

No. 97.

An Act

Relative to the laying out of a certain State Road from Curvinsville, Clearfield county, through the towns of Indiana and Saltsburg, in Indiana county, and through Westmoreland county to East Liberty, in Allegheny county, and for laying out certain other state roads, and for other purposes.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same.* That Alexander Patteson, of Indiana county, George M'Combs, of Allegheny county, William M'Cutchen, of Westmoreland county, and Moses Boggs, of Clearfield county, be and they are hereby appointed commissioners to view, lay out and mark a State road, leading from Curvinsville, in Clearfield county, through the towns of Indiana and Saltsburg in Indiana county, and through the county of Westmoreland, to East Liberty, in Allegheny county, by the nearest and best route.

Commiss'rs
to lay out
State road
from Curvins-
ville, in
Clearfield co
to E. Liberty
in Alleg'y co

SECTION 2. It shall be the duty of the said commissioners, or a majority of them appointed to view as aforesaid, after having been sworn or affirmed before some justice of the peace, who shall file and preserve the same in his office, to perform the duties enjoined on them by this act with impartiality and fidelity, carefully to view the ground over which the road by them laid out may pass, and lay out the same as near to a straight line between the aforesaid points as the nature of the ground and circumstances will permit, and so that the vertical departure from a horizontal line shall in no point exceed five degrees, except at the crossing of ravines and streams, where, by moderate filling and bridging, the declination of the road may be preserved within that limit, and further it shall be the duty of the said commissioners, to have due regard to the crossing of waters, the nature of the ground, and damages to private property, and all other circumstances that may affect the route, so that, by a judicious combination of them, the route adopted may best promote the public good; and that they shall clearly and distinctly mark upon the ground the route agreed upon, in such a manner as to enable the supervisors readily to find the same; and for the purpose of fulfilling the duties by this act enjoined, the commissioners herein mentioned shall receive a per diem

Duties of
commission-
ers and their
compensa-
tion.

allowance of two dollars each, for every day they shall be necessarily employed in performing the duties of this act, together with all necessary provisions; and in case any of the said commissioners shall perform the duties of surveyor he shall receive fifty cents per day in addition; and the said commissioners are hereby authorized to employ one surveyor at two dollars per day, two chain bearers and one axe-man, at a per diem allowance not exceeding seventy-five cents.

SECTION 3. The said commissioners shall meet on or before the first Monday in August next, or as soon thereafter as practicable, at such places as a majority of them shall agree upon, and complete the location of said road as soon as practicable; and if any vacancy or vacancies shall happen by resignation or any other cause, the Governor, or the court of Quarter Sessions of the county in which the commissioner shall reside, as the case may be, are hereby authorized to fill the vacancy or vacancies by a suitable appointment.

Vacancies.

SECTION 4. It shall be the duty of the commissioners to make out a fair and accurate draft of the location of said road, noting thereon the courses and distances as they occur, the improvements passed through, and also the crossing of township lines, roads and waters, with such other matters as may serve for explanation, one copy whereof shall be deposited in the office of the Secretary of the Commonwealth, on or before the first day of January next, and one copy in the office of the clerk of the court of Quarter Sessions of the county through which said road may pass, on the day aforesaid, or as much sooner as practicable, which shall be a record thereof, and from thenceforth the said road shall be, to all intents and purposes, a public highway, and shall be opened and repaired in all respects as roads are opened and repaired which are laid out by orders of the courts aforesaid.

Commiss'rs to make a draft of the road and deposit a copy in the secretary's office.

SECTION 5. The accounts of the commissioners for their own pay and for the pay of surveyors, chain carriers; and markers, shall be adjusted by the commissioners of the respective counties through which the said road shall pass, and paid by the treasurers thereof on warrants drawn in the usual way.

Accounts of commiss'rs—how settled.

SECTION 6. It shall be the duty of the said commissioners to take from each and every person or persons owning lands along the road by them laid out, acquittances or releases from any claim or damages: *Provided*, Such releases can be obtained upon the condition that such road shall pass through such person or persons' land or lands, and file the same in the commissioners' office of the proper county.

Commiss'rs to take acquittances or releases from damages.

SECTION 7. William McHenry and William Field of Bucks county, and Robert Dunn and David Rogers of Montgomery county, be and they are hereby appointed commissioners to view, lay out and mark a State road from Doylestown, in the county of Bucks, by the Castle Valley bridge, to intersect the Philadelphia and Bethlehem Turnpike road, to a point at or near Gikeson's tavern, or near the Spring House tavern, in Montgomery county, with like powers, privileges, and subject to the same restrictions contained in this act.

SECTION 8. John Huston, Joseph Keller, and William Overfield of Monroe county, James M. Porter, M. Robert Butz of Northampton county, and Albert G. Brodhead of Luzerne county, be and they are hereby appointed to view, lay out, and mark a State road, commencing at Howell's mills, seven miles north of Easton, on the river Delaware, in Northampton county, to pass near the west end of the Belvidere bridge, over that river and through Stroudsburg, in Monroe county, and by White's Haven, on the river Lehigh, to a point on the Susquehanna and Lehigh Turnpike road, between Beaver Meadow, in Northampton, and Conynghamtown in the county of Luzerne, with like powers and privileges, and subject to the same restrictions contained in this act.

SECTION 9. That Robert Wray of Armstrong county, Benjamin Walker, senior, and Jacob Beelor of Indiana county, be and are hereby appointed commissioners, to view, lay out and mark a State road, beginning at the town of Warren, in Armstrong county, to intersect the turnpike at the town of Shaloceta, and thence to Johnston's mill, on Plum creek, to intersect with the turnpike at the town of Smithsburg, in Indiana county.

SECTION 10. It shall be the duty of the said commissioners, or a majority of them, appointed to view as aforesaid, after having been sworn or affirmed before some justice of the peace, who shall file and preserve the same in his office, to perform the duties enjoined on them by this act with impartiality and fidelity, carefully to view the ground over which the road by them laid out may pass, and lay out the same as near to a straight line between the aforesaid points, as the nature of the ground and circumstances will permit, and so that the vertical departure from a horizontal line shall in no point exceed five degrees, except at the crossing of ravines and streams, where, by moderate filling and bridging, the declination of the road may be preserved within that limit; and further, it shall be the duty of said commissioners to have due regard to the crossing of waters, the nature of

the ground and damages to private property, and all other circumstances that may affect the route, so that by a judicious combination of them, the route adopted may best promote the public good, and that they shall clearly and distinctly mark upon the ground the route agreed upon, in such a manner as to enable the supervisors readily to find the same, and for the purpose of fulfilling the duties by this act enjoined, the commissioners herein mentioned shall receive a per diem allowance of two dollars each, for every day they shall be necessarily employed in performing the duties of this act, together with provisions, and in case any of the said commissioners shall perform the duties of surveyor he shall receive fifty cents per day in addition; and the said commissioners are hereby authorized to employ one surveyor at two dollars and twenty-five cents per diem, two chain-bearers and one axe-man, at a per diem allowance not exceeding seventy-five cents.

Compensation, &c.

Commissioners to make draft of the road and deposit a copy in Secretary's office.

SECTION 11. It shall be the duty of the said commissioners to make out a fair and accurate draft of the location of said road, noting thereon the courses and distances as they occur, the improvements passed through, and also the crossing of county and township lines, roads and waters, with such other matters as may serve for explanation, one copy whereof shall be deposited in the office of the Secretary of the Commonwealth, on or before the first day of January next, and one copy in the office of the clerk of the court of Quarter Sessions of the county through which said road may pass, on the day aforesaid, or as much sooner as practicable, which shall be a record thereof, and from thenceforth the said road shall be, to all intents and purposes, a public highway, and shall be opened and repaired in all respects as roads are opened and repaired which are laid out by orders of the court aforesaid.

Accounts—how applied.

SECTION 12. The accounts of the said commissioners for their own pay and for the pay of surveyors, chain-carriers, markers, and for provisions, shall be adjusted by the commissioners of the respective counties through which said road shall pass, and paid by the treasurers thereof on warrants drawn in the usual way, in proportion to the length of the road in such county respectively.

Time of meeting of Commissioners.

SECTION 13. The said commissioners shall meet on or before the third Monday in May next, or as soon thereafter as practicable, at such places as a majority of them shall agree upon, and complete the location of said road as soon as practicable; and if any vacancy or vacancies shall happen by resignation or any other cause, the court of Quarter Sessions of the proper county, as the case may be, are hereby

authorized to fill the vacancy or vacancies by a suitable appointment.

SECTION 14. It shall be the duty of the said commissioners to take from each and every person or persons to take account of the lands along the road by them laid out, acquittances or releases from any claim or damages: *Provided*, Such releases can be obtained upon the condition that such road shall pass through such person or persons' land or lands, and file the same in the commissioners' office of the proper county.

SECTION 15. That the proceedings of David Petriken, Edward McHenry, and E. G. Ricketts, in laying out and marking a State road from John Kile's tavern, on the North Mountain, in Lycoming county, through Rohrsburg to Orangeville, in Columbia county, in pursuance of the twelfth, thirteenth, fourteenth, fifteenth and sixteenth sections of an act entitled An act authorizing the laying out of certain State roads, and for other purposes, passed the twenty-fifth day of May, one thousand eight hundred and thirty-six, are hereby ratified, confirmed and made valid, so far as relates to the location of said road, in as full and ample a manner as if the requisitions of the act above mentioned had been literally and unequivocally complied with; and from henceforth the said road shall be, to all intents and purposes, a public highway, and shall be opened and repaired as other roads laid out by the courts.

SECTION 16. That it shall and may be lawful for any person or persons to erect, maintain and keep up, any dam in the river Juniata, for the purpose of creating and maintaining water power for manufacturing purposes, at any point between the feeder dam, at or near Millerstown, in Perry county, and Lewistown in the county of Mifflin; *Provided*, Such person, bodies politic or corporate, shall first obtain the consent in writing of the owner or owners of the land or lands, which such dam shall be opposite to or adjoin, and upon which the water shall be swelled by the construction of such dam.: *And provided further*, That such dam shall not interfere with or swell the water at any ford where a public road shall lead to and from said river.

SECTION 17. That such dam shall be so built, constructed, maintained and kept up, as not to diminish the supply of water, or in any way create obstructions to the navigation of the canal or canals of the commonwealth, and that such dam shall not be built or erected without first having a careful examination, by a competent engineer, under the direction of the

Consent of Canal Commissioners to be obtained in writing, &c.

Canal Commissioners, of the site at which such dam is proposed to be built or erected, and the consent, in writing, of said board of Canal Commissioners, before the building of such dam is commenced, in which said commissioners shall direct the height such dam shall or may be built, and shall otherwise restrict the person, bodies politic or corporate, who may make application to build such dam, in such manner as the said Canal Commissioners shall deem necessary, to prevent injury to said canals, and the navigation thereof; nor shall such dam, at any time after the same is built, be raised or altered without the consent of the said commissioners being first obtained, as above directed: *Provided*, That the expense of the examination by an engineer, authorized by this act, shall be paid by the person at whose instance said examination shall be made.

Proviso

Canal Commissioners not to be liable for damages, &c.

SECTION 18. That the said Canal Commissioners shall enter into a contract with the person or persons who shall ask leave to build and erect such dam, in which they shall provide that if at any time thereafter the commonwealth shall see proper to change the location of the dam or dams now in said river, used as feeder dams, or in any way change the location or alter the present plan of the canal or public works, so as to interfere with or injure the dams and manufactories erected in pursuance of this act, the commonwealth shall have full power to do so, without being held liable to the owner or owners thereof for any injury or damage said owner or owners may sustain by such construction, alteration or change, which contract, together with a copy of the writing specified and mentioned in the preceding section of this act, shall be filed in the office of said board of Canal Commissioners; and the legislature reserve the right of repealing this act, and of altering and amending the same when and in such manner as they shall deem the public interests to require, and may resume the rights and privileges hereby granted for any misuse or abuse of the same.

Contract, &c to be filed in the office of Canal Commissioners Legislature reserves the right to repeal, &c.

Courts of Quarter Sessions to appoint viewers for a private road under ground to coal mines.

Proviso.

SECTION 19. That, from and after the passage of this act, it shall and may be lawful for the several courts of Quarter Sessions, upon application of any person or persons for a private road, under the surface of any land, to coal mines, to cause a view to be had of the said premises, and upon return of viewers that said road is necessary, then the said court shall cause the same to be entered on record, and thenceforth such road shall be deemed and taken to be a lawful private road, shall be opened by the person or persons making application for the same, and shall be kept in repair at their exclusive cost: *Provided*, That the viewers, appointed as aforesaid, before making their return to the

court, shall assess the amount of damages sustained by the owner or owners of lands through which the road shall be made, and embody the same in their report to the court, which damages, as assessed by said viewers, shall be paid by the person or persons making application for such road, to the owner or owners of such land.

SECTION 20. That the village Freedom, in the county of The village
Beaver, shall be and the same is hereby erected into a bo- of Freedom
rough, which shall be called the Borough of Freedom, and in Beaver co.
shall be comprised within the following boundaries, to wit: erected into
beginning at a Sugar tree on the bank of the Ohio river, a borough.
thence north fifty-two and a half degrees east, sixty-four Boundaries.
perches to a post, thence south thirty-seven and a half de-
grees east, one hundred and sixty-three perches to the mar-
gin of Dutchman's run, thence, down said run, south fifty-two
and a half degrees west, twenty-six perches to a stump,
thence south sixty-four degrees west, forty perches to the
mouth of Dutchman's run and bank of the Ohio river, thence,
down the Ohio river, one hundred and seventy-five perches,
to the place of beginning.

SECTION 21. It shall and may be lawful for all persons Election of
entitled to vote for members of the legislature, who have re- borough offi-
sided in the said borough three months previously to such cers.
election, to meet at the place appointed by the electors on
the third Friday of March in every year, and then and there
elect, by ballot, between the hours of twelve and six o'clock
of the same day, one respectable citizen residing therein who
shall be styled the burgess of the said borough, and five citi-
zens residing therein who shall be a town council, and two
persons to be returned for high constable; but previously to
such election the inhabitants present shall elect two respect-
able citizens as judges, one as inspector and two as clerks
of the said election, which shall be regulated and conducted
according to the general election law of this commonwealth,
so far as relates to receiving and counting votes, and who
shall be subject to the same penalties for mal-practices as
by the said law is imposed; and the said judges, inspector
and clerks, before they enter upon the duties of their offices,
shall each take an oath or affirmation before any justice of the
peace of the said county, but if no justice of the peace be
present at the election, one of the judges, after first having
the oath or affirmation required by the aforesaid act adminis-
tered to him by one of the other judges, shall administer the
oaths or affirmations to the other judges, and to the inspec-
tors and clerks, to perform the same with fidelity, and after
the said election shall be closed shall declare the person hav-
ing the greatest number of votes to be duly elected; and in

- case any two or more candidates shall have an equal number of votes the preference shall be determined by lot, to be drawn by the judges and inspector, whereupon duplicate returns thereof shall be signed by the said judges, one of which shall be transmitted to each of the persons elected, and the other filed among the records of the corporation; and in case of death, resignation, removal or refusal to accept, or neglect or refusal to act after acceptance, of any of the said officers, the burgess, or in case of his death, absence or inability to act, or when he neglects or refuses to act, the first named of the town council, shall issue his precept directed to the high constable, or when there is no high constable, or when he refuses or neglects to act, then any of the members of town council shall advertise and hold an election, in the manner aforesaid, to supply such vacancy, giving at least ten days notice thereof, by advertisements set up at four of the most public places in said borough.
- Vacancies, how filled.**
- SECTION 22.** From and after the third Friday of May next, the burgess and town council, duly elected as aforesaid, and their successors, shall be one body politic and corporate in law, by the name and style of the burgess and council of Freedom, and shall have perpetual succession, and the said burgess and council aforesaid, and their successors, shall be capable in law to receive, hold, and possess goods and chattels, land and tenements, rents, liberties, jurisdictions, franchises, hereditaments, to them and their successors, in fee simple or otherwise, not exceeding the yearly value of one thousand dollars, and also to give, grant, sell, let and assign the same lands, tenements, hereditaments, rents, and by the same name and style aforesaid, they shall be capable in law to sue and be sued, plead and be impleaded in any of the courts of law in this commonwealth, in all manner of actions whatsoever, and to have and to use one common seal, the same from time to time, at their will, to change and alter.
- Name, style and title.**
- Rights and privileges.**
- Liabilities.**
- Seal.**
- Penalty for refusing to perform official duty.**
- SECTION 23.** If any person, an inhabitant of the said borough, duly qualified to elect as aforesaid, shall be elected to the office of burgess, and having notice of his election, shall refuse to undertake and execute that office, every person so refusing shall forfeit and pay a fine of ten dollars; and if any other person, duly qualified as aforesaid, shall be duly elected to any other office in said borough, enacted by this act, and having notice of his election shall refuse to undertake and execute the duties of that office, every person so refusing shall forfeit and pay a fine of five dollars, which fines, forfeitures, and all others in pursuance of this act, or

of the by-laws of the said council, shall be recoverable before any justice of the peace of said county, for the use of said corporation: *Provided*, That no person shall be compelled to serve more than one year in any term of three years; and that if any person or persons shall conceive himself or themselves aggrieved by the judgment of any justice of the peace, by virtue of this act, he or they may appeal to the next county court of Common Pleas, upon giving security according to law to prosecute his or their appeal with effect, who shall, on the petition of the party, take such order therein as to them shall appear just and reasonable, and the same shall be conclusive to all parties. Proviso.

SECTION 24. The burgess shall take and subscribe an oath or affirmation, before one of the associate judges or justice of the peace for the county of Beaver, to support the constitution of the United States and of this state, and an oath or affirmation well and truly to execute the office of the burgess of the borough of Freedom, and, when so qualified, he shall administer an oath or affirmation to the council, high constable or town clerk, in manner and form aforesaid, before they shall enter on the duties of their respective offices, the certificates of which oaths and affirmations shall be filed among the records of the said corporation. Borough officers to take an oath or affirmation.

SECTION 25. The town council may meet by their own authority, as occasion may require, or upon the summons of the burgess; they shall have power to enact by-laws, and to make such rules, regulations and ordinances as shall be determined on by a majority of the whole council, necessary to promote the peace, good order and general welfare of the inhabitants of the said borough, and for the purpose of improving and keeping in order the streets, lanes, alleys, public squares, and common ground belonging to said town within the said borough; for removing nuisances and obstructions therefrom, and the same to annul, alter or make anew, as the occasion may require, and also to assess, levy and collect a tax for said purposes, and also, annually, to appoint a town clerk, treasurer, street commissioner, overseer of the poor, and such other officers as may be deemed necessary, with all other powers required for the well ordering and better government of the said borough: *Provided*, That the said ordinances, rules and regulations, shall not be repugnant to the constitution or laws of the United States or of this commonwealth: *And provided also*, That no tax shall be laid by them in any one year to exceed one half of a cent in the dollar on the valuation of taxable property, taken from the last assessment, unless some object of general utility shall be thought necessary, in which case a majority of the freeholders of said borough, by writing, under Powers of town council
Taxes.
Proviso.
2d Proviso.

their hands, shall approve and certify the same to the town council, who shall proceed to assess the same accordingly; and all taxes which may be assessed or laid in their said borough, shall, as nearly as the same is practicable, be assessed and collected conformably to the laws for raising county rates and levies.

Duty of town clerk.

SECTION 26. It shall be the duty of the town clerk to attend all meetings of the town council, when assembled on business of the corporation, and perform the duty of clerk thereto, and keep and preserve the common seal and records of the corporation, and be answerable for the same, and also for the faithful discharge of all the duties which may be enjoined upon him by virtue of this act, or of the acts of the corporation; and his attestation, with the seal of the corporation, shall be good evidence of the thing or act so certified.

Treasurer to give security

SECTION 27. The treasurer shall give security for the faithful discharge of the duties of his office, and for the safe delivery, into the hands of his successors, of all monies, books and accounts appertaining thereto, upon demand being made by the burgess for that purpose.

Accounts to be adjusted & published.

SECTION 28. The street commissioners, treasurers, constable and overseer of the poor, as well as all other officers who may be appointed by the corporation or council, shall render their accounts to the council, once in every year, for settlement, and the said accounts, being adjusted and settled accordingly, shall be forthwith published by the said council, showing particularly the amount of taxes laid and collected, and of the expenditures.

Notice of election.

SECTION 29. It shall be the duty of the high constable to give notice of the election, by setting up advertisements in three public places in the said borough, ten days previously thereto, and shall attend and see that the same is opened at the time and in the manner directed by this act.

Election of constable.

SECTION 30. It shall and may be lawful for all persons entitled by law to vote for burgesses and other officers of the borough of Freedom, at the same time and place where they vote for said officers, to elect two reputable citizens of the said borough, and return the names of the persons so elected to the next court of Quarter Sessions of the said county, one of whom shall be appointed constable of said borough, with like power and authority and subject to the same regulations and penalties as are provided and contained in the laws now existing, or that may be hereafter passed, concerning borough constables within this commonwealth, and the constable so appointed shall do and perform all the duties required

Powers.

Duties.

to be done by the high constable of said borough, in pursuance of this act and of the by-laws and ordinances of said borough; and the said constable of the borough of Freedom shall have, exercise and possess, within the said borough, all the powers and duties of the constables elected in the several townships in the said county of Beaver, and before he shall enter upon the duties of his office shall take and subscribe the same oath as other constables, and shall, if not possessed of a freehold estate in his own right, clear of all incumbrances, of the value of one thousand dollars, enter into a bond to that amount with at least one sufficient surety, to be approved of by the court of Quarter Sessions of said county, in the same manner as now with reference to the several constables of the several counties within the commonwealth, and for the same uses and trusts, to all intents and purposes, and the same penalties imposed for neglect or refusal to serve; the said court shall have the same power to appoint another person as the court of Quarter Sessions in the several counties in this commonwealth have and possess by law, to appoint a constable in any of the townships in the several counties of this commonwealth.

Oath.

To give security.

SECTION 31 The burgess, president of the council and Court of ap- treasurer, or any two of them, shall constitute a court of ap- peal, and, prior to the collection of any borough tax, they shall appoint a day for the hearing of appeals, of which, and of the amount of his or her tax and the place where the appeal will be held, the collector shall notify each taxable by a written notice, in the usual manner, at least ten days before the day of appeal, and when the said tax shall have been properly adjusted it shall be the duty of the burgess, or in case of his absence or inability to act, of the treasurer, and he is hereby authorized to issue his precept directed to the collector, commanding him to collect all taxes so assessed, and vesting him with like powers and authorities given to the collectors of county rates and levies by the laws of this commonwealth, and the amount so collected shall be paid into the treasury for the use of the corporation.

Collector of taxes.

SECTION 32. In the absence from the borough or inability of the burgess, it shall be the duty of the first named of the town council, who may be present, to perform the duties which are enjoined on the burgess by this act, or which may be enjoined by the by-laws which may be passed in pursuance of the same.

When bur- gess is abse't one member of town coun cil to act.

SECTION 33. In any meeting of the burgess and town council, it shall require at least three to form a quorum to transact business.

Quorum.

First electi'n
how to be
held.

SECTION 34. Stephen Philips and Martin Fisher, of said village, or either of them, shall publish and superintend the first election for borough officers, to be held on the third Friday of May next after the passage of this act, at the place appointed by the electors for holding the annual elections for said borough, and they are hereby directed to give five days notice, by advertisement, as before directed in other cases of elections, of the time and place of holding the same.

Commiss'rs
to lay out
State road
from Nesque-
honing to
Homestown.

SECTION 35. That Henry Boyer of Schuylkill county, and Samuel Barber and Nathan Allen of Northampton county, be and they are hereby appointed commissioners to view, lay out and mark a State road leading from the village of Nesquehoning, in Northampton county, to the road leading from Tamaqua to Homestown, in the county of Schuylkill.

Duties of
commiss'rs.

SECTION 36. It shall be the duty of the said commissioners, or a majority of them appointed to view as aforesaid, after having been sworn or affirmed before some justice of the peace, who shall file and preserve the same in his office to perform the duties enjoined on them by this act, with impartiality and fidelity, carefully to view the ground over which the road by them laid out may pass, and lay out the same as near to a straight line between the aforesaid points as the nature of the ground and circumstances will permit, and so that the vertical departure from a horizontal line shall in no point exceed five degrees, except at the crossing of ravines and streams, where by moderate filling and bridging the declination of the road may be preserved within that limit, and further it shall be the duty of said commissioners to have due regard to the crossing of waters, the nature of the ground and damages to private property, and all other circumstances that may affect the route, so that by a judicious combination of them the route adopted may best promote the public good, and that they shall clearly and distinctly mark upon the ground the route agreed upon, in such a manner as to enable the supervisors readily to find the same, and for the purpose of fulfilling the duties by this act enjoined, the commissioners herein mentioned shall receive a per diem allowance of two dollars each for every day they shall be necessarily employed in performing the duties of this act, together with all necessary provisions; and in case any of the said commissioners shall perform the duties of surveyor, he shall receive fifty cents per day in addition, and the said commissioners are hereby authorized to employ one surveyor at two dollars per day, two chain bearers and one axe man at a per diem allowance not exceeding seventy-five cents.

Compensat'n

SECTION 37. The said commissioners shall meet on or before the first Monday in June next, or as soon thereafter as

practicable, at such places as a majority of them shall agree upon, (and complete the location of said road as soon as practicable) and if any vacancy or vacancies shall happen by resignation or any other cause, the Governor or the court of Quarter Sessions of the proper county, as the case may be, are hereby authorized to fill the vacancy or vacancies by a suitable appointment.

SECTION 38. It shall be the duty of the commissioners to make out a fair and accurate draft of the location of said road, noting thereon the courses and distances as they occur, the improvements passed through, and also the crossing of township lines, roads and waters, with such other matters as may serve for explanation, one copy whereof shall be deposited in the office of the Secretary of the Commonwealth, on or before the first day of November next, and one copy in the office of the clerk of the several courts of Quarter Sessions of the counties through which said road may pass, on the day aforesaid, or as much sooner as practicable, which shall be a record thereof, and from thenceforth the said road shall be to all intents and purposes a public highway, and shall be opened and repaired in all respects as roads are opened and repaired, which are laid out by orders of the courts aforesaid.

Draft of road to be filed in Secretary's office, &c.

SECTION 39. The accounts of the commissioners, for their own pay and for the pay of surveyors, chain carriers and markers, shall be adjusted by the commissioners of the respective counties through which the said road shall pass, and paid by the treasurers thereof on warrants drawn in the usual way.

Accounts—how adjusted.

SECTION 40. It shall be the duty of the said commissioners to take from each and every person or persons owning lands along the road by them laid out, acquittances or releases from any claim or damages: *Provided*, Such releases can be obtained upon the condition that such road shall pass through such person or persons' land or lands, and file the same in the commissioners' office of the proper county.

Commiss'rs to take releases.

SECTION 41. That James D. White and Enoch Marvin of Beaver county, and John Wilson of Mercer county, be and they are hereby appointed commissioners to view, lay out and mark a State road, from or near where the boundary line, between the counties of Beaver and Mercer, intersects the western boundary line of Butler county, thence along or as near the said boundary line, between Beaver and Mercer counties, as the nature of the ground and other circumstances will admit, to where the State road from Pearson's mill to the Big run crosses the line, between the said counties of Beaver and Mercer, thence, by the shortest and best route, to or near the borough of New Castle in Mercer

Commiss'rs to lay out State road from the western line of Butler co. to boro' of New Castle, Mercer co.

county; and the said commissioners are hereby authorized and required to review, and if they shall find it necessary and advisable, to re-locate on other ground the State road from Pearson's mill to the Big run, and to vacate such part or parts of the said road from Pearson's mill to the Big run, as they shall alter or supply by a new location; and the said commissioners shall be allowed one dollar and fifty cents, each, per day, for every day necessarily spent in performing the duties hereby enjoined on them, which, together with all reasonable expenses for surveyor or any other necessary hands, shall be paid by orders drawn by the county commissioners on the treasurers of their respective counties.

Compensation

Duties of
commissioners.

SECTION 42. It shall be the duty of the said commissioners, respectively, appointed to view as aforesaid, after having been sworn or affirmed before some justice of the peace who shall file and preserve the same in his office, to perform the duties enjoined on them by this act, with impartiality and fidelity, carefully to view the ground over which the road by them laid out or altered may pass, and lay out the same as near to a straight line between the aforesaid points as the nature of the ground and the circumstances will admit, and so that the vertical departure from a horizontal line shall in no point exceed five degrees, except at the crossing of ravines and streams, where, by moderate filling and bridging the declination of the road may be preserved within that limit; and further, it shall be the duty of said commissioners respectively, to have due regard to the crossing of waters, the nature of the ground and damages to private property, and all other circumstances that may affect the route, so that by a judicious combination of them, the route adopted may best promote the public good, and they shall clearly and distinctly mark upon the ground the route agreed upon, in such a manner as to enable the supervisors readily to find the same; and in case any of the said commissioners shall perform the duties of surveyor, he shall receive fifty cents per day in addition to his per diem pay.

Draft of road
to be filed in
Secretary's
office, &c.

SECTION 43. It shall be the duty of the said commissioners, respectively, to make out a fair and accurate draft of the location of said roads, noting thereon the courses and distances as they occur, the improvements passed through, and also the crossing of county and township lines, roads and waters, with such other matters as may serve for explanation, one copy whereof shall be deposited in the office of the Secretary of the Commonwealth, on or before the first day of January next, and one copy in the office of the clerk of the court of Quarter Sessions of the respective counties through which said roads may pass, on the day aforesaid, or as much sooner as practicable, which shall be a record thereof,

and from thenceforth the said roads shall be, to all intents and purposes, public highways, and shall be opened and repaired in all respects as roads are opened and repaired which are laid out by orders of the courts aforesaid.

SECTION 44. The said commissioners shall meet on or before the first Monday in July next, or as soon thereafter as practicable, at such places as a majority of them shall agree upon, and complete the location of said roads as soon as practicable; and if any vacancy or vacancies shall happen by resignation or any other cause, the court of Quarter Sessions of the proper county, as the case may be, are hereby authorized to fill the vacancy or vacancies by a suitable appointment.

When commissioners shall meet.
Vacancies—how filled.

SECTION 45. That from and after the passage of this act, the court of Quarter Sessions of Mercer county, on being petitioned to grant a view to lay out or vacate a public or private road, shall appoint three reputable citizens, one of whom shall be a practical surveyor, who in the opinion of the court shall be competent to grade the road to be viewed, and who shall receive a per diem compensation of one dollar and fifty cents for every day necessarily spent in viewing, locating and plotting said road, the other two viewers to receive the same compensation as is now allowed by law; that if only two of the said viewers shall meet, (the surveyor being one,) they shall have power to supply such vacancy by appointing a suitable person in the room of the delinquent viewer; that they shall all examine the ground; any two of them (the surveyor being one) shall have power to locate and grade the road, and shall, in their plot or draft accompanying their report, designate what portion of said road was necessary to be graded; and that no road laid out under this act shall be confirmed by the court, unless it can be graded at an elevation of not more than six degrees from the plane of the horizon, or cannot be easily reduced to that elevation; and it shall be lawful for the said viewers to take to their assistance two suitable persons as chain bearers, who shall take an oath or affirmation (to be administered by one of the said viewers) to perform the duty of chain bearers, who shall receive a compensation of seventy-five cents per day for every day necessarily spent, in the same manner as viewers are paid.

Court of Q'r Sessions of Mercer co.
viewers of road.
Compensat'n
Powers and duties.
Chain bearers employed.
Oath.
Compensat'n

LEWIS DEWART,

Speaker of the House of Representatives.

CHARLES B. PENROSE,

Speaker of the Senate.

APPROVED—The sixteenth day of April, one thousand eight hundred and thirty-eight.

JOS. RITNER.