birds for shipment to a point without the state, shall be prima facie evidence that said birds were killed within the state for the purpose of carrying the same beyond its limits.

SEC. 2. [Penalty for violation.] Any person violating any of the provisions of the preceding section, shall be fined as provided in section sixty-nine hundred and sixty-eight.

SEC. 6964. [Purchase, sale, exposure, or possession of certain birds or game.] Whoever has in his possession, any quail or wild turkey, except between the tenth day of November and the fifteenth day of December, inclusive; or any woodcock or squirrel, except between the fourth day of July and the fifteenth day of December, inclusive; or any ruffed grouse, or pheasant, or prairie chicken, except between the first day of September and the fifteenth day of December, inclusive; or whoever purchases, sells or exposes for sale, or has in his possession, any dove, except between the fourth day of July and the fifteenth day of December, inclusive; or any snipe, rail, kildeer or plover, except between the first day of September and the fifteenth day of May, inclusive; or any coot or mud hen, or wild duck, except between the first day of September and the fifteenth day of April, inclusive; or any Mongolian pheasant, English or ring-neck pheasant, before the tenth day of November, 1903, or after that date, except between the tenth day of November and the fifteenth day of December, inclusive; or any of the song or insectivorous birds mentioned in section 6960;

[Killing, selling or transportation of game.] Or whoever shall at any time, catch or kill, any quail, wild turkey, ruffed grouse or pheasant, prairie chicken, woodcock, squirrel, Mongolian pheasant, or English or ring-neck pheasant, for the purpose of conveying the same beyond the limits of this state, or for sale in the markets of this state, or shall transport or have in possession with intent to procure the transportation beyond the limits of this state, or for sale in the markets of this state, any quail, wild turkey, ruffed grouse or pheasant, prairie chicken, woodcock, squirrel, Mongolian pheasant, or English or ring-neck pheasant, killed within this state, shall be fined as provided in section 6968. And in addition thereto, shall be liable to a penalty of twenty-five dollars for each bird trapped or possessed contrary to the provisions of this act.

[Evidence.] The reception by any person within this state of any such birds, game or animals, for shipment to a point without the state, shall be prima facie evidence that such birds, game or animals,

were killed within this state for the purpose of conveying the same beyond its limits;

[**Common carrier.**] Provided, that the provisions of this act shall not be construed as applicable to any common carrier into whose possession any of the birds, game or animals herein mentioned, shall come in the regular course of their business for transportation, while they are in transit through this state from any place without this state, where the killing of such birds, game or animals shall be lawful, but nothing in the provisions of this act shall prevent any one having in his possession wild deer during the time when the killing thereof is made penal.

[**Authority of game warden or deputy to open shipments of birds or game.**] Any game warden or deputy game warden in this state shall have authority and right, at any time, to open packages, boxes, crates or other receptacles, containing the birds, game or animals prohibited by this act from being transported without the limits of this state, delivered to a common carrier for transportation out of the state, and shall take and confiscate such birds, game or animals, about to be transported out of the state, and deliver them to some hospital, infirmary or charitable institution.

SEC. 6965. [**Disturbing pigeon-roosts, etc.; sneak-boats.**] Whoever kills, maims, or discharges any fire-arms at any wild pigeon while on its nesting ground or at its roosting place, or breaks up, or in any way disturbs any pigeon-roost or nesting, or the birds therein, or discharges any fire-arms at any wild pigeon within one-half mile of any pigeon-roosting or nesting place, or disturbs or destroys any pigeon eggs or nestlings, or from, or by the aid of any sneak-boat, battery or sink boat, approaches by rowing, paddling, sailing, floating or sneaking, and fires upon any wild ducks, or other water fowls sitting upon or as they rise from the open water of any bay or estuary, excepting only such water fowl as have been previously wounded, shall be guilty of a misdemeanor, and on conviction, be punished as hereinafter provided in section *six thousand nine hundred and sixty-eight*.

SEC. 6966. [**For shooting or hunting on lands of another without permission.**] Whoever, without having first received written permission from the owner, his agent, or the person having the control of any lands, pond, lake, or other private waters, except the waters claimed by riparian right of ownership of adjacent lands, hunts upon the same or thereon hunts, shoots, or shoots at, kills or pursues with the intent to kill, or capture the Virginia partridge, quail, pheasant, prairie chicken, ruffed [ruffed] grouse, blue winged teal, mallard duck, wood duck, squirrel, rabbit, wild turkey, robbins, turtle doves, or any other bird or wild animal, [fowl] or game of any kind or destroys the eggs or nests of any such bird or fowl, shall be deemed guilty of a misdemeanor, and upon conviction thereof, for the first offense, fined not less than five or [nor] more than fifteen dollars, and stand committed until such fine and costs of suit are paid; and any person convicted for a second offense under this section committed within a year from time of first offense, shall be fined not less than five or [nor] more than fifteen dollars, and stand committed until such fine and costs of suit are paid.

(6966-1) [**Jurisdiction in prosecutions; trial.**] That justices of the peace, mayors and police judges shall have final jurisdiction in all

cases arising under the provisions of said section sixty-nine hundred and sixty-six, provided, that the defendant shall be entitled, on demand, to a trial by jury. If such prosecutions be before a justice of the peace, and a trial by jury be not waived, the said justice shall issue a venire to any constable of the county, containing the names of sixteen electors of the county, to serve as jurors to try such case, and make due return thereof. Each party shall be entitled to two peremptory challenges, and shall be subject to the same challenges as jurors are subject to in criminal cases in the court of common pleas. If the venire of sixteen names be exhausted without obtaining the required number to fill the panel, the justice may direct the constable to summon any of the bystanders to act as jurors;

[Costs.] But costs shall not be required to be advanced or paid by a person or an officer authorized or required by statute to prosecute such cases; and if the defendant be acquitted, or if he be convicted, and committed to jail in default of payment of fine and costs, the justice, mayor, or police judge before whom the case was brought shall certify such costs to the county auditor, who shall examine, and, if necessary, correct the amount [account], and issue his warrant to the county treasurer in favor of the respective officers to whom costs are due for the amount due to each.

(6966-2) [Giving to justices, mayors, and police judges final jurisdiction in certain cases; costs.] Justices of the peace, mayors, and police judges shall have final jurisdiction in all cases arising under the provisions of sections *sixty-nine hundred and sixty, sixty-nine hundred and sixty-one, sixty-nine hundred and sixty-three, sixty-nine hundred and sixty-four, sixty-nine hundred and sixty-five, sixty-nine hundred and sixty-seven, and sixty-nine hundred and sixty-eight* of the Revised Statutes; provided, that the defendant shall be entitled, on demand, to trial by jury. If such prosecutions be before a justice of the peace, and a trial by jury be not waived, the said justice shall issue a venire to any constable, or fish and game warden, of the county, containing the names of sixteen electors of the county, to serve as jurors to try such case, and make due return thereof. Each party shall be entitled to two peremptory challenges, and shall be subject to the same challenges as jurors are subject to in criminal cases in the court of common pleas. If the venire of sixteen names be exhausted without obtaining the required number to fill the panel, the justice may direct the constable, or fish and game warden, as the case may be, to summon any of the bystanders to act as jurors; but costs shall not be required to be advanced or paid by a person or an officer authorized or required by statute to prosecute such cases; and if the defendant be acquitted, or if he be convicted, and committed to jail in default of payment of fine and costs, the justice, mayor, or police judge, before whom the case was brought, shall certify such costs to the county auditor, who shall examine, and, if necessary, correct the account, and issue his warrant to the county treasurer in favor of the respective persons to whom costs are due, for the amount due to each.

SEC. 6967. [Ferrets not to be used to catch rabbits.] Whoever, upon the premises or lands of another, uses or employs, or attempts to use or employ, ferrets for the purpose of catching rabbits, or driving them from their burrows or hiding-places without first obtaining verbal or written permission from the owner of such lands or premises, or from his agent, or person in charge thereof, shall be fined for the first offense,

not more than twenty nor less than five dollars, and for any subsequent offense not more than one hundred nor less than fifty dollars.

SEC. 7001. [Penalty for vending impure seed.] Whoever knowingly vends any grass or other seed, in or among which there is any seed of the Canada thistle, white or yellow daisy, or wild carrot, and whoever being the owner, occupier, or possessor of any land, suffers any Canada thistle, teasels or wild carrot to grow and ripen seed thereon, or on the highway adjoining the same, shall be fined twenty dollars.

Duty with reference to the destruction of Canada thistles and other noxious weeds, see §§ 4732, 4732a, 4732b.

SEC. 7002. [Unlawful sale of commercial fertilizer.] Whoever sells, exposes for sale, or offers for sale any commercial fertilizer without having complied with the provisions of sections 4446a, 4446b, and 4446c, of the Revised Statutes, shall be fined in any sum not exceeding two hundred dollars, or imprisoned not more than thirty days, or both, and said fine or imprisonment, or both, shall not be a bar to the recovery of the civil penalty provided for by sections 4446f and 4446g of the Revised Statutes.

On the subject of the sale of commercial fertilizers, penalties, etc., see § 4446a et seq.

SEC. 7003. [Importing cattle infected with Spanish fever.] Whoever except common carriers not the owners of cattle transported by them, brings into this state any cattle infected with the disease commonly known as the Texas or Spanish fever, or cattle liable to impart such fever to other cattle, shall be fined not more than five hundred nor less than fifty dollars.

For "an act to prevent the introduction of Texas fever among cattle" (85 v. 83), see § (4211-19) et seq.

SEC. 7006. [Exhibitions and temporary business at fairs prohibited.] Whoever exhibits or shows any natural or artificial curiosity for any price or gain, or sets up to let or use for profit any swing, revolving swing, flying horses, whirligigs or other device, or whoever establishes a temporary place of business for the sale of any article whatsoever, or offers for sale any such article except as a regular established dealer in such article at his usual place of business, within one-fourth of a mile of the fair ground of any agricultural society, while the fair of such society is being held therein, unless he has obtained the written permission of the board of such society, shall be fined not more than one hundred dollars nor less than one dollar.

FRAUDS.

(7069-3) **SEC. 1. [Unlawful sale of certain kinds of wool.]** *Be it enacted by the General Assembly of the state of Ohio,* That it shall be unlawful for any person or persons to sell any wool washed on sheep's back or otherwise, containing any unwashed tag-locks, or any unwashed wool of any kind, or black wool, or parts of buck's fleeces, or other substances foreign to the fleece or fleeces, which is calculated and intended to defraud the purchaser thereof.

(7069-4) **SEC. 2. [Penalty.]** Any person or persons guilty of violating the provisions of section one of this act, shall be fined not less

than twenty-five dollars nor more than one hundred dollars, or imprisoned not less than thirty days nor more than ninety days, or both, at the discretion of the court.

(7069-5) SEC. 1. [**Fraud in sale of grain, seed, etc., negotiation of notes obtained by such fraud; penalty.**] *Be it enacted by the General Assembly of the State of Ohio,* That whoever, either for his own benefit or as the agent of any corporation, company, association or person, obtains from any other person anything of value, or procures the signature of any such person, as maker, indorser, guarantor or surety thereon, to any bond, bill, receipt, promissory note, draft, check, or any other evidence of indebtedness, as the whole or part consideration of the sale or transfer to such other person of any grain, seed or other cereals, which sale or transfer is at a fictitious price or at a price equal to or more than twice the market price of such grain, seed or cereals, or as the whole or part consideration for any bond, contract or promise given the vendee of any grain, seed or cereals binding the vendor or any other person, corporation, company, association, or the agent thereof, to sell for such vendee any grain, seed or cereals at a fictitious price, or at a price equal to or more than twice the market price of such grain, seed or cereals; and whoever sells, barter or disposes of, or offers to sell, barter or dispose of, either for his own benefit or as the agent of any corporation, company, association or person, any bond, bill, receipt, promissory note, draft, check, or other evidence of indebtedness, knowing the same to have been obtained as the whole or part consideration of the sale or transfer to the maker, indorser, guarantor or surety on any such bond, bill, receipt, promissory note, draft, check, or other evidence of indebtedness, of any grain, seed or cereals which have been sold or transferred to such maker, indorser, guarantor or surety at a fictitious price or at a price equal to or more than double the market price of such grain, seed or cereals, or as the whole or part consideration for any bond, contract or promise given the vendee of any grain, seed or cereals binding the vendor or any other person, corporation, company, association, or the agent thereof, to sell for such vendee any grain, seed or cereals at a fictitious price, or at a price equal to more than twice the market price of such grain, seed or cereals, shall be imprisoned in the penitentiary not more than three years nor less than one year, or be fined in the sum of not more than five hundred dollars nor less than one hundred dollars, or both, at the discretion of the court.

(7072-1) [**Labeling of binding twine.**] Each separate ball or parcel of binding twine—being that commonly employed in binding grain—exposed to sale or offered for sale in this state, shall have attached thereto a tab or label, on which shall be plainly written or printed the kind of material of which the string is composed and the true weight of each of such separate balls or parcels of twine and any dealer, manufacturing corporation, company or their agent selling or offering for sale any such ball or parcel of twine without then having the tab or label attached thereto, above required, shall on conviction thereof be fined not less than one dollar nor more than twenty-five dollars, and shall stand committed until the fine and costs are paid.

(7270-3) SEC. 2. [**Labeling of "soaked" goods and cans of maple molasses.**] That all soaked goods, or goods put up from products dried before canning, shall be plainly marked by an adhesive label, having on its face the word "soaked," in letters not less in size than

two-line pica, of solid and legible type; and all cans, jugs, or other packages, containing maple-syrup or molasses, shall be plainly marked by an adhesive label, having on its face the name and address of the person, firm or corporation who made or prepared the same, together with the name and quality of the goods, in letters of the size provided in this section.

(7076-1) SEC. 1. [Unlawful obtaining of registry or transfer in any herd book; penalty.] Every person, who by any false pretense shall obtain from any club, association, society, or company for improving the breed of Jersey cattle a certificate of registration of any animal in the herd register or other register of any such club, association, society, or company, or a transfer of any such registration, and every person who shall knowingly give a false pedigree of any Jersey animal, upon conviction thereof, shall be punished by imprisonment in a jail for a term not exceeding six months, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

(7076-2) SEC. 2. [Venue.] The crime shall be deemed completed and every such person shall be prosecuted either in the county in which such certificate of registration or transfer has been obtained or in the county where such false pretense has been made.

(7076-3) SEC. 3. [False pedigree or certificate of sale of stock; penalty.] Any person who shall knowingly and wilfully furnish or [to] give a purchaser of any animal any false pedigree or any false certificate of sale of such animal, and every person who shall knowingly and wilfully use for the purpose of deceiving, any false pedigree or false certificate of sale of any animal, whether such false pedigree or false certificate of sale was furnished, given or procured in this state or elsewhere, shall upon conviction thereof, be punished by fine in any sum not less than twenty-five nor more than five hundred dollars or be imprisoned in the county jail for a term not exceeding six months, or both fine and imprisonment in the discretion of the court.

Misrepresenting pedigree of stallion, § (3213-1).

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