

SUPREME COURT, STATE OF COLORADO

CASE NO. 90SC67

CERTIORARI TO THE COLORADO COURT OF APPEALS, #88CA1139

CITY OF LAKEWOOD, a municipal corporation of the
State of Colorado,

Appellant,

vs.

WILLIAM MAVROMATIS, sometimes known as BILLY WILSON; and
UNITED BANK OF DENVER, as Trustee for the Estate of
JOE BARRON,

Appellee.

BRIEF OF AMICI CURIAE
COLORADO COUNTIES, INC. AND THE COLORADO MUNICIPAL LEAGUE

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COMES NOW, Amici Curiae Colorado Counties, Inc. and the Colorado Municipal League, by and through their attorneys and pursuant to the Colorado Appellate Rules and previous Orders of this Court herein to submit their brief in support of the request of the City of Lakewood that this Court reverse the decision of the Colorado Court of Appeals in City of Lakewood v. Mavromatis, (Colo. App. No. 88CA1139, Dec. 7, 1989).

ISSUE PRESENTED

Did the Colorado Court of Appeals err in determining that a right-of-way, a public highway dedicated pursuant to the provisions of Chapter XCV, Gen. Stat. 1883, was invalid as against subsequent good faith purchasers for failure to record the road-viewers final report and plat in the grantee/grantor index?

SUMMARY OF ARGUMENT

I. THE 1883 AMENDMENTS TO THE ROAD DECLARATION PROVISIONS, FIRST ENACTED IN 1877, ELIMINATED ANY NEED TO FILE AND RECORD THE ROAD-VIEWERS FINAL REPORT AND PLAT IN THE GRANTEE/GRANTOR INDEX.

II. STANDARD RULES OF STATUTORY CONSTRUCTION REQUIRE THAT ANY CONFLICTS BETWEEN THE RECORDING ACT AND THE RECORDING PROVISIONS SPECIFICALLY APPLICABLE TO FINAL ROAD-VIEWER PLATS MUST BE RESOLVED IN FAVOR OF THOSE SPECIFIC PROVISIONS APPLICABLE TO ROAD-VIEWER DOCUMENTS.

III. THE PUBLIC NATURE OF THE ROAD DECLARATION PROCEEDINGS, IN FORCE UNDER THE 1883 STATUTORY PROVISIONS, PRECLUDED ANY REQUIREMENT OR NEED FOR RECORDING DOCUMENTS PURSUANT TO THE GENERAL RECORDING ACT.

STATEMENT OF THE CASE

Amici adopt the statement of the case submitted by the Petitioner, adding the following:

Jefferson County's practice of filing and recording the road plat in a separate book maintained for that purpose was substantially similar to the practice followed in the vast majority of the counties in the State of Colorado. See Appendix A, Paragraph 6. This process for recording road-viewer maps, plats and reports has been followed in the majority of Colorado Counties according to a survey by the Garfield County Clerk's Office. See Appendix A, Paragraph 6.¹

ARGUMENT

- I. THE 1883 AMENDMENTS TO THE ROAD DECLARATION PROVISIONS, FIRST ENACTED IN 1877, ELIMINATED ANY NEED TO FILE AND RECORD THE ROAD-VIEWERS FINAL REPORT AND PLAT IN THE GRANTEE/GRANTOR INDEX.

The provisions setting forth the procedure under which County

¹ By way of example, the Garfield County Clerk and Recorder states that her practice is to maintain records containing "road-viewer reports and plats" filed in books and drawers separate and distinct from those maintained for deeds and other documents affecting realty. See Appendix A, Paragraph 1. Additionally, she maintains a separate book, kept for the purpose of recording the plats of roads resulting from the road-viewer process. In Garfield County and the other 35 of 41 counties following similar procedure, virtually no road-viewer plats, petitions, reports or maps have ever been filed in the grantee/grantor index. See Appendix A, Paragraphs 4, 5, and 6. Appendix B is a copy of a specific road-viewers' report, one of many where the road was dedicated on land owned wholly by the United States Government. In this example, it is noteworthy that the United States was not a signatory to the petition. Most of the land in western Colorado prior to 1900 was owned or controlled by the United States. Thus, the petition does not contain any signature of the representative of the owner nor any signature of the recipient of the road (public). The transfer exemplified by the report at Appendix B attached hereto was a transfer of control of land between governments following statutory procedures.

Commissioners could declare the existence of a public highway were first enacted in 1877. See Chapter LXXXVIII, Section 1, et seq., Gen. Laws 1877, Appendix C; Chapter XCV, Section 1, et seq., Gen. Stat. 1883, Appendix E. The 1877 statute contains the following provisions concerning the filing of a road-viewers' plats and associated documents:

"Section 10 - Whenever the reviewers of any road shall have completed their labors, and returned to the county commissioners their final report of any road, it shall be the duty of said board of commissioners to have all of said report, including plat of said road, put upon record in their respective counties in the office of recorder of deeds for such county." (Gen. Laws 1877, Appendix C, at 791.) (Emphasis added.)

In 1883, the provisions concerning creation of a road by adoption of road-viewers' reports were revised. The Section 10 language noted above, was repealed and the following was adopted (Colo. Sess. 1883 at 255, Appendix D):

"Section 14 - If the board of county commissioners determine to open any such road they shall cause the full and final report of the viewer, including the plat and report of the surveyor, to be recorded in the office of the county clerk and recorder in a book kept for that purpose." (Appendix E, Chapter XCV, Section 14, Gen. Stat. 1883.) (Emphasis added.)

In the statutory revisions of 1883, no significant alteration was made to the provisions concerning the filing and notice required to make a written instrument affecting interest in realty effective against subsequent bonafide purchasers. Chapter XVII, Section 18, Gen. Stat. 1883, Appendix E. Thus, the 1883 amendments changed the provisions concerning the adoption of roads through the

use of road-viewers. Chapter XCV, Sections 1 through 40, Gen. Stat. 1883, Appendix E. The legislature no longer required filing of the road-viewers' final report and plat with the recorder of deeds. Rather, the final plat and report were required to be filed with the clerk and recorder. The legislature's new method called for filing and recording the road-viewers' report in a specific book maintained by the clerk and recorder for that purpose. Chapter XCV, Section 14, Gen. Stat. 1883.² It is that change which the Court of Appeals ignored.

It is well established that statutory amendment evidences legislative intent to change the law. Cf. Bar 70 Enterprises, Inc. v. Tosco Corp., 703 P.2d 1297, 1304 (Colo. 1985). In this case, if the legislature had intended that the road-viewers' reports and plats continue to be recorded in the grantee/grantor index, there was no need to make any change in 1883. Filing road records with other real estate documents was the requirement to that point in time. To read the 1883 provision as requiring exactly what was required under the 1877 language would impute to the legislature enactment of a meaningless and superfluous amendment. Such a result is contrary to recognized standards of statutory construction. Section 2-4-201, C.R.S. 1973; Blue River Defense Committee v. Town of Silverthorne, 516 P.2d 452, (Colo. App. 1973). This Court should reverse the Court of Appeals for its failure to

² While no change was made to Chapter LXXXVIII, Section 16, Gen. Laws 1877, later Chapter XCV, Section 20, Gen. Stat. 1883, both Section 10 of Chapter LXXXVIII, Gen. Laws 1877, and Section 14 of Chapter XCV, Gen. Stat. 1883, by their terms apply to any road.

recognize that the legislature intended to change the provisions of the 1877 law through its 1883 action.

II. STANDARD RULES OF STATUTORY CONSTRUCTION REQUIRE THAT ANY CONFLICTS BETWEEN THE RECORDING ACT AND THE RECORDING PROVISIONS SPECIFICALLY APPLICABLE TO FINAL ROAD-VIEWER PLATS MUST BE RESOLVED IN FAVOR OF THOSE SPECIFIC PROVISIONS APPLICABLE TO ROAD-VIEWER DOCUMENTS.

Appellee asserts that both Chapter XCV, Section 14, Gen. Stat. 1883 and Chapter XVIII, Section 18, Gen. Stat. 1883, should be given effect and the Court of Appeals agreed. The result is a chaotic and absurd procedure requiring the recording of road-viewer plats and reports in both a separate book maintained for road reports and as well as the grantee/grantor index. The Court of Appeals failed to explain why the legislature would have required such duplicative recording. Dual recording is not a reasonable construction of the two statutory provisions as it would require meaningless, redundant and superfluous action by a county official. Such an interpretation is unreasonable and inconsistent with normal statutory construction. Section 2-4-201(c), C.R.S. 1973; Conrad v. City of Thornton, 536 P.2d 855 (Colo. App. 1975), reversed on other grounds, 553 P.2d 822 (1976).

A. Official Interpretation

Rather than require dual recording, this Court should look to the construction of the 1883 statute by the public officials charged with its enforcement. It is well established that courts give great deference to the interpretation of statutes by officials charged with their implementation. Larimer County School District v. Industrial Commission, 727 P.2d 401, 403; cert. denied, 752 P.2d 80 (Colo. 1988); Humana, Inc. v. Board of Agriculture, 537 P.2d 741

(Colo. 1975); Section 2-4-203(1)(f), C.R.S. 1973. For the filing and recording of road-viewer reports, that public official would be the county clerk and recorder, also defined as the ex-officio recorder of deeds.

For example, in Garfield County, the current Clerk and Recorder indicates that records from 1888 to 1938 show that all road-viewer reports and plats were filed in a separate book, and separately numbered file drawers. No such documents have ever been filed in the grantee/grantor index. Appendix B, at 5, is the cover of a specific Road-Viewers' Report dated April 23, 1888 and accepted July 9, 1888. On that page, the Court will note a filing record of the Garfield County Clerk in 1888 specifically noting that the document was "filed in Book No. 1 of road records at Page 94". This example illustrates the practice of at least one clerk and recorder in construing the statute within a few years of the passage of the Act. The current Garfield County Clerk survey indicates that at least 35 counties maintain records in a substantially similar fashion. Appendix A. Those records, from a vast majority of the County Clerks of the State of Colorado, provide an unmistakable interpretation of the 1883 legislation by the officials charged with its enforcement. It is obvious that County Clerks believed they were required to file and record road-viewer reports, plats and maps in a separate book, maintained for the purpose of containing those documents, in lieu of recording those documents in the grantee/grantor index. Now, more than 100 years after those officials have interpreted the statutes through implementation, the Court of Appeals ignores a century of common

practice and interpretation. Their ruling must be reversed.³

B. Controlling Special Provision

In case of statutory conflict, specific provisions control over general language. Section 2-4-205, C.R.S. 1973. Narrowly defined interests in real property may be excepted from the applicability of the general recording statutes and given full and complete effect against subsequent bonafide purchasers even though not fully recorded in the grantee/grantor index. Ragsdale Bros. Roofing v. United Bank, 744 P.2d 750, (Colo. App. 1987) cert. denied, (Colo. 1987). A public highway dedicated through extensive and clearly delineated public proceedings falls within the exception. It is a narrow and clearly defined interest in real property filed and recorded with the clerk in a separate book limited to road-viewers' plats, maps and documents. In the instant action every test set forth in the provisions of Section 2-4-205, C.R.S. 1973, and Ragsdale, supra, has been met. Such an exception, as with the mechanic's liens addressed in Ragsdale, would allow full force and effect to be given to a road-viewers' report properly recorded in a separate book maintained for that purpose. Therefore, Chapter XCV, Section 14, Gen. Stat. 1883, must control over the general recording statutes as an exception to those general recording provisions.

³ The interpretation of the clerks and recorders equally demonstrates their belief that Chapter XCV, Section 14, Gen. Stat. 1883, required that roads dedicated under Section 20 were to be treated in a manner identical with all other roads dedicated through road petitions.

III. THE PUBLIC NATURE OF THE ROAD DECLARATION PROCEEDINGS, IN FORCE UNDER THE 1883 STATUTORY PROVISIONS, PRECLUDED ANY REQUIREMENT OR NEED FOR RECORDING DOCUMENTS PURSUANT TO THE GENERAL RECORDING ACT.

The recording acts are designed to protect subsequent purchasers of real estate interests from prior secret conveyances. Page v. Frees-Krey, Inc., 617 P.2d 1188 (Colo. 1980). In the case of a road dedicated through the road-viewer process, a transfer of control occurs through well publicized proceedings. By reviewing the relevant statutory provisions as a whole, the Court will find that the 1883 provisions provided the following safeguards for notification to subsequent bonafide purchasers, as well as members of the public:

1. Ten citizens must execute a petition requesting dedication of the road, setting forth in full the point of beginning, the point of termination and the width and course of the proposed road. Chapter XCV, Section 4, Gen. Stat. 1883.

2. The county commissioners appoint three citizens to view and mark the proposed road and they were required to post public notice five days before such viewing in order to allow public participation. Chapter XCV, Section 8, Gen. Stat. 1883.

3. After completion of the viewing, the road-viewers were required to file a report with the clerk and recorder. Chapter XCV, Section 12, Gen. Stat. 1883. The foregoing report was to contain a full and complete description of the proposed road.

4. At a regular meeting of the board of county commissioners, the County must consider such report. Chapter XCV, Section 13, Gen. Stat. 1883.

5. After accepting the report, plat or map, such documents were to be filed and recorded with the clerk and recorder in a book maintained for that purpose. This provision applies by its own terms to any road created through the road-viewers' report process. Chapter XCV, Section 14, Gen. Stat. 1883.

6. Once accepted at a public meeting and filed with the clerk, the road itself was to be posted on the course of the road, providing notice to the public that the road would be opened in sixty days. Chapter XCV, Section 15, Gen. Stat. 1883.

The foregoing provisions required a full and complete public dedication of a road requiring at least two public recordings in the office of the clerk, two posted notices on the course of the road, one filing with the county commissioners and at least one public meeting to discuss the proposed road. The procedures set forth above do not in any manner describe a secret conveyance.⁴

Keeping in mind that a bonafide purchaser is under a duty of inquiry, Ragsdale, supra, Amici believe the road dedication process as set forth in the revisions of 1883 completely satisfy the notice goals of the recording act. South Creek Association v. Bixby & Associates, 781 P.2d 1027 at 1033 (Colo. 1989). In South Creek, supra, this Court found that a P.U.D. plan did not need to be recorded in the grantee/grantor index because such plan was

⁴ The procedure set forth above by practice of the county clerks applied to all roads accepted by petition. At a minimum, roads accepted under Chapter XCV, Section 20, Gen. Stat. 1883, were subject to filing with the county commissioners, consideration by the commissioners at a public meeting and filing and recording with the county clerks in a special book set aside for road petitions.

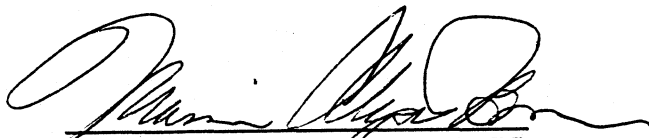
adopted pursuant to validly enacted ordinances. In the instant action, the road-viewers' reports were adopted pursuant to validly enacted statutory provisions. Appendix C. Additionally, in South Creek, supra, this Court found that the P.U.D. plan was of a public nature, adopted through public processes, not unlike the formal the public processes affecting road-viewers' reports in 1883. Further, this Court found that the P.U.D. plan in South Creek, supra, was adopted at a public hearing and was a matter of public record available at the City of Boulder. In the instant case, the road-viewers' reports were adopted after a public meeting and were available through filing with the clerk and recorder. Appendix A and Appendix B. In South Creek, supra, this Court concluded that the public nature of P.U.D. approval and Boulder's P.U.D. authority provided an adequate safeguard against secret conveyances. The same reasoning applies with respect to the road-viewers' reports, because there are, if anything, more safeguards regarding secret conveyances than existed in Boulder's P.U.D. plan. Therefore, this Court should follow the South Creek, supra, precedent and find that the general intent and purposes of the recording acts are fulfilled through the requirements of the road-viewers' report process of 1883, precluding the need to record in the grantee/grantor index.

CONCLUSION

The 1883 amendments of the 1877 provisions, must be given full force and effect. Given proper statutory construction, those amendments substituted filing and recording of road-viewer reports in a separate book with the clerk and county recorder for filing

in the grantee/grantor index. Besides complying with the letter of the 1883 amendments, the City of Lakewood's actions were consistent with the public notice goals of the recording act. The full and complete public nature of the adoption of the road-viewers' reports, accomplished pursuant to validly enacted statutory provisions was a complete disclosure within the intent of the recording acts precluding the necessity for filing in the grantee/grantor index. Amici urge that this Court follow its earlier recent ruling in South Creek v. Bixby, supra, by reversing the Court of Appeals and directing a remand to the District Court.

Respectfully submitted this 23rd day of July, 1990.



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ON BEHALF OF COLORADO COUNTIES, INC.

CERTIFICATE OF MAILING

I, the undersigned, hereby certify that true and accurate copies of the foregoing BRIEF OF AMICI CURIAE COLORADO COUNTIES, INC. AND THE COLORADO MUNICIPAL LEAGUE were deposited in the United State Mail, postage prepaid, this 23rd day of July, 1990, to the following:

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Mary Lynn Steves

SUPREME COURT, STATE OF COLORADO

CASE NO. 90SC67

CERTIORARI TO THE COLORADO COURT OF APPEALS, #88CA1139

CITY OF LAKEWOOD, a municipal corporation of the
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vs.

WILLIAM MAVROMATIS, sometimes known as BILLY WILSON; and
UNITED BANK OF DENVER, as Trustee for the Estate of
JOE BARRON,

Appellee.

APPENDIX

Appendix No.

Title of Document

A	Affidavit concerning Road-Viewer Records
B	Certified Road-Viewers' Reports of July 9, 1888
C	General Laws State of Colorado 1877
D	Colorado Session Laws 1883
E	General Statutes State of Colorado 1883

APPENDIX A

AFFIDAVIT CONCERNING ROAD-VIEWER RECORDS

APPENDIX B

CERTIFIED ROAD-VIEWER REPORTS OF JULY 9, 1888.

STATE OF COLORADO,
County of Garfield

I, Mildred Alsdorf, County Clerk and Recorder in and for said County, in the State aforesaid, do hereby
certify that the foregoing is a full, true and correct copy of Petition

#13 as the same appears upon the records of my office.

Given under my hand and official seal, this 1st day of
April, A.D. 19 85, 2:45 o'clock P.M.

Mildred Alsdorf

MILDRED ALSDORF
COUNTY CLERK AND RECORDER

To The Hon Board of County
Commissioners of Garfield Co
Colorado

We the resident Tax-
payers and freeholders of Garfield
County respectfully ask that a
county road be laid out commencing
at a point near where the present
county crosses Rifle Creek between J. D.
McLeans Rancho and the E. C. & J. Coal camp
thence running northerly direction up
west Rifle creek about one and one
half (1 1/2) miles thence across west
Rifle and up Middle about ten
miles to about three miles north
of E Parkers Rancho. I we hereby
agree to ~~the~~ sell right of way through
our respective ranches through which
the proposed road runs to the county
of Garfield for the sum of one
dollar the receipt of which is
hereby acknowledged.

J. C. Callahan
H. Brown

H. Brown

W. J. Reed

G. B. Thompson

Henry Nelson

Samuel Stevenson

Richardson

John Callahan

John Younger

James L. Nevill

James Reed

Cliff Gilbert

Thomas Golden

John B. Orr

P. Parry

C. H. Parry

Richardson

L. S. Carter

Wm Clarke

H. Brown

Petition to

Views and lay
out so Road

at Middle Ridge

Section
between Johnson
and Adams roads

11/20/89

A. J. Warner

Shannon

John Barnes

W. M. Nelson

Samuel J. Barnes

Frank J. Barnes

- Charles Muller
- J. H. Hoback
- D. B. Muller
- Daniel Muller
- John W. Manning
- Herman Peirce

(Mechanical)

STATE OF COLORADO,
County of Garfield

I, Mildred Alsdorf, County Clerk and Recorder in and for said County, in the State aforesaid, do hereby certify that the foregoing is a full, true and correct copy of Road Reviewers Report with attached map Page 20 (#7364) as the same appears upon the records of my office.

Given under my hand and official seal, this 8th day of January, A.D. 19 85, 10:50 o'clock A.M.

Mildred Alsdorf

MILDRED ALSDORF
COUNTY CLERK AND RECORDER

ROAD-VIEWERS' REPORT.

Met at 11:30 AM
Range

Filed in the office of the County Clerk,

April 23rd 1888

John W. Terrell
County Clerk.

Presented to the Board of Commissioners
when the following action was taken and
entered of record, to wit:

Ad. Gregory
Chairman

John North, Successor to Oliver, Page, Boyer & Co., Printers, Chicago.

STATE OF COLORADO, }
COUNTY OF GARFIELD, } SS.

This instrument was filed
and recorded the 31st day of July
1888 at 10 o'clock A.M.
at the office of the County Clerk
of the County of Garfield
Colorado.

Extracts from Road Laws, Page 788, General Laws of 1877.

SECTION 5. The clerk shall issue a warrant directed to the viewers appointed, setting forth their appointment, and requiring them to meet at the day and place named by the board of county commissioners, and to proceed thence to view and locate such road, and to survey or cause the same to be surveyed and platted, and to return the said plat together with a full report of their viewing, and an assessment of the damages and benefits accruing to the owner of any of the lands over which the same may pass by reason of the location thereof, and the probable cost of opening such road to travel; said plat and report to be returned by said viewers into the office of the county clerk on or before the first day of the next regular meeting of the board of county commissioners; such warrant shall be delivered to the sheriff of the county to be served, and the sheriff shall serve the same by delivering a copy thereof to each of the viewers named therein. The original he shall return to the county clerk with his endorsement of service. Any person appointed a road viewer, and duly served with such warrant, who shall wilfully neglect or refuse to act, shall be liable to a fine of twenty-five dollars, to be paid to the county, to be recovered in an action of debt before any justice of the peace of the county.

SECTION 6. It shall be the duties of viewers of all public highways within this State, after receiving their authority to act, to meet at the time and place specified in the notice of their appointment, and proceed to view the said road prayed for in the petition (a copy of which shall be furnished them by the board of county commissioners), and commence at the point of starting named in the petition, and run out said road to the terminus by the most practicable route that they, in their judgment, can find; and in their report, which must be signed by at least two of the said viewers, they are to embody a plat of said road or changes they have made, and to make return thereof to the county commissioners within ten days after such view is completed.

SECTION 9. It shall be the duty of all viewers of public highways, in addition to the duties defined in section five of this act, to take into account all the damages and benefits arising from the laying out of any public highway, and report fully thereon, assessing the benefits accruing by such laying out or change and awarding those damaged by the same. Those who are damaged shall receive a warrant on the county treasurer for amount of damages in excess of benefits awarded in said viewers' report, and the said viewers shall receive a warrant on the county treasurer for their services for a sum to be fixed by the county commissioners, not exceeding five dollars each per day for each day's service rendered, and ten cents a mile each for each mile actually traveled from their usual place of residence to the proposed road they are to view, and in addition to the above amount the surveyor shall receive ten dollars as full compensation for a full and complete report and plat of the road laid out or rejected by the said viewers; and any person appointed a road viewer, and duly served with a warrant of such appointment, who shall wilfully, refuse or neglect to act, shall forfeit the sum of ten dollars to the county, to be recovered by action of debt before any justice of the peace.

SECTION 11. In case any person appointed a viewer shall refuse or be disqualified to act or cannot be found, the other two viewers may supply such vacancy, or if only one of said viewers appear after such notice being served, he shall have power to fill such vacancy as exist [exists] and proceed to the view of said road.

SECTION 12. The viewers appointed shall designate and mark out such road or roads as they may locate or lay out, either by stakes or turning a furrow on each side of the said proposed road on prairie land, or by blazing trees or other appropriate land marks in wooded or mountain districts.

SECTION 14. If the owner or owners of any lands over which any such new road is located be not known or cannot be found, the damage or the excess thereof over the benefits accruing by reason of the opening of such road, shall be deposited and set apart to such owner or owners in the county treasury, and such deposit when made shall have the same effect as a payment.

SECTION 15. In laying out any road under the provisions of this act, it shall not be lawful to locate the same through any dwelling house nor within thirty yards thereof, nor through any barn stable, office, mill or other building, nor through any garden, orchard, vineyard or stable yard appurtenant to any dwelling house, without first obtaining the consent of the owner or owners of such premises.

Extracts from Eminent Domain, Page 396, General Laws of 1877.

SECTION 1. That private property shall not be taken or damaged for public or private use without just compensation;

SECTION 17. In estimating the value of all property actually taken, the true and actual value thereof at the time of the appraisalment shall be allowed and awarded, and no deduction therefrom shall be allowed for any benefit to the residue of said property; but in estimating damages occasioned to other portions of claimant's property, or any part thereof other than that actually taken, the value of the benefits, if any, may be deducted therefrom; provided, however, that in all cases the owner or owners shall receive the full and actual value of all property actually taken, and in case the benefit to the property not actually taken exceed the damage sustained by the owner to property not actually taken, the owner or owners shall not be required to pay or allow credit for such excess.

SECTION 18. The report of the commissioners or the verdict of the jury, in every case shall state
First—An accurate description of the land taken.
Second—The value of the land or property actually taken.
Third—The damages, if any, to the residue of such land or property; and

ROAD-VIEWERS' REPORT.

To the Honorable Board of County Commissioners Garfield County, Colorado:

GENTLEMEN:—

Your viewers appointed on the _____ day of _____ 18____ to view a county road prayed for in a certain petition presented to your Honorable body on the above named day and date, a copy of which has been received by us, viz.: Commencing at*

point where the present County road crosses Rifle Creek between J. J. McLean & the C. C. & D. Coal Camp. and running from thence in a northerly direction on the most eligible route up West Rifle Creek about 1 1/2 miles, thence across West Rifle & up middle fork about 10 miles about 3 miles North of E Parkers ranch

Respectfully submit the following report, to wit: After receiving our authority to act, we met at the starting point of said proposed road, on the 30. day of January 1888 at the hour of 11 o'clock A.M., being the time and place specified in our appointment, and proceeded to view the road prayed for in said petition, as follows:

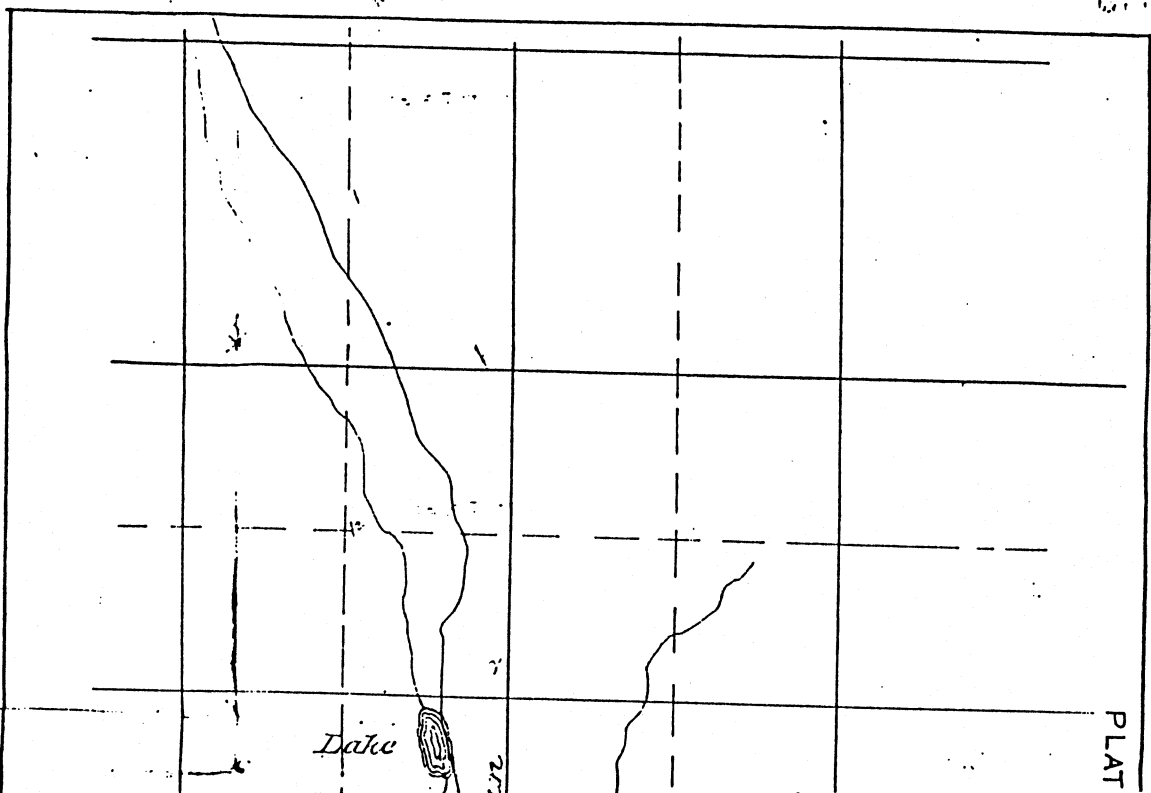
We commenced at the starting point named in said petition, and ~~then~~ ^{after looking the country over} carefully as far as E Parkers ranch (snow penetrating all going northward) a ~~we~~ ^{we} ~~reasoned~~ ^{reasoned} that the road extend up the center of said middle (to its head in some being about 3 miles in a northerly direction) over E Parkers ranch. ~~we~~ ^{we} ~~erect~~ ^{erect} a stake with ~~regard~~ ^{regard} of stone round, whence E. Parkers house bears S. 1° E. 307 ft. Thence S. 30° E. going to the East Side of gulch & East Parkers meadow to the crest of the between Parkers meadow & the ~~to~~ ^{to} Lake. Thence down said hill in South westerly direction to a red spruce stake with ~~red~~ ^{red} of stone and ~~whence~~ ^{whence} a red spruce tree bears S. 48° 54' W. about 600 ft. Thence S. 41° 34' W. Thence S. 50° 57' E. 117' Thence S. 44° W. 1050' Thence S. 3° 58' E. 500' (250' to edge of lake).

S. 10° 55' E. 936' through East Side of lake (8 1/2 mile to edge of lake) Thence S. 2° 15' E. 522' Thence S. 10° 6' W. 780' " 7° 2' " 1053' Thence S. 25° 25' E. 522' Thence S. 17° 02' W. 500' Thence S. 26° 25' E. 394' Thence S. 3° 30' W. 535' Thence S. N. Cor. of McQueen's cabin bears N. 27° 30' E. 19' Thence N. 51° 12' E. 58' (across the meadow) Thence S. 17° 30' W. 109' Thence S. 41° 48' W. 650' Thence S. 36° 17' W. 1277' Thence S. 23° 17' W. 670' S. 36° 44' W. 620' Thence S. 22° 17' W. 757' (501' across on E bank) Thence S. 6° 49' W. 244' Thence S. 5° 20' E. 245' " 41° 46' " 375' " " 37° 37' " 319' Thence S. 53° 25' W. 507' " " 11° 57' " 555' (130' across on E bank) " 37° 40' E. 140' " " 18° 41' " 870' " " 25° 22' " 1078' " " 68° 35' " 188' (reference to McQueen's cabin) " " 53° 12' " 288' " " 84° 8' " 193' Thence S. 11° 55' E. 239' Thence S. 204' Thence S. 31° 24' W. 139' (25' across to E side of creek) Thence S. 8° 47' E. 1040' " " 10° 10' E. 916' " " 1200' " " 36° 36' E. 500' Thence S. 61° 12' E. 324' (110' across to E side of creek) See below

The last named point being the terminus thereof, and the road as above laid out and viewed being over the most practicable route which we in our judgment can find. We found it necessary to make the following changes in the proposed route as prayed for, viz.: None

S. 14° 42' E. 1090' Thence S. 27° 50' W. 662' Thence S. 26° 50' W. 360' Thence S. 68° 40' W. 520' " " " 29° 50' " 766' " " " 24° 35' E. 729' Thence South 487' (to gap in small hogback between middle & West Rifle) Thence S. 33° 14' W. 137' Thence S. 23° 37' W. 738' Thence S. 9° 12' W. 190' 50' across to Rifle Creek " 20° 40' E. 317' " South on line between Dan Mullen & Herman Hering 1936' to a cor. at 1/4 mile North & 1/2 mile West of Standard Corner to Sec. 1.6.7 & 1/2 on the 11th West Guide in T. 5. S. of range 92 & 98 W. 64th P.M. & the intersection with the Miller New Castle road.

* Description of Road as prayed for. † Description of the Viewing. ‡ State the changes, if any; if no changes have been made, erase this sentence.



We have caused to be surveyed and platted, and have herein embodied a plat of said road as viewed by us, and which forms a part of this report as shown by the following map:

36	31	32	33	34	35	36	31
1	6	5	4	3	2	1	6
12	7	8	9	10	11	12	7
13	18	17	T. R.	16	15	14	13
24	19	20	21	22	23	24	19

We have caused to be surveyed and platted, and have herein embodied a plat of said road as viewed by us, and which forms a part of this report as shown by the following map:

36	31	32	33	34	35	36	31
1	6	5	4	3	2	1	6
12	7	8	9	10	11	12	7
13	18	17	T. R. 16	15	14	13	18
24	19	20	21	22	23	24	19
25	30	29	28	27	26	25	30
36	31	32	33	34	35	36	31
1	6	5	4	3	2	1	6

We have taken into account all the damages and benefits to land owners arising from the laying out of said road and report, in tabular form, as follows:

NAME OF LAND OWNER.	DESCRIPTION OF LAND.					No. a's taken.	Damages, or value of Land Taken.	Damages to residue of land and other property.	Value of the Benefits.	Amount of Damages in excess of Benefits.
	Part or width of strip taken.	Subdivision.	Sec.	Tp.	Range.					

No damages

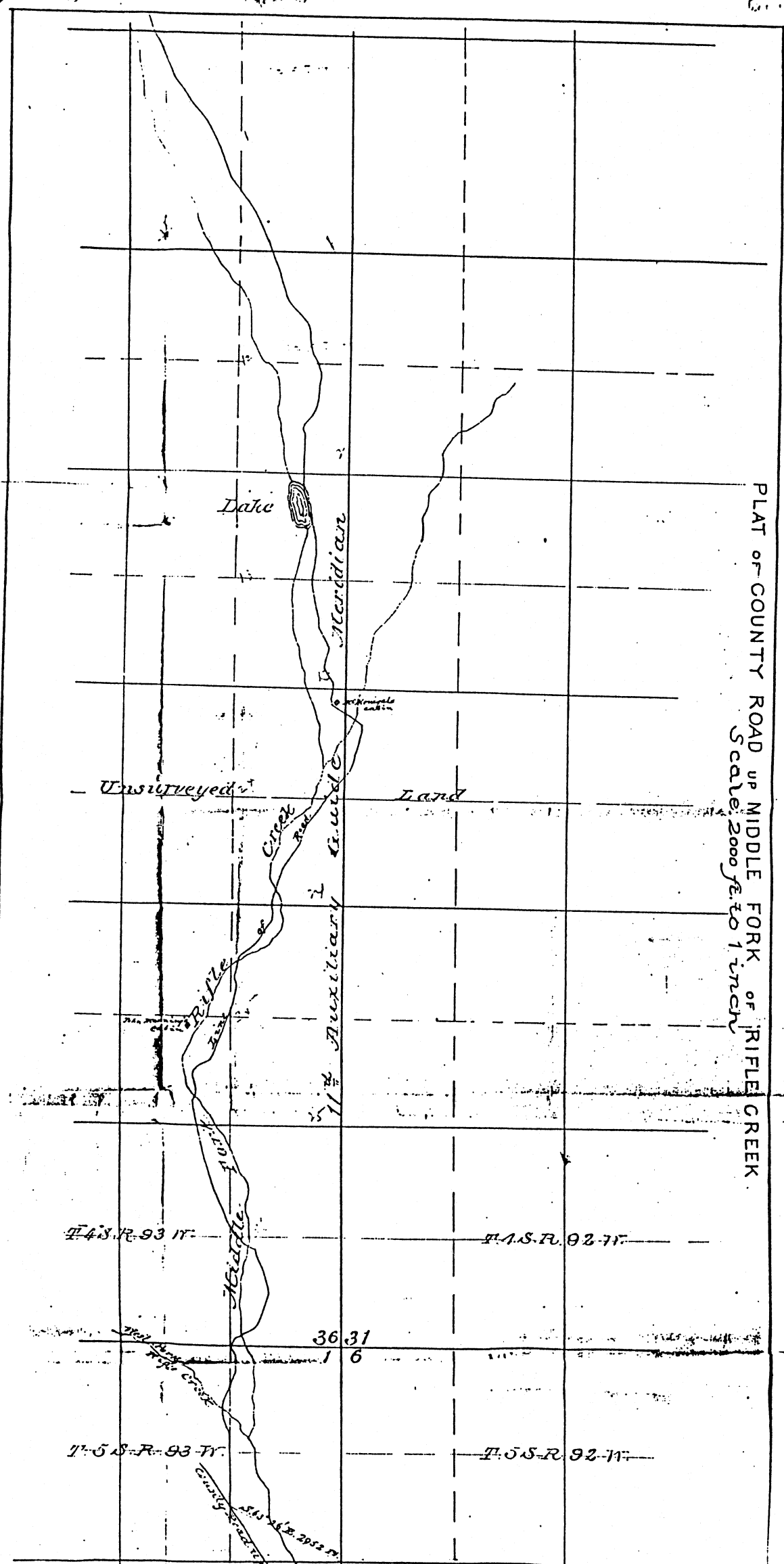
We have taken the following Government Lands, viz.: A strip 60 feet wide
the entire length of road

We have taken the following Railroad Grant Lands, viz.: None

erecting monuments along centre line of
We have marked out the line of said road as located by us by ~~turning a furrow on each side of~~ said proposed road.
We estimate the probable cost of opening said road to travel to be \$ _____

Which viewing we have completed this Fifth day of February 1888

A. B. Nelson
Geo. C. Mansfield
H. E. Brown } VIEWERS.



PLAT OF COUNTY ROAD UP MIDDLE FORK OF RIFLE CREEK
 Scale: 2000 feet to 1 inch

RECEIVED JUN 6-1985

APPENDIX C

RELEVANT STATUTORY PROVISIONS 1877

GENERAL LAWS

—OF THE—

STATE OF COLORADO,

—COMPRISING—

THAT PORTION OF THE REVISED STATUTES OF COLORADO, AND THE GENERAL ACTS OF THE SUBSEQUENT LEGISLATIVE ASSEMBLIES OF COLORADO TERRITORY FOR THE YEARS 1870, 1872, 1874, AND 1876, STILL REMAINING IN FORCE, AND THE GENERAL LAWS ENACTED AT THE FIRST SESSION OF THE GENERAL ASSEMBLY OF THE STATE OF COLORADO, CONVENEED NOVEMBER 1, 1876,

—TOGETHER WITH THE—

DECLARATION OF INDEPENDENCE, THE CONSTITUTION OF THE UNITED STATES, AND THE AMENDMENTS THERETO, THE ENABLING ACT, THE CONSTITUTION OF THE STATE OF COLORADO, AND THE PROCLAMATION OF THE PRESIDENT OF THE UNITED STATES DECLARING THE ADMISSION OF THE STATE.

PUBLISHED BY AUTHORITY.



DENVER:
TRIBUNE STEAM PRINTING HOUSE,
1877.

176. SEC. 17. All deeds, conveyances, agreements in writing of, or affecting title to real estate or any interest therein, and powers of attorney for the conveyance of any real estate or any interest therein, may be recorded in the office of the recorder of the county wherein such real estate is situated, and from and after the filing thereof for record in such office and not before, such deeds, bonds and agreements in writing shall take effect as to subsequent *bona fide* purchasers and encumbrancers by mortgage, judgment or otherwise not having notice thereof.

Deeds, etc., to be recorded, and to be in force as to third persons, from date of filing for record.

177. SEC. 18. All such deeds, bonds, agreements and powers of attorney acknowledged or proved in accordance with this chapter, or acknowledged, attested or proved in accordance with the laws of this state, or the local laws of the mining district wherein such real estate is situated, in force at the date of such acknowledgment, attestation or proof may be read in evidence, without, in the first instance additional proof of the execution thereof, and the record of any such deed, bond, agreement or power of attorney, whether an original record of any mining district, or a copy thereof deposited in the recorder's office of any county, in accordance with the laws of this state, (as a part of the records of such mining district) or a record of such recorder's office, when the same appears by such record to be properly acknowledged, attested or proved in accordance with the laws of this state or of the proper mining district, in force at the date of such acknowledgment, attestation or proof, or a transcript from any such record, certified by the recorder of the proper county, where such deed, bond, agreement, or power of attorney ought by law to be of record, may, upon affidavit of the party desiring to use the same, that the original thereof is not in his possession or power to produce, be read in evidence with like effect as the original of such deed, bond or power of attorney, properly acknowledged, attested or proved as aforesaid.

Deeds, etc., acknowledged or proved in accordance with laws of this state, to be evidence without proof of execution.

Record of deeds, etc., or transcript of such record, to be evidence in case of loss of original.

178. SEC. 19. Deeds, bonds, and agreements in writing, for the conveyance or encumbering of real estate, or any interest therein, shall be deemed from the time of being filed for record, notice to subsequent purchasers or encum-

law for probate business, and such other compensation as the board of county commissioners may determine: *Provided*, that nothing shall be paid by the county if the fees and official compensation of such judge shall amount to five hundred dollars.

Vacancies in
office of county
judge, how filled

477. SEC. 50. If any vacancy in the office of county judge should occur by death, resignation or otherwise, the board of county commissioners shall appoint some suitable person to fill such vacancy, until a successor shall be elected according to law: *Provided*, that if the unexpired term exceed one year the vacancy shall be filled by election.

COUNTY CLERK.

Election of
county clerk.
Bond, how
conditioned.

478. SEC. 51. A county clerk shall be elected in each county of this state for the term of two years, and he shall, before he enters upon the duties of his office, execute to the people of the state of Colorado, and file with the county clerk then in office, a bond with two or more sufficient sureties, in the penal sum of not less than five thousand dollars, to be affixed and approved by the county commissioners according to law, with conditions in substance as follows, to wit: "*Whereas*, The above bounden ——— was elected to the office of county clerk of ———, on the — day of ——. *Now, Therefore*, if the said ——— shall faithfully perform all the duties of his office, and shall pay over all moneys that may come into his hands as such clerk as required by law, and shall deliver to his successor in office all the books, records, papers and other things belonging to his said office, then the above obligation to be null and void, otherwise to remain in full force." Which bond, after being recorded, shall be at once deposited with the county treasurer for safe keeping.

Clerk of board of
commissioners.

479. SEC. 52. The county clerk shall be, in and for his county, clerk of the board of commissioners.

Clerk to appoint
a deputy.

480. SEC. 53. Every such clerk shall appoint a deputy, in writing, under his hand, and shall file such appointment in his office; and such deputy, in case of the absence or disability of such clerk, or in case of a vacancy in his office, shall perform all the duties of such clerk during such absence or until such vacancy shall be filled. Every such

clerk may appoint other deputies, and his sureties shall be responsible under his official bond, for the acts of all such deputies.

481. SEC. 54. If a vacancy in the office of county clerk should occur by death, resignation or otherwise, the board of county commissioners shall appoint some suitable person to fill such vacancy until a successor shall be elected according to law.

Vacancy in office of, how filled.

482. SEC. 55. The county clerk shall keep his office at the county seat; he shall attend the sessions of the board of county commissioners either in person or by deputy; keep the county seal, records and papers of the said board of county commissioners, and keep a record of the proceedings of the said board in a book, as required by law, under the direction of the said board of county commissioners.

Duties of county clerk.

483. SEC. 56. The county clerk shall be *ex officio* recorder of deeds, and shall have custody of and safely keep and preserve all the books, records, deeds, maps and papers deposited or kept in his office; he shall also record or cause to be recorded in print or in a plain and distinct handwriting, in suitable books, to be provided and kept in his office, all deeds, mortgages, maps, instruments and writings, authorized by law to be recorded in his office, and left with him for that purpose, and shall perform all other duties required of him by law.

Duties as recorder of deeds.

484. SEC. 57. Every recorder shall keep a general index, direct and inverted, in his office. The general index direct, may be divided into seven columns, with heads to the respective columns as follows, to wit:

General index.

Time of Reception.	Names of Grantors.	Names of Grantees.	Nature of Instrum't.	Vol. and p. where r'corded	Remarks.	Descri p'n of Tract.
--------------------	--------------------	--------------------	----------------------	----------------------------	----------	----------------------

He shall make correct entries in such general index of every instrument recorded concerning or affecting real estate, under the appropriate headings, entering the names of the grantors in an alphabetical form. The general index inverted may be divided into seven columns, as follows, to wit:

Time of Reception.	Names of Grantees.	Names of Grantors.	Nature of Instrum't.	Vol. and p. where r'corded	Remarks.	Descri p'n of Tract.
--------------------	--------------------	--------------------	----------------------	----------------------------	----------	----------------------

He shall make in such general index correct entries of every instrument required by law to be entered in the general index direct, entering the names of the grantees in alphabetical order; and whenever any mortgage, bond or other instrument has been released or discharged from record, whether by written release upon the margin of the record, or by recording a deed of release, the recorder shall immediately note in both general indices, under the column headed "Remarks," and opposite to the appropriate entry, that such instrument has been satisfied.

Receiving book.

485. SEC. 58. He shall also keep a receiving book, each page of which shall be divided into five columns, as follows, to wit:

Time of recept'n	Names of Grantors.	Names of Grantees.	To whom deliver'd	Fees rec'd
------------------	--------------------	--------------------	-------------------	------------

Whenever any instrument has been received by him for record, he shall immediately indorse upon such instrument his certificate, noting the day, hour and minute of its reception, the volume and page where recorded, and the fees received for recording the same, and the date of record of such instrument shall be from the date of filing; whenever any instrument has been filed as aforesaid, the recorder shall immediately make an entry of the same in his receiving book, under the appropriate heading, with the amount paid as fee for recording the same, and after such instrument has been recorded, he shall deliver it to the person authorized to receive the same, writing the name of the person to whom it is delivered, in the appropriate column.

Book of plats.

486. SEC. 59. He shall also keep a large, well bound book in which shall be platted all maps of cities, towns, villages or additions to the same, within his county, together with the description, acknowledgment or other writing thereon. He shall keep an index to such book of plats, which index shall contain the name or names of the proprietor or proprietors of such city, town or village or addi-

CHAPTER LXXXVIII.

ROADS AND HIGHWAYS.

AN ACT CONCERNING ROADS AND PUBLIC HIGHWAYS.

Be it enacted by the General Assembly of the State of Colorado.

What roads de-
clared to be pub-
lic highways.

2375. SECTION 1. All roads and highways heretofore established in accordance with law, excepting those of corporations and individuals used as toll roads, under articles of incorporation properly filed and duly authenticated, and roads for private use, are hereby declared to be public highways of the respective counties through which they pass and are to be kept in repair by the proper authorities of said counties as long as they remain in general use by the traveling public.

Proceedings in
case of discon-
tinuance of pub-
lic highway.

2376. SEC. 2. Whenever in the opinion of the board of county commissioners of any county, there does not exist a need for a public road that is then in use by the citizens of said county, or the repairs of said public highway are burdensome to the citizens of said county in excess of the benefits derived therefrom, the said commissioners may, at a regular meeting of said board, appoint three disinterested qualified electors of said county, as viewers, to view said public highway and make report of said view to the board of county commissioners at their next regular meeting, setting forth fully in their report their finding, and if they recommend a discontinuance of said road, then the board may order the same vacated: *Provided*, that if such road runs on the county line between two counties, the county commissioners of both such counties shall appoint viewers and concur in an order vacating such road before the same be disestablished.

Proceedings in
case of change of
highway or loca-
tion of new road.

2377. SEC. 3. Any person wishing to have any public highway changed, or a new highway laid out or located in any of the counties of this state, shall petition the board of county commissioners, which petition shall state the change asked to be made, giving the point of starting, and the terminus thereof, and the said petition shall be signed by not less than ten persons who reside within two miles of that

part of the road sought to be changed; and the petitioners shall deposit with the clerk of the county a sufficient sum to defray the expenses of viewing the proposed road, to be fixed by the board of commissioners, such sum to be paid into the county road fund, in case the prayer of the petitioners shall be refused, otherwise it shall be returned to the persons depositing the same, and if such highway or proposed highway be on the line between two counties, the boards of county commissioners of both such counties shall be petitioned, and the concurrence of both such boards shall be required to establish it; in such case each county shall open and maintain a definite part of the road, to be apportioned by mutual agreement between the said boards.

2378. SEC. 4. It shall be the duty of the county commissioners of any county in this state, at their next meeting after the receipt of a petition, as required in the preceding section, to appoint from the qualified electors of said county, three disinterested persons as viewers, to view the road prayed for in said petition, and also to fix a day for the view of such road, and to cause to be posted notices in three of the most public places along the proposed new road, giving parties in interest notice that at such an hour on such a day, viewers will meet at the point designated in the petition as the starting point of said road, to attend to their duties as viewers of the said proposed road; said notices to be posted by one of the petitioners to be designated by the county commissioners and without cost to the county.

Appointment of road viewers and publication of notice.

2379. SEC. 5. The clerk shall issue a warrant directed to the viewers appointed, setting forth their appointment, and requiring them to meet at the day and place named by the board of county commissioners, and to proceed thence to view and locate such road, and to survey or cause the same to be surveyed and platted, and to return the said plat, together with a full report of their viewing, and an assessment of the damages and benefits accruing to the owner of any of the lands over which the same may pass by reason of the location thereof, and the probable cost of opening such road to travel; said plat and report to be returned by said viewers into the office of the county clerk on or before the first day of the next regular meeting

Issue and service of warrant to road viewers; their duties; penalty for wilful neglect or refusal to act.

of the board of county commissioners; such warrant shall be delivered to the sheriff of the county to be served, and the sheriff shall serve the same by delivering a copy thereof to each of the viewers named therein. The original he shall return to the county clerk, with his endorsement of service. Any person appointed a road viewer, and duly served with such warrant, who shall wilfully neglect or refuse to act, shall be liable to a fine of twenty-five dollars, to be paid to the county, to be recovered in an action of debt before any justice of the peace of the county.

Manner of view-
ing road.

2380. SEC. 6. It shall be the duties of viewers of all public highways within this state, after receiving their authority to act, to meet at the time and place specified in the notice of their appointment and proceed to view the said road prayed for in the petition, (a copy of which shall be furnished them by the board of county commissioners), and commence at the point of starting named in the petition, and run out said road to the terminus by the most practicable route that they, in their judgment, can find; and in their report, which must be signed by at least two of the said viewers, they are to embody a plat of said road or changes they have made, and to make return thereof to the county commissioners within ten days after such view is completed.

Consideration of
report of viewers
by county com-
missioners.

2381. SEC. 7. Upon the return of such plat and assessment the board of commissioners shall proceed to consider the same, and all objections which may be made thereto, and shall determine whether such road shall be located and opened or not, and may refer the matter of such viewing and assessment to the same or other viewers, with directions to report in like manner.

Notice to be
given of opening
of road.

2382. SEC. 8. It shall be the duty of the county commissioners, within ten days after the return of any view of a public road, if in their judgment the public good require the laying out of the same, to cause notices to be posted at three places along the line of said road, that they have or will direct their proper officer to open and work such road as a public highway from and after ninety days from that date, and declaring thereby said road to be a public highway.

2383. SEC. 9. It shall be the duty of all viewers of public highways, in addition to the duties defined in section five of this act, to take into account all the damages and benefits arising from the laying out of any public highway, and report fully thereon, assessing the benefits accruing by such laying out or change and awarding those damaged by the same. Those who are damaged shall receive a warrant on the county treasurer for amount of damages in excess of benefits awarded in the said viewers report, and the said viewers shall receive a warrant on the county treasurer for their services for a sum to be fixed by the county commissioners, not exceeding five dollars each per day for each day's service rendered, and ten cents a mile each, for each mile actually traveled from their usual place of residence to the proposed road they are to view, and in addition to the above amount, the surveyor shall receive ten dollars as full compensation for a full and complete report and plat of the road laid out or rejected by the said viewers; and any person appointed a road viewer, and duly served with a warrant of such appointment, who shall wilfully refuse or neglect to act, shall forfeit the sum of ten dollars to the county, to be recovered by action of debt before any justice of the peace.

2384. SEC. 10. Whenever the viewers of any road shall have completed their labors, and returned to the county commissioners their final report on any road, it shall be the duty of said board of commissioners to have all of said report, including plat of said road, put upon record in their respective counties in the office of the recorder of deeds for such county.

2385. SEC. 11. In case any person appointed a viewer shall refuse or be disqualified to act or cannot be found, the other two viewers may supply such vacancy, or if only one of said viewers appear after such notice being served, he shall have power to fill such vacancy as exist [exists] and proceed to the view of said road.

2386. SEC. 12. The viewers appointed shall designate and mark out such road or roads as they may locate or lay out, either by stakes or turning a furrow on each side of said proposed road on prairie land, or by blazing trees or other appropriate landmarks in wooded or mountain districts.

Assessment and payment of damages in excess of benefits; compensation of viewers; penalty for refusal to act as viewers after being served with notice of appointment; compensation of surveyors.

Record of final report of road viewers.

In case of refusal or disqualification of one or more viewers to act; how vacancy filled.

In what manner location of road to be marked.

How damages in excess of benefits to be paid.

2387. SEC. 13. Whenever in any case the damages accruing to any person by reason of the opening of any such road shall exceed the benefits according to such reports of viewers, the same shall be paid the person or persons so damaged, by warrant on the county treasury for amount of such damages.

Deposit of amount in case owner of land is unknown.

2388. SEC. 14. If the owner or owners of any lands over which any such new road is located be not known or cannot be found, the damage or the excess thereof over the benefits accruing by reason of the opening of such road, shall be deposited and set apart to such owner or owners in the county treasury, and such deposit when made shall have the same effect as a payment.

What consent necessary to be obtained for location of road.

2389. SEC. 15. In laying out any road under the provisions of this act, it shall not be lawful to locate the same through any dwelling house nor within thirty yards thereof nor through any barn, stable, office, mill or other building, nor through any garden, orchard, vineyard or stable yard appurtenant to any dwelling house, without first obtaining consent of the owner or owners of such premises.

Declaration of public highway upon petition presented where owners donate right of way.

2390. SEC. 16. Whenever a petition shall be presented to the board of county commissioners of any county of this state, praying for a public highway, and the names of all the owners of all the land through which said road is to be laid out, shall be signed by the owners thereof to said petition, giving the right of way through the lands and accompanied by a plat of the road, it shall be the duty of the board of county commissioners, if in their opinion the public good requires it, to declare the same a public highway, and thereupon the plat shall be filed and recorded and the said road shall become a public highway, from and after that date.

By whom notices to be served or posted.

2391. SEC. 17. All notices which are required by any of the foregoing sections of this act, to be given or posted as directed by any section following this one, shall be served or posted by some one of the petitioners in such manner as is hereinbefore described, or as he shall be directed by the county commissioners, and the person serving said notices shall not be entitled to receive any compensation therefor from the county.

2392. SEC. 18. The manner of laying out any private wagon road from the dwelling of any person to any public road, and of condemning the lands necessary therefor, shall be the same as hereinbefore provided, excepting that the viewers of the same shall only receive compensation for one day's service, and mileage to and from their respective places of residence; and the petition in such cases need be signed only by such person and the expense of viewing and surveying such road, and the damage which may accrue to any person by reason of laying out the same, and the expense of opening such road shall be paid by such petitioner.

Manner of laying out private wagon road; compensation of viewers and payment of damages.

2393. SEC. 19. Whenever any public highway is to be laid out, or any alterations are made in the location of any public road, the county clerk shall notify the road overseers of the several road districts through which such road passes, which is to be laid out or changed, and for such notices the county clerk shall receive fifty cents each from the county treasury.

Notification to road overseers in case of laying out or change of highway.

2394. SEC. 20. All public highways now in general use are sixty feet wide, and all county or public roads hereafter to be laid out or changed, shall be sixty feet in width, unless otherwise ordered by the county commissioners.

Width of public highways.

2395. SEC. 21. When any public road heretofore laid out or traveled as such, or hereafter to be laid out or traveled, crosses any creek or stream of water, and such stream during any part of the year, is usually fordable where such road crosses or shall cross the same, the said ford and the banks of the stream adjacent thereto, and the roadway or track usually traveled, leading thereto from such highway, shall be deemed and taken to be part of such highway; and any person who shall obstruct any such ford, or the road leading thereto, or shall dig down the banks of such ford, or who shall erect any dam, embankment or other obstruction in such stream, or any wing-dam or other obstruction on the banks of said stream, for the purpose of raising the water of said stream upon the said ford, and so as to render the said ford impassable or more difficult of passage than theretofore, or who shall maintain any such dam, wing-dam, embankment or obstruction here-

Fords, obstruction of, or roadway leading thereto.

tofore erected, after being by the road overseer of the district notified to remove or abate the same, shall be liable to the same penalties as for obstructing a public highway, and no person or corporation, upon any pretense or authority, shall be permitted to erect a toll bridge over any stream, at or upon any public ford or road crossing or so near thereto as by the abutments, embankments or piers of such bridge, to obstruct or render impassable the said ford, or the roadway leading thereto.

Penalty for bridge owner or corporation failing to remove obstructions to ford caused by their own acts.

2396. SEC. 22. Where any person or corporation hath heretofore erected a bridge over any stream, at or near the crossing of any highway used and traveled as such at the time of the erection of such bridge, and by fences, embankments, dikes, walls or other obstructions, hath obstructed the said ford or the road or trail leading thereto, as usually traveled where such stream is fordable, such person or corporation shall forthwith cause all such obstructions to be removed and abated, so that the public may enjoy the use of said ford as before the erection of said bridge; and for a failure to remove such obstruction within thirty days after notice shall be given by the road overseer, shall pay a fine of fifty dollars, to be recovered by an action of debt in the name of the people of the state of Colorado, in any court of competent jurisdiction, and the like fine for every day such obstruction is allowed to remain after the said thirty days, until such obstructions are removed or abated as hereinbefore required; the owner or owners of such bridge shall not demand nor receive toll thereat.

Levy and collection of property tax for road purposes.

2397. SEC. 23. The board of county commissioners of the respective counties of this state may levy a property tax for road purposes, which shall not exceed one dollar on each one hundred dollars, to be levied and collected in the same manner and at the same time as other property taxes are levied and collected in each year. *but all property included within the limits of unincorporated towns or cities shall not be subject to such tax.*

within the limits of unincorporated towns or cities shall not be subject to such tax.
Oct 1879.

Who subject to payment of road tax; amount of labor in lieu thereof.

2398. SEC. 24. Every able bodied man between the ages of twenty-one and fifty years, shall annually pay to the overseer of roads of the district wherein he resides, a road tax of ~~50~~⁵ dollars, or in lieu of such tax shall perform two days labor upon the public roads, whenever notified by the overseer of roads as herein provided; ~~the provisions~~

Co. Commissioners may change highway on petition of not less than ten persons who reside within two miles of the part of the road sought to be changed, with the deposit with the Clerk of funds sufficient to pay expenses of viewing.
525 Act of 1879.

~~of this section shall not apply to incorporated cities or towns.~~
Amended Act of 1879.

2399. SEC. 25. The board of commissioners shall divide their counties into suitable road districts, as in their judgment will best subserve the interests of the people of the whole county; in each district so formed there shall be elected annually, in the same manner as other district and precinct officers, a road overseer of such district, who shall hold his office for a period of one year, or until his successor is duly qualified, who shall file with the county clerk a sufficient bond, approved by the board of county commissioners, for the faithful performance of his duties as such road overseer, and to secure payment of any money that he may receive under the provisions of this act.

Division of counties into road districts; election of road overseers; bond and conditions.

2400. SEC. 26. The road overseers shall cause all the public highways within their respective districts to be kept in good condition and clear from obstructions.

Duties of road overseers.

2401. SEC. 27. When any bridge is to be built the estimated cost of which will exceed one hundred dollars, the work shall be let out by contract, and the board of commissioners shall advertise for sealed proposals for performing the work, in some newspaper published in the county, for a period of not less than three weeks; *provided*, that if there is no newspaper published in the county where such bridge is to be built, the board of county commissioners shall cause to be posted up in five of the most public places in said county, such advertisement, the same to be posted up at least ten days before such contract shall be let; such advertisement shall describe the bridge to be built, its location, and shall refer all persons to the person or persons holding the plans and specifications therefor, and such contract so to be let shall be awarded to the lowest responsible bidder, to be paid for out of the road fund or general fund, as the county commissioners may determine.

Letting of contracts for building of bridges.

2402. SEC. 28. Any person neglecting or refusing to perform such work according to the order of said overseer, for a period of ten days, such person shall be considered delinquent, and the overseer shall proceed to levy upon and sell at public auction (after giving ten days' notice), to the highest bidder for cash, any property of said delinquent, or

Refusal to perform work on road by order of overseer; levy and sale of property to satisfy delinquency

so much thereof as may be necessary to satisfy such delinquency and costs.

Notification to perform work on roads.

2403. SEC. 29. Each road overseer shall, between the first day of April and the first day of September in each year, notify all persons in his district subject to road tax to appear at such time and place and with such tools as he may designate, to perform the work required in lieu of road tax; *provided*, that nothing in this section shall prevent the overseer from calling out any such persons to perform such work at any time when he shall consider such work needed.

Annual report of road overseers.

2404. SEC. 30. The road overseers shall report to the county commissioners at their regular meeting on the first Monday in October of each year, a list of all persons in his district subject to a road tax, the names of all persons who have performed the work instead thereof, amount of money collected and paid out by him, from whom received, to whom and for what paid, the number of days he himself has been in actual service, and the list of delinquents.

Compensation of road overseers.

2405. SEC. 31. The road overseers of the respective counties shall receive as compensation for their services a sum to be fixed by the county commissioners, not to exceed four dollars per day for each day's service actually rendered, when in the performance of their duties as road overseers, payable out of any road fund in the hands of the county treasurer belonging to their district.

Apportionment and payment of road fund.

2406. SEC. 32. The property tax levied for road purposes shall be collected as hereinbefore stated and only paid out on orders of the board of county commissioners issued by the county clerk as other county orders are issued and paid; such orders only to be paid out of moneys belonging to the general road fund, and the county commissioners shall apportion the road fund among the several road districts of their respective counties, as in their judgment shall best subserve the interests of the county.

Penalty for obstructing or damaging public highway.

2407. SEC. 33. If any person shall wilfully erect or place or cause to be erected or placed, within any public highway any obstruction thereto, or shall wilfully obstruct or encroach upon any public highway, by falling trees or placing stones therein, or by erecting any fence, house or structure therein, or by digging holes therein, or if any

person shall tear down or burn, destroy or injure any bridge or any public highway, or shall wilfully or carelessly permit waste water to flow into any public highway so as to damage such public highway, every person so offending shall pay a fine of not less than ten dollars nor more than three hundred dollars, and a like fine of ten dollars for each day that such obstruction shall be suffered to remain in said road.

2408. SEC. 34. No person, mining or irrigating ditch or milling company, shall be allowed by virtue of any charter or law granted or made, for mining, milling or irrigating purposes, to dam the waters of any stream in this state so that the water or waters of such stream, raised by such damming, shall flow back to a higher point or mark on the margin of such stream than high water mark, so the water thus dammed shall overflow any wagon road or other road running or being situated on the side or banks of such stream, or so as to cause the water so dammed to undermine, weaken or damage any bridges, walls or embankments of such road.

Erection of dams across streams, and causing overflow beyond high water mark.

2409. SEC. 35. Any person violating any of the provisions of the preceding section, shall be liable to a fine of not less than twenty-five dollars, nor more than five hundred dollars, and shall also be liable to the party injured, for any damages resulting therefrom, to be recovered by civil action.

Penalty for violation of preceding section.

2410. SEC. 36. Whenever the owner or owners of any ditch, race or drain, for mining, milling, manufacturing or irrigating purposes, shall fail, neglect or refuse to construct a good and sufficient bridge over such ditch wherever the same crosses the highway within thirty days after notice shall be served on him by the road overseer of such district, every such owner and every such officer or trustee in any corporation owning such ditch, shall be liable to a fine of fifty dollars and a fine of five dollars for every day that such ditch shall remain unbridged after the expiration of such thirty days, and such bridge shall be thereafter maintained by the county.

Penalty for refusal to construct bridges at crossing of ditch and highway.

2411. SEC. 37. That in case any road tax in any county shall be unpaid and delinquent, the road overseer of the district wherein the same is due and payable, may

Notice for pay-
ment of delin-
quent road tax.

serve on any debtor of the person from whom such road tax is due, a notice printed or in writing or partly print and partly written, that such road tax has been demanded and is unpaid, and requiring such debtor of the person delinquent to pay to such road overseer, the full amount of such road tax, with fifty cents additional thereto for cost of such notice, and every such notice may require such debtor to appear before some justice of the peace of the county at a day and hour named therein, to answer said road overseer as the garnishee of the delinquent tax payer.

Notice to have
effect of gar-
nishee process.

2412. SEC. 38. The service of such notice shall have the same effect as the service of a garnishee process, and upon the service thereof, the person upon whom the same is served shall be authorized to pay to the road overseer the amount of tax assessed against said delinquent, together with fifty cents in addition thereto, and such payment shall to the extent thereof bar any further liability therefor to such delinquent tax payer.

Debtor liable to
costs for failure
to pay amount
of tax; fees of
road overseer for
service of notice.

2413. SEC. 39. If any such debtor, upon whom service of any such notice is made, shall fail or refuse to pay to the road overseer serving the same the amount of such tax, with the fee of fifty cents for serving such notice, provided by the two preceding sections, he shall be liable for all costs thereafter accruing in the said proceedings of garnishment. Every road overseer, for the service of such notices, shall be entitled to receive fifty cents.

Disposition of
fines and pen-
alties.

2414. SEC. 40. All fines, penalties and forfeitures provided by this act, where not otherwise specified, shall be recoverable by action of debt, in the name of the people of the state of Colorado, before any court of competent jurisdiction; all such fines, penalties and forfeitures shall be paid into the county treasury and shall be a fund for the improvement of roads of the road district wherein the same accrued.

Repeal.

2415. SEC. 41. Chapter seventy-six of the revised statutes, an act "to establish a territorial road from the town of Evans in the county of Weld to Boulder city, the county of Boulder, and for other purposes," approved February 11, 1870.

An act "to amend chapter seventy-six of the revised sta

utes of Colorado territory," approved February 10, A. D. 1870.

An act "to establish a territorial road," approved February 9, A. D. 1872.

An act "to establish a territorial road," approved February 9, A. D., 1872.

An act "to amend section twenty-seven and thirty of chapter seventy-six of the revised statutes of Colorado," approved, February 6, 1872.

An act "to amend chapter seventy-six of the revised statutes," approved, February 13, A. D., 1874.

An act "to amend an act, entitled roads and highways," approved, February 9, 1874.

An act "to establish a territorial road in Huerfano county," approved, February 13, 1874.

An act "regulating the pay of road overseers in Weld and Larimer counties," approved, February 13, 1874.

An act "to legalize the roads and highways of Boulder, Douglas, Las Animas, Weld, Larimer, Jefferson, Arapahoe, El Paso, Lake, Costilla, Bent, Pueblo and Huerfano counties, established by order of the county commissioners of said county commissioners of said counties," approved, February 12, A. D., 1874.

An act "regulating the pay of road overseers in Douglas and other counties," approved February 9, 1876.

An act in relation to road law in Lake and Saguache counties, approved, January 11, A. D., 1876, all of the late territory of Colorado, be and are hereby repealed; *provided*, that the repeal of such chapter or acts, or any of them, shall in no wise take away, divest or impair any right acquired while the same remained in force.

Approved, March 22, 1877.

APPENDIX D
SESSIONS LAWS 1883

AN ACT

CONCERNING ROADS AND HIGHWAYS, AND TO REPEAL ACTS OF THE GENERAL ASSEMBLY OF THE STATE OF COLORADO, ENTITLED, "AN ACT CONCERNING ROADS AND PUBLIC HIGHWAYS," APPROVED MARCH 22, 1877, AND AN ACT TO AMEND CHAPTER EIGHTY-EIGHT OF THE GENERAL LAWS, APPROVED FEBRUARY 18, 1879.

Be it enacted by the General Assembly of the State of Colorado :

SECTION 1. All roads and highways, except private roads heretofore established in pursuance of any law of this State or the Territory of Colorado, and roads dedicated to public use, that have not been vacated or abandoned, and such other roads as are now recognized and maintained by the corporate authorities of any county in this State, are hereby declared to be public highways.

All roads except private, declared public highways.

SEC. 2. All public highways, except such as are owned and operated by private corporations, and highways within the corporate limits of any incorporated city or town, shall be maintained and kept in repair by the respective counties in which they are located.

Roads except, etc., to be kept in repair by counties.

SEC. 3. Whenever, in the opinion of the board of county commissioners of any county, any road or part of road then established and maintained as a public highway, is not needed, or the repairs of the same are burdensome in excess of the benefits therefrom, they may at a regular meeting appoint a board of commissioners of three free holders of the county as viewers, to view such road or part of road, and make report thereof to the board of county commissioners at their next regular meeting, setting forth fully their finding, and if they recommend a discontinuance of such road or part of road, then the board of county commissioners may order the same located; *Provided*, that if such road runs on the county line between two counties, the county commis-

Commissioners to appoint viewers.

Report of viewers.

When road in two counties both to concur.

tioners of both the counties interested shall appoint viewers, and the concurrence of the county commissioners of both such counties shall be necessary to vacate it.

County commissioners may alter, widen or change upon petition.

SEC. 4. The board of county commissioners may alter, widen or change any established road or lay out any new road in their respective counties when petitioned by ten free holders residing within two miles of the road sought to be altered, widened, changed or laid out. Said petition shall set forth a description of the road sought to be altered, widened or changed and if the petition be for a new road it shall set forth the point where it is to commence, its general course and place where it is to terminate.

Petitioners to deposit money for expenses of viewing, etc.

SEC. 5. The petitioners shall deposit with the county clerk of the county in which any road is sought to be altered, widened, changed or laid out and established, a sufficient sum of money, which shall be fixed by the board of the county commissioners, to defray the expense of viewing the proposed road, which sum shall be paid into the county road fund in case the prayer of the petitioner be refused, but if the board of county commissioners alter, widen, change or lay out such road then such sum shall be returned to the person or persons depositing the same. The petitioners in lieu of such deposit may file with the county clerk aforesaid a good and sufficient bond conditioned for the payment of the expenses of viewing such road should the prayer of the petitioners be refused.

Where road is on county line petition to be sent to commissioners of both counties.

SEC. 6. If any proposed highway be on the county line between two counties, the board of county commissioners of each county interested shall be petitioned, and each of such boards shall appoint three viewers, qualified as in other cases, who or a majority of them, shall meet at a time and place named by the board of the county [commissioners] first interested, and proceed to view and mark out the road, and report to the board of county commissioners of both counties, as in other cases, and the concurrence of the county commissioners of both such counties shall be necessary to establish it. And if any such road be established, each of such counties shall open and maintain a definite part thereof, which the

board of county commissioners of such counties shall apportion by mutual agreement between the two counties, and if the boards of county commissioners cannot agree upon the apportionment they may refer the matter to three disinterested freeholders as arbitrators, whose duty it shall be to apportion the same and report thereon to the boards of county commissioners of both counties.

SEC. 7. It shall be the duty of the board of county commissioners of any county in this State at their next meeting, after a petition as required in section four of this act is received, to appoint a board of commissioners of three free holders of the county to view and mark out the road prayed for in the petition, and to fix a time for such view, and to cause notices to be posted in three of the most public places, along the proposed new road, at least five days previous to the day fixed for the view thereof, giving parties in interest notice that at the time fixed by the board of county commissioners, the viewers so appointed will meet at the point designated in the petition as the starting point of such road, to attend to their duties as viewers.

County commissioners to appoint commissioners to view and post notices of time, etc.

SEC. 8. The county clerk shall issue a warrant directed to the viewers appointed, setting forth their appointment, and requiring them to meet at the time and place named by the board of county commissioners, and to proceed to view and mark out such road, to assess the damages and benefits accruing to the owner or owners of any of the lands over which the same may pass, by reason of the alteration, widening, changing or location thereof, and the probable cost of opening such road for travel.

County clerk to direct warrant to viewers, commanding, etc.

SEC. 9. The sheriff of the proper county shall serve the warrant mentioned in the preceding section, by delivering a copy to each of the viewers named therein, and the original he shall return to the county clerk with his endorsement of service made thereon. Any person appointed road viewer and duly served with a warrant, who shall wilfully neglect or refuse to act, shall forfeit the sum of twenty-five dollars to the county.

Sheriff to serve said warrant.

SEC. 10. The viewers appointed and served with warrant as herein provided, shall meet at the time and

Viewer's duties.

place specified in the warrant, and commencing at the place designated in said petition as the starting point of the road sought to be altered, widened, changed, or laid out and established, the said viewers shall proceed to view and mark out the same by setting stakes, blazing trees, turning a furrow, or other appropriate monuments to the terminus named in the petition by the most practicable and convenient route that they in their judgment can find. They shall assess the benefits and damages accruing to all persons by reason of the alteration, widening, changing, or laying out of such road, and award to any person or persons damages in excess of the benefits accruing to him or them, a sum equal to such excess. And if the viewers or a majority of them be of opinion that the road should be altered, widened, changed or laid out and established, they shall cause a survey and plat of the same to be made by the county surveyor or other competent person, giving the courses and distances and specifying the land over which the road extends.

Assess the benefits
and damages.

Viewers to fill va-
cancy.

SEC. 11. If any viewer duly appointed and served with warrant refuses to act or is disqualified or does not appear the other two viewers may fill such vacancy, or if but one of the viewers appears who is qualified and consents to act he shall appoint two others who shall be freeholders to assist him and they shall proceed to view such road.

Report.

SEC. 12. The viewers shall file a report of the view in the office of the county clerk and recorder of the county in which such view was made ten days before the next regular meeting of the board of county commissioners held after the same is completed, which shall be signed by a majority of the viewers and shall contain a full statement of their proceedings, a description of the land over which such road extends, an estimate of the cost of opening it for travel, an assessment of the damages and benefits accruing to any person or persons by reason of the alteration, widening, changing or laying out of such road, and the sum awarded any person or persons for damages in excess of the benefits assessed to him or them, and if such road be practicable and the establishment of it be recommended by them. To this report the viewers shall annex the plat, survey and re-

port of the surveyor. For their services the viewers shall receive (shall receive) a warrant on the county treasurer for a sum to be fixed by the county commissioners not exceeding five dollars per day.

SEC. 13. The board of county commissioners at their next regular meeting, after the return of such report shall proceed to consider the same and all objections that may be made thereto, and they shall determine whether or not such road shall be established and opened for travel. And they may refer the matter of viewing to the same or other viewers with instructions to report in like manner, as herein required, or specially upon some particular matter.

County commissioners to hear objections and determine.

SEC. 14. If the board of county commissioners determine to open any such road, they shall cause the full and final report of the viewers, including the plat and report of the surveyor, to be recorded in the office of the county clerk and recorder in a book kept for that purpose.

When road opened said report, plat, etc., to be filed.

SEC. 15. The board of county commissioners having considered the report of any road view, and the compensation to which any person or persons damaged having been ascertained and paid to the owner or owners or into court for him or them, may order the road to be opened for travel. And if they do so order they shall cause notices to be posted at three public places along the line of such road, giving all parties notice that they have or will direct their proper officers to open and work the same from and after sixty days from the date of such notice; *Provided*, no such road shall be ordered opened through fields of growing crops or along a line where growing crops would thereby be exposed to stock until the owner or owners of such crops shall have sufficient time to harvest and take care of the same.

Damages, how paid.

Notices.

Not to open through fields of growing crops, etc.

SEC. 16. If the damages assessed to any person or persons by reason of the alteration, widening, changing or laying out of any road shall exceed the benefits, the excess shall be paid to such person or persons by warrant on the county treasurer for the amount. If any person or persons to whom damages are awarded be under disability, or cannot be found, the same shall be set apart to such person or persons in the county treasury.

Damages exceeding benefits, how paid.

Appeals from viewer's estimates.

SEC. 17. If any person or persons be of opinion that the damages awarded him or them by the viewers are inadequate and insufficient, the board of county commissioners may agree with such person or persons upon the measure of the same.

When jury may determine damages.

SEC. 18. Any person or persons owning or having an interest in any land over which any proposed road extends, who shall be of opinion that the damages awarded him or them by the road viewers, are inadequate and insufficient, may personally or by agent or attorney, on or before the first day of the next regular meeting of the board of county commissioners held after the report is filed in the office of the county clerk and recorder of the county in which the view was made, [file] a written request addressed to the board of county commissioners for a jury to ascertain the compensation which he or they may be entitled to, by reason of damages sustained by altering, widening, changin [changing] or laying out such road. Thereupon the board of county commissioners shall apply to the judge of the district or county court of the same county by filing a petition, as in other cases under the act of the general assembly of the State of Colorado, entitled, "An Act to Provide for the Exercise of the Right of Eminent Domain," approved February 12, 1877, and the compensation to be paid such person or persons shall be ascertained and the land condemned, the rule of court or decree rendered, and all condemnation proceedings thereupon shall be according to the proceedings of said act, as in other cases. The board of county commissioners of any county may, and they are hereby authorized, to take and condemn, or cause to be condemned, the lands of private persons under and according to said eminent domain act in the first instance without view or other proceeding under this act.

Width of highways.

SEC. 19. All public highways hereafter laid out in this State shall be sixty feet in width unless otherwise ordered by the board of county commissioners.

When all the owners of land petition.

SEC. 20. Whenever a petition shall be presented (to) the board of county commissioners of any county of this State praying for a public highway, and the names of all the owners of all the land through which said road is to be laid out, shall be signed by the owners thereof to

said petition, giving the right of way through the lands, and accompanied by a plat of the road, it shall be the duty of the board of county commissioners, if in their opinion, the public good requires it, to declare the same a public highway, and thereupon the plat shall be filed and recorded and the said road shall become a public highway from and after that date.

SEC. 21. The manner of laying out any private wagon road from the dwelling of any person to any public road, and of condemning the lands necessary therefor, shall be the same as hereinbefore provided, excepting that the viewers of the same shall only receive compensation for one day's service, and mileage to and from their respective places of residence; and the petition in such cases need be signed only by such person, and the expense of viewing and surveying such road and the damages which may accrue, to any person by reason of laying out the same, and the expense of opening such road shall be paid by such petitioner.

Private road over land of another to be a public road; how right of way secured.

SEC. 22. When any highway is to be altered, widened, changed or laid out, the county clerk shall notify the overseer of the proper district, and for such notice the clerk shall receive fifty cents from the county treasury.

County clerk to give notice to road overseer.

Fees.

SEC. 23. When any public road heretofore laid out or traveled as such, or hereafter to be laid out or traveled, crosses any creek or stream of water, and such stream during any part of the year is usually fordable where such road crosses, or shall cross the same, the said ford and the banks of the stream adjacent thereto, and the roadway or track usually traveled leading thereto from such highway shall be deemed and taken to be part of such highway, and any person who shall obstruct any such ford, or the road leading thereto, or shall dig down the banks of such ford, or who shall erect any dam, or embankment or other obstruction in such stream, or wing dam or other obstruction on the banks of said stream, for the purpose of raising the water of said stream upon the said ford, so as to render the said ford impassable, or more difficult of passage than heretofore, or who shall maintain any such dam, wing dam, embankment or

Crossing streams.

obstruction heretofore erected, after being by the road overseer of the district notified to remove or abate the same, shall be liable to the same penalties as are hereinafter prescribed for obstructing a public highway, and no person or corporation upon any pretense or authority, shall be permitted to erect a toll bridge over any stream at or upon any public ford, or road crossing, or so near thereto, as by the abutments, embankments, or piers of such bridge, to obstruct, or render impassable the said ford, or roadway leading thereto.

Bridges.

SEC. 24. When any bridge is to be built the estimated cost of which will exceed one hundred dollars, the work shall be let out by contract, and the board of commissioners shall advertise for sealed proposals for performing the work in some newspaper published in the county for a period of not less than three weeks; *Provided*, that if there is no newspaper published in the county where such bridge is to be built, the board of county commissioners shall cause to be posted up in five of the most public places in said county such advertisement, the same to be posted up at least ten days before such contract shall be let. Such advertisement shall describe the bridge to be built, its location, and shall refer all persons to the person or persons holding the plans and specifications therefor, and such contract so to be let shall be awarded to the lowest responsible bidder, to be paid for out of the road fund or general fund, as the county commissioners may determine.

County commissioners to divide counties into road districts.

Overseer; term of office and bond.

SEC. 25. The board of county commissioners shall divide their counties in suitable road districts as in their judgment will best subserve the interests of the people of the whole county. In each district so formed there shall be elected annually in the same manner as other district and precinct officers, a road overseer of such district, who shall hold his office for a period of one year, or until his successor is duly qualified, who shall file with the county clerk a sufficient bond approved by the board of county commissioners for the faithful performance of his duties as such road overseer, and to secure payment of any money that he may receive under the provisions of this act.

SEC. 26. The board of county commissioners of the respective counties of the State may levy a property tax for road purposes, which shall not exceed one dollar on each one hundred dollars to be levied and collected in the same manner and at the same time as other property taxes are levied and collected in each year. The commissioners shall apportion the fund, so collected, among the several road districts of their respective counties, and the same shall be paid out only on the order of the board of county commissioners; but all property included within the limits of incorporated towns and cities shall not be subject to such tax.

Road tax on property.

SEC. 27. Every able bodied man, between the ages of twenty-one and fifty years, shall annually pay to the overseer of roads of the district wherein he resides, a road tax of three dollars, or in lieu of such sum, shall labor two days upon the public roads, whenever notified by the overseer, as hereinafter provided, but the provisions of this act shall not apply to persons residing within the corporate limits of cities and towns.

Road tax on persons between 21 and 50 years of age.

SEC. 28. The road overseers shall keep the county roads and highways of their respective districts in repairs and in good condition for travel. The road overseers shall notify all persons in his district subject to road tax, between the first day of April and the first day of September in each year, to appear at such time and place, and with such tools as he may designate to perform the work required in lieu of road tax; *Provided*, nothing in this section shall prevent the overseer from calling out any such persons to perform such work at any time when he shall consider the same needed.

Duties of overseers. Failure to pay road tax.

SEC. 29. Any person subject to road tax and refusing or neglecting to pay the same and failing to perform the work in lieu thereof, for a period of ten days after being notified according to the provisions of the preceding section, shall be considered delinquent, and the overseer shall proceed to levy upon and sell at public auction, to the highest bidder for cash, any property of said delinquent, or so much thereof as may be necessary to satisfy such delinquency and costs, upon giving ten days' notice by posting the same in three public places in his district.

Failure to pay road tax.

Proceedings to re-
cover, notice, etc.

SEC. 30. If any road tax be unpaid and delinquent, the road overseer of the district wherein the same is due and payable, may serve on any debtor of the person from whom such road tax is due, a notice printed or in writing, or partly printed or partly written, that such road tax has been demanded and is unpaid, and requiring such debtor of the person delinquent to pay to such road overseer the full amount of such road tax, with fifty cents additional thereto for costs of such notice; and every such notice may require such debtor to appear before some justice of the peace of the county, at a day and hour named therein, to answer said road overseer as the garnishee of such delinquent tax payer.

Service of notice
same effect as
garnishee pro-
cess.

SEC. 31. The service of such notice shall have the same effect as the service of a garnishee process, and upon the service thereof, the person upon whom the same is served shall be authorized to pay to the road overseer the amount of tax assessed against said delinquent, together with fifty cents in addition thereto, and such payment shall to the extent thereof bar any further liability therefor to such delinquent tax payer.

Costs.

SEC. 32. If any such debtor upon whom service of any such notice is made, shall fail or refuse to pay the road overseer serving the same, the amount of such tax, with the fee of fifty cents for serving such notice, as provided by the two preceding sections, he shall be liable for all costs thereafter accruing in said proceedings of garnishment. Every road overseer, for the service of such notice, shall be entitled to receive fifty cents.

Fee of overseer.

Overseer to report
to county treas-
urer.

SEC. 33. If any person required by this act to pay a road tax shall neglect to make such payment, or perform the labor in lieu thereof, and the road overseer is unable or neglects to collect the same prior to the first day of November in any year, it shall be the duty of the overseer of roads to report such delinquency to the county treasurer of the county, who is hereby authorized and required to collect the amount of such delinquency from the delinquent in the same manner as other taxes are collected, and to pay the same over to the overseer of roads of the road district in which the same are due and payable.

SEC. 34. The road overseers shall report to the board of county commissioners at their regular October meeting of each year, a list of all persons in his district subject to a road tax, the names of all persons who have performed the work in lieu thereof; the amount of money collected and paid out by him, from whom received, to whom and for what it was paid, the number of days he has been in actual service as road overseer, and the list of delinquents.

To render an account to county commissioners at October meeting.

SEC. 35. Each road overseer shall receive as compensation for his services a sum to be fixed by the board of county commissioners not exceeding five dollars per day for each days' service rendered as road overseer, to be paid out of the road fund in the county treasury, belong [belonging] to the respective districts.

Compensation.

SEC. 36. No person or persons shall erect any fence, house or other structure, or dig pits or holes in or upon any highway, or place thereon any stones, timber, trees or any obstruction whatsoever; and no person or persons shall tear down, burn or otherwise damage any bridge of any highway, or cause waste water or the water from any ditch, road, drain or flume to flow in or upon any road or highway so as to damage the same.

No person to erect fence, building or other structure, dig ditches, etc., across.

SEC. 37. No person or persons, corporation or company, shall dam the waters of any stream so as to cause the same to overflow any road, or damage or weaken the abutments, walls or embankments of any bridge of any highway. Any person or persons, corporation or company, violating any of the provisions of this section, shall forfeit the sum of fifty dollars to the company, [county] and shall be liable to any person or persons, corporation or company, in a civil action, for any damages resulting therefrom.

Not to dam streams so as to casuse overflow.

SEC. 38. Any person or persons, corporation or company, owning or constructing any ditch, race, drain or flume in, upon or across any highway, shall keep the highway open for safe and convenient travel, by constructing bridges over such ditch, race, drain or flume, or by providing other safe and convenient way across or around the said ditch; and within five days after any ditch is constructed across, in or upon any highway, at any point thereof, so as to interfere with or obstruct such

highway, the person or persons owning or constructing such ditch shall erect a good and substantial bridge across the same, which shall thereafter be maintained by the county. Any person or persons, corporation or company constructing any ditch, race, drain or flume in, upon or across any highway, and failing to keep the highway open for safe and convenient travel, shall forfeit the sum of twenty-five dollars to the county. And any person or persons, corporation or company, who shall fail to erect a good and substantial bridge across any ditch, race, drain or flume within five days after the same is constructed in, upon or across any highway, shall forfeit the sum of twenty-five dollars to the county, together with the cost of constructing there a good and substantial bridge, which the overseer shall at once proceed to build, and shall also be liable in damages to any person or persons damaged by such neglect.

Penalties.

Penalties, fines,
etc., how recover-
ed.

SEC. 39. All fines, penalties and forfeitures incurred under any provisions of this act except as otherwise provided, shall be recoverable by an action of debt in the name of the people of the State of Colorado, in any court of competent jurisdiction, and the county treasurer shall set the same apart to the district wherein the same accrued.

Repeal.

SEC. 40. The acts of the general assembly of the State of Colorado, entitled "An act concerning roads and public highways," approved March 22, 1877, and "An act to amend chapter eighty-eight of the general laws," approved February 18, 1879, be and the same are hereby repealed; *Provided*, that the repeal of said acts shall not be construed to effect any right nor to abate any suit or action or proceeding existing or pending under the acts hereby repealed.

Approved March 9, 1883.

APPENDIX E
RELEVANT STATUTES
GENERAL STATUTES OF 1883

THE
GENERAL STATUTES

OF THE
STATE OF COLORADO,
1883.

TO WHICH ARE PREFIXED THE DECLARATION OF INDEPENDENCE; THE CONSTITUTION OF THE UNITED STATES; THE ENABLING ACT; THE CONSTITUTION OF THE STATE OF COLORADO; THE ORDINANCES OF THE CONVENTION WHICH FRAMED THE CONSTITUTION; THE PRESIDENT'S PROCLAMATION OF AUGUST 1st, 1876.

AUTHORIZED BY THE FOURTH GENERAL ASSEMBLY.

DENVER, COLORADO:
TIMES STEAM PRINTING AND PUBLISHING HOUSE.
1883.

Powers of Attorney.]

[Records.

original thereof, but no person shall be admitted to use such certified copy so proved, as evidence, except upon satisfactory proof that the original thereof hath been lost or destroyed, or is beyond his power to produce. [Sec. 174 (15), pp. 137-8, G. L.—Sec. 15, pp. 109-10, R. S.

214. Powers of attorney, how acknowledged and proved.]

SEC. 17. (16.) Powers of attorney for the conveying, leasing, or releasing of any lands, tenements or hereditaments, or any interest therein, may be acknowledged or proved in the same manner as deeds. [Sec. 175 (16), p. 138, G. L.—Sec. 16, p. 111, R. S.

215. Notice takes effect from filing for record—Except as to parties having notice.]

SEC. 18. (17.) All deeds, conveyances, agreements in writing of, or affecting title to real estate or any interest therein, and powers of attorney for the conveyance of any real estate or any interest therein, may be recorded in the office of the recorder of the county wherein such real estate is situate, and from and after the filing thereof for record in such office and not before, such deeds, bonds and agreements in writing shall take effect as to subsequent *bona fide* purchasers and encumbrancers by mortgage, judgment or otherwise not having notice thereof. [Sec. 176 (17), p. 139, G. L.—Sec. 18, p. 111, R. S.

Clerk's fees for recording patents and plats contained therein, See 1320, s. 14, chap. 36, evidence.

216. Giving deeds in evidence—Affidavit—Copy of record.]

SEC. 19. (18.) All such deeds, bonds, agreements and powers of attorney acknowledged or proved in accordance with this chapter, or acknowledged, attested or proved in accordance with the laws of this State, or the local laws of the mining district wherein such real estate is situate, in force at the date of such acknowledgment, attestation or proof may be read in evidence, without, in the first instance, additional proof of the execution thereof, and the record of any such deed, bond, agreement or power of attorney, whether an original record of any mining district, or a copy thereof deposited in the recorder's office of any county, in accordance with the laws of this State, (as a part of the records of such mining district), or a record of such recorder's office, when the same appears by such record to be properly acknowledged, attested or proved in accordance with the laws of this State or of the proper mining district, in force at the date of such acknowledgment, attestation or proof, or a transcript from any such record, certified by the recorder of the proper county, where such deed, bond, agreement, or power of attorney ought, by law, to be of record, may, upon affidavit of the [party] desiring to use the same, that the original thereof is not in his possession or power to produce, be read in evidence with like effect as the original of such deed, bond or power of attorney, properly acknowledged, attested or proved as aforesaid. [Sec. 177 (18), p. 139, G. L.—Sec. 19, p. 112, R. S.—amend't 1876, p. 40, rep. code, 162.

For Sec. concerning record of U. S. patents, see 1317-18-19, s.s. 10, 11 and 12, ch. 36, evidence.

N. B. The word "party" in above Sec. between the words "he" and "desiring," is *party* in Rev. Stat. Word *party* was stricken out and *person* inserted, Sec. 1, on p. 40, acts 1876, and that Sec. repealed. Code, p. 162.

217. Record of deed not acknowledged, notice—Not evidence unless proved.]

SEC. 20. (19.) Deeds, bonds and agreements in writing, for the conveying or encumbering of real estate, or any interest therein, shall be deemed from the time of being filed for record, notice to subsequent purchasers or encum-

Division II.]

[Power of Clerk—Custody of Books, Etc.]

575. Clerk appoint deputy, or deputies—Duties—Clerk liable.]

SEC. 55. (53.) Every such clerk shall appoint a deputy, in writing, under his hand, and shall file such appointment in his office; and such deputy, in case of the absence or disability of such clerk, or in case of a vacancy in his office, shall perform all the duties of such clerk during such absence or until such vacancy shall be filled. Every such clerk may appoint other deputies, and his sureties shall be responsible under his official bond for the acts of all such deputies. [Sec. 480 (53), pp. 232-3, G. L.]

Fees of county clerk—counties of first class, Sec. 24; 2nd class, Sec. 33; 3rd class, Sec. 42, Chap. 38, fees.
Fees under loco weed act, Sec. 6, Chap. 67. Loco—duties under said chapter, ss. 3, 4, 5.

576. Vacancy—how filled.]

SEC. 56. (54.) If a vacancy in the office of county clerk should occur by death, resignation or otherwise, the board of county commissioners shall appoint some suitable person to fill such vacancy until a successor shall be elected according to law. [Sec. 481 (54), p. 233, G. L.]

Clerk shall make tax list, etc.—Sec. 54, Chap. 94, revenue.
Liability for mistakes, negligence, etc.—Sec. 13, same.
Clerk's duties under revenue laws in levying taxes—part 5, div. 2, Chap. 94.
Clerk not omit under penalty to levy 2 mill tax for schools, if coms. omit it—Sec. 65, Chap. 97, schools.
Clerk's duties in extending city and town taxes—Sec. 52, Chap. 109, towns and cities.

577. Clerk keep office at county seat—Seal, records.]

SEC. 57. (55.) The county clerk shall keep his office at the county seat; he shall attend the sessions of the board of county commissioners either in person or by deputy; keep the county seal, records and papers of the said board of county commissioners, and keep a record of the proceedings of the said board in a book, as required by law, under the direction of the said board of county commissioners. [Sec. 482 (55), p. 233, G. L.]

See sec. 82, as to notifying sheriff's bond executed; as to cancelling county bonds, sec. 6, ch. 10.
Duty of clerk in canvassing returns of elections, 1202, sec. 53, ch. 34, elections, and fol. sections.
Duty of clerk in furnishing books and blanks for registering officers, distribution, sec. 118, ch. 34.
Duty of clerk under estray law, sec. 1, ch. 35, estrays.
Issuing license for marriage, sec. 5, ch. 71, marriages.

578. Clerk, recorder—Custody of books, deeds, etc.]

SEC. 58. (56.) The county clerk shall be *ex officio* recorder of deeds, and shall have custody of and safely keep and preserve all the books, records, deeds, maps and papers deposited or kept in his office; he shall also record or cause to be recorded in print or in a plain and distinct handwriting, in suitable books, to be provided and kept in his office, all deeds, mortgages, maps, instruments and writings, authorized by law to be recorded in his office, and left with him for that purpose, and shall perform all other duties required of him by law. [Sec. 483 (56), p. 233, G. L.]

Certificate of magistracy of J. P., sec. 2, ch. 36, evidence—Fees of clerk for recording U. S. patents and plats therein, see sec. 13, ch. 36.

Shall keep separate book for recording liens of mechanics and material men, etc., sec. 13, ch. 65, liens.

The record of tax sales filed by treasurer is part of county clerk's records, sec. 112, ch. 94, revenue.

Approve and record bond of sheep inspector, sec. 7, ch. 100, sheep.

Record brands, penalty for recording second brand, sec. 27, ch. 102, stock.

Record ear marks, penalty, etc., 3173, sec. 28, same chapter.

Record and keep index of non-resident stock owner's certificates, ss. 51-2, ch. 102, stock.

Division II.]

[General Index—Book of Maps.

579. General index—Contents—Form.]

SEC. 59. (57.) Every recorder shall keep a general index, direct and inverted, in his office. The general index direct may be divided into seven columns, with heads to the respective columns as follows, to-wit:

Time of Reception.	Names of Grantors.	Names of Grantees.	Nature of Instrument.	Vol. and p. where recorded.	Remarks.	Description of Tract.
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He shall make correct entries in such general index of every instrument recorded concerning or affecting real estate, under the appropriate headings, entering the names of the grantors in an alphabetical form. The general index inverted may be divided into seven columns, as follows, to-wit:

Time of Reception.	Names of Grantees.	Names of Grantors.	Nature of Instrument.	Vol. and p. where recorded.	Remarks.	Description of Tract.
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He shall make in such general index correct entries of every instrument required by law to be entered in the general index direct, entering the names of the grantees in alphabetical order; and whenever any mortgage, bond or other instrument has been released or discharged from record, whether by written release upon the margin of the record, or by recording a deed of release, the recorder shall immediately note in both general indices, under the column headed "Remarks," and opposite to the appropriate entry, that such instrument has been satisfied. [Sec. 484 (57), pp. 233-4, G.L.]

580. Receiving book—Form—Contents.]

SEC. 60. (58.) He shall also keep a receiving book, each page of which shall be divided into five columns, as follows, to-wit:

Time of Reception.	Names of Grantors.	Names of Grantees.	To whom delivered.	Fees Received.
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Whenever any instrument has been received by him for record, he shall immediately endorse upon such instrument his certificate, noting the day, hour and minute of its reception, the volume and page where recorded, and the fees received for recording the same, and the date of record of such instrument shall be from the date of filing. Whenever any instrument has been filed as aforesaid, the recorder shall immediately make an entry of the same in his receiving book, under the appropriate heading, with the amount paid as fee for recording the same, and after such instrument has been recorded, he shall deliver it to the person authorized to receive the same, writing the name of the person to whom it is delivered in the appropriate column. [Sec. 485 (58), p. 234, G. L.]

Filing certificates of levy and recording same, Sec. 51, Chap. 60, judgments and executions.

581. Book of maps—Index—Names—Fees.]

SEC. 61. (59.) He shall also keep a large, well-bound book, in which shall be platted all maps of cities, towns, villages or additions to the same, within his county, together with the description, acknowledgment or other writing thereon. He shall keep an index to such book of plats, which index shall contain the name or names of the proprietor or proprietors of such city,

Division II.]

[Index of Records—Clerks' Fees.]

town, village or addition, and the name of the city, town, village or addition. No recorder of deeds shall be bound to perform any of the duties required to be performed by this act, for which a fee is allowed, unless such fee has been paid or tendered. [Sec. 486 (59), pp. 234-5, G. L.]

Recording patents and plats therein, fees of clerk, Sec. 13, Chap. 36, evidence.

582. Index of records—Grantors—Grantees.]

SEC. 62. (60). He shall also keep an index of each volume of record kept in his office, showing on one page the grantors' names in alphabetical order, and on the other page the names of the grantees in alphabetical order. [Sec. 487 (60), p. 235, G. L.]

583. Copies of papers filed—Prima facie evidence.]

SEC. 63. (61.) Copies of all papers filed in the office of the recorder of deeds, and transcripts from the books of records kept therein, certified by him under the seal of his office, shall be *prima facie* evidence in all cases. [Sec. 488 (61), p. 235, G. L.]

584. Abstracts of deeds—Contents—Other instruments.]

SEC. 64. (1.) That it shall be the duty of the several county clerks and recorders in this State to make and furnish upon application therefor, abstracts of deeds, powers of attorney, mortgages, releases and all other instruments and muniments of title to real property recorded in their respective counties, which abstract shall set forth a description of the property, the character of the instrument, and date of the execution and acknowledgment, the names of parties to the instrument, the date of record and the page and volume of the record book wherein such instrument is recorded, and such abstract shall be made and furnished by said clerks and recorders to any person who shall make application therefor, and shall pay or tender the fees provided by law, and such abstracts shall be certified by said clerks and recorders under the seal of their offices as correct from what appears of record in their office. [Sec. 424 (1), p. 217, G. L.—Sec. 1, p. 50, acts 1874.]

An act providing for certain entries to be made by county clerks and recorders in the receiving books and general index kept by them.

[Approved Feb. 8, 1879—In force May 9, 1879, p. 49, acts 1879.]

585. Homestead—Satisfactions—Indexed—Sales for tax excepted.]

SEC. 65. (1.) That in addition to the entries now required by law to be made by county clerks and recorders in the receiving books and general index kept by them, the county clerk and recorder shall also enter therein a statement or entry of all homestead [homesteads], satisfaction of mortgage [mortgages] or trust deeds, or other changes of the records of their office affecting or concerning real estate; *Provided*, that nothing in this act shall be construed to require the record of sale of land for taxes to be entered in the receiver's book or general index. [Sec. 1, p. 49, acts 1879.]

Medical certificates, recording and certifying, s. 17, ch. 89, public health.

Recording school district bonds in separate book, s. 91, ch. 97, schools.

586. Clerks' fees.]

SEC. 66. (2.) For making the entry required by this act, county clerks and recorders shall be entitled to the same fees as are now allowed by law for similar service. [Sec. 2, p. 49, acts 1879.]

An act authorizing county clerks in the State of Colorado to administer oaths.

[Approved March 1, 1877—In force May 31, 1877, pp. 217-18, G. L.]

Division VI.]

[Miscellaneous.

thereto, are hereby repealed: *Provided, however*, that so much of said acts as shall be necessary to carry out, consummate or perfect any proceedings relative to real estate heretofore sold for taxes, shall continue in force for that purpose and no other: *And provided further*, that all assessments and levies of taxes heretofore made, where the taxes have not been collected at the date of the passage of this act, shall be considered as assessments and levies made under the provisions of this act, and are hereby legalized and made lawful in all respects and for all purposes; and all further proceedings for the collections [collection] of the taxes so levied, or for the sale of real estate so assessed for taxes, shall be made under the provisions of this act. [Sec. 2373 (134), p. 787, G L.

An act to provide for the assessment and collection of revenue of the moneys and credits of non-residents.

[Acts 1876, p. 118.]

SECTION 1. All moneys owned by non-residents, that are kept and used and loaned within the territory [State] of Colorado for the purpose of investment and profit, shall be subject to taxation the same as the personal effects and choses in action of persons domiciled in this territory [State].

SEC. 2. Every person, whether principal or agent, loaning money within this territory [State] for the purpose of profit as aforesaid, when such money is owned by a non-resident, shall, on the first day of May in every year, return to the county assessor in the county where such agent resides, the amount of moneys and credits owned by non-residents of the territory [State] of Colorado, in the hands of such principal or agent using the same, and the amount so returned shall be taxed in like manner as the property of residents; but with this exception, that such amount so returned shall be taxed for territorial [State], county and general school purposes only, and for no other.

SEC. 3. Any person, whether principal or agent, using moneys and credits of non-residents, who fails to return the same to the county assessor, as provided in section two of this act, the assessor shall proceed to assess the same from such sources as are at his command; and to the aggregate amount so assessed shall be added thereto fifty per cent thereof; the total amount including such fifty per cent shall be deemed and taken to be the basis for taxation against the owner thereof, as in other cases; *Provided*, nothing herein contained shall prevent the agent of the person so assessed from controverting the amount assumed by the assessor, if said agent will thereupon make a true return under oath of the moneys and credits in his hands, as of said first day of May.

SEC. 4. If the principal shall refuse or fail to pay any taxes assessed as aforesaid, then it shall be the duty of any agent to pay such tax of his principal, assessed as aforesaid, out of any moneys that may be in the possession of such agent, belonging to the party owing taxes as aforesaid.

Approved February 11, 1876.

CHAPTER XCV.

ROADS AND HIGHWAYS.

[Session Laws 1883, pp. 251-263.]

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All are Highways except Private Roads.]

[Petitioners pay Expenses of Viewing.]

An act concerning roads and highways and to repeal acts of the general assembly of the State of Colorado entitled "an act concerning roads and public highways," approved March 22, 1877, and "an act to amend chapter 88 of the general laws," approved February 18, 1879.

[Approved March 9, 1883—In force June 7, 1883.]

2953. All roads except private are highways.]

SECTION 1. All roads and highways, except private roads heretofore established in pursuance of any law of this State or the Territory of Colorado, and roads dedicated to public use, that have not been vacated or abandoned, and such other roads as are now recognized and maintained by the corporate authorities of any county in this State, are hereby declared to be public highways. [Sec. 1, said act.]

2954. Kept in repair by counties.]

SEC. 2. All public highways, except such as are owned and operated by private corporations, and highways within the corporate limits of any incorporated city or town, shall be maintained and kept in repair by the respective counties in which they are located. [Sec. 2, said act.]

2955. Viewers appointed by commissioners—Report—Locating new road—Proviso—When in two counties.]

SEC. 3. Whenever, in the opinion of the board of county commissioners of any county, any road or part of road then established and maintained as a public highway, is not needed, or the repairs of the same are burdensome in excess of the benefits therefrom, they may at a regular meeting appoint a board of commissioners of three free holders of the county as viewers, to view such road or part of road, and make report thereof to the board of county commissioners at their next regular meeting, setting forth fully their finding, and if they recommend a discontinuance of such road or part of road, then the board of county commissioners may order the same located; *Provided*, that if such road runs on the county line between two counties, the county commissioners of both the counties interested shall appoint viewers, and the concurrence of the county commissioners of both such counties shall be necessary to vacate it. [Sec. 3, said act.]

2956. Commissioners may alter, widen or change upon petition.]

SEC. 4. The board of county commissioners may alter, widen or change any established road, or lay out any new road in their respective counties, when petitioned by ten freeholders residing within two miles of the road sought to be altered, widened, changed or laid out. Said petition shall set forth a description of the road sought to be altered, widened or changed, and if the petition be for a new road it shall set forth the point where it is to commence, its general course, and place where it is to terminate. [Sec. 4, said act.]

2957. Petitioners deposit money for expenses of viewing, etc.]

SEC. 5. The petitioners shall deposit with the county clerk of the county in which any road is sought to be altered, widened, changed or laid out and established, a sufficient sum of money, which shall be fixed by the board of the county commissioners, to defray the expense of viewing the proposed road, which sum shall be paid into the county road fund in case the prayer of the petitioner be refused, but if the board of county commissioners alter, widen, change or lay out such road, then such sum shall be returned to the

Road on County Line.]

[Serving Warrant to Petitioners.

person or persons depositing the same. The petitioners in lieu of such deposit may file with the county clerk aforesaid a good and sufficient bond conditioned for the payment of the expenses of viewing such road should the prayer of the petitioners be refused. [Sec. 5, said act.

2958. Road on county line, petition to be sent to two counties.]

SEC. 6. If any proposed highway be on the county line between two counties, the board of county commissioners of each county interested shall be petitioned, and each of such boards shall appoint three viewers, qualified as in other cases, who, or a majority of them, shall meet at a time and place named by the board of the county [commissioners] first interested, and proceed to view and mark out the road, and report to the board of county commissioners of both counties, as in other cases, and the concurrence of the county commissioners of both such counties shall be necessary to establish it. And if any such road be established, each of such counties shall open and maintain a definite part thereof, which the board of county commissioners of such counties shall apportion by mutual agreement between the two counties, and if the boards of county commissioners cannot agree upon the apportionment, they may refer the matter to three disinterested freeholders as arbitrators, whose duty it shall be to apportion the same and report thereon to the boards of county commissioners of both counties. [Sec. 6, said act.

2959. Board appoint commissioners to view and mark out—Notice of time and place.]

SEC. 7. It shall be the duty of the board of county commissioners of any county in this State at their next meeting, after a petition as required in section four of this act is received, to appoint a board of commissioners of three freeholders of the county to view and mark out the road prayed for in the petition, and to fix a time for such view, and to cause notices to be posted in three of the most public places, along the proposed new road, at least five days previous to the day fixed for the view thereof, giving parties in interest notice that at the time fixed by the board of county commissioners the viewers so appointed will meet at the point designated in the petition as the starting point of such road, to attend to their duties as viewers. [Sec. 7, said act.

2960. County clerk direct warrant to viewers.]

SEC. 8. The county clerk shall issue a warrant directed to the viewers appointed, setting forth their appointment, and requiring them to meet at the time and place named by the board of county commissioners, and to proceed to view and mark out such road, to assess the damages and benefits accruing to the owner or owners of any of the lands over which the same may pass, by reason of the alteration, widening, changing or location thereof, and the probable cost of opening such road for travel. [Sec. 8, said act.

2961. Sheriff to serve said warrant—Failure to act—Penalty.]

SEC. 9. The sheriff of the proper county shall serve the warrant mentioned in the preceding section, by delivering a copy to each of the viewers named therein, and the original he shall return to the county clerk with his endorsement of service made thereon. Any person appointed road viewer and duly served with a warrant, who shall wilfully neglect or refuse to act, shall forfeit the sum of twenty-five dollars to the county. [Sec. 9, said act.

Viewers—Mark Out.]

[Objections to Report.

2962. Viewers meet—Mark out—Assess.]

SEC. 10. The viewers appointed and served with warrant as herein provided shall meet at the time and place specified in the warrant, and commencing at the place designated in said petition as the starting point of the road sought to be altered, widened, changed, or laid out and established, the said viewers shall proceed to view and mark out the same by setting stakes, blazing trees, turning a furrow, or other appropriate monuments to the terminus named in the petition by the most practicable and convenient route that they in their judgment can find. They shall assess the benefits and damages accruing to all persons by reason of the alteration, widening, changing or laying out of such road, and award to any person or persons damages in excess of the benefits accruing to him or them, a sum equal to such excess. And if the viewers or a majority of them be of opinion that the road should be altered, widened, changed or laid out and established, they shall cause a survey and plat of the same to be made by the county surveyor or other competent person, giving the courses and distances and specifying the land over which the road extends. [Sec. 10, said act.]

2963. Viewers fill vacancy.]

SEC. 11. If any viewer duly appointed and served with warrant refuses to act, or is disqualified or does not appear, the other two viewers may fill such vacancy, or if but one of the viewers appears who is qualified and consents to act he shall appoint two others who shall be freeholders to assist him and they shall proceed to view such road. [Sec. 11, said act.]

2964. Viewers' report—What contain—Fees.]

SEC. 12. The viewers shall file a report of the view in the office of the county clerk and recorder of the county in which such view was made ten days before the next regular meeting of the board of county commissioners held after the same is completed, which shall be signed by a majority of the viewers and shall contain a full statement of their proceedings, a description of the land over which such road extends, an estimate of the cost of opening it for travel, an assessment of the damages and benefits accruing to any person or persons by reason of the alteration, widening, changing or laying out of such road, and the sum awarded any person or persons for damages in excess of the benefits assessed to him or them, and if such road be practicable and the establishment of it be recommended by them. To this report the viewers shall annex the plat, survey and report of the surveyor. For their services the viewers shall receive (shall receive) a warrant on the county treasurer for a sum to be fixed by the county commissioners not exceeding five dollars per day. [Sec. 12, said act.]

2965. Objections to report—Board hear and determine.]

SEC. 13. The board of county commissioners, at their next regular meeting after the return of such report, shall proceed to consider the same and all objections that may be made thereto, and they shall determine whether or not such road shall be established and opened for travel. And they may refer the matter of viewing to the same or other viewers with instructions to report in like manner, as herein required, or specially upon some particular matter. [Sec. 13, said act.]

Report, Plat, etc., to be Filed.]

[Commissioners Condemn.

2966. Report, plat, etc., to be filed.]

SEC. 14. If the board of county commissioners determine to open any such road, they shall cause the full and final report of the viewers, including the plat and report of the surveyor, to be recorded in the office of the county clerk and recorder in a book kept for that purpose. [Sec. 14, said act.

2967. Damages, how paid—Notices—Not open through fields of growing crops.]

SEC. 15. The board of county commissioners having considered the report of any road view, and the compensation to which any person or persons damaged having been ascertained and paid to the owner or owners or into court for him or them, may order the road to be opened for travel. And if they do so order they shall cause notices to be posted at three public places along the line of such road, giving all parties notice that they have or will direct their proper officers to open and work the same from and after sixty days from the date of such notice: *Provided*, no such road shall be ordered opened through fields of growing crops or along a line where growing crops would thereby be exposed to stock until the owner or owners of such crops shall have sufficient time to harvest and take care of the same. [Sec. 15, said act.

2968. Damages exceeding benefits, how paid—Owner unknown.]

SEC. 16. If the damages assessed to any person or persons by reason of the alteration, widening, changing or laying out of any road shall exceed the benefits, the excess shall be paid to such person or persons by warrant on the county treasurer for the amount. If any person or persons to whom damages are awarded be under disability, or cannot be found, the same shall be set apart to such person or persons in the county treasury. [Sec. 16, said act.

2969. Appeals from estimates of viewers.]

SEC. 17. If any person or persons be of opinion that the damages awarded him or them by the viewers are inadequate and insufficient, the board of county commissioners may agree with such person or persons upon the measure of the same. [Sec. 17, said act.

2970. Jury determine—Condemnation—Commissioners authorized to condemn without view or proceeding.]

SEC. 18. Any person or persons owning or having an interest in any land over which any proposed road extends, who shall be of opinion that the damages awarded him or them by the road viewers are inadequate and insufficient, may personally, or by agent or attorney, on or before the first day of the next regular meeting of the board of county commissioners held after the report is filed in the office of the county clerk and recorder of the county in which the view was made, [file] a written request addressed to the board of county commissioners for a jury to ascertain the compensation which he or they may be entitled to by reason of damages sustained by altering, widening, changin [changing] or laying out such road. Thereupon the board of county commissioners shall apply to the judge of the district or county court of the same county by filing a petition, as in other cases under the act of the general assembly of the State of Colorado entitled "an act to provide for the exercise of the right of eminent domain," approved February 12, 1877, and the compensation to be paid such person or persons shall be ascertained and the land condemned, the rule of court or decree rendered, and all condemnation pro-

Width of Highways.]

[Crossing Streams.]

ceedings thereupon shall be according to the proceedings of said act, as in other cases. The board of county commissioners of any county may, and they are hereby authorized, to take and condemn, or cause to be condemned, the lands of private persons under and according to said eminent domain act in the first instance without view or other proceeding under this act. [Sec. 18, said act.]

2971. Highways sixty feet wide, unless, etc.]

SEC. 19. All public highways hereafter laid out in this State shall be sixty feet in width, unless otherwise ordered by the board of county commissioners [Sec. 19, said act.]

2972. When all the owners petition.]

SEC. 20. Whenever a petition shall be presented to (to) the board of county commissioners of any county of this State praying for a public highway, and the names of all the owners of all the land through which said road is to be laid out, shall be signed by the owners thereof to said petition, giving the right of way through the lands, and accompanied by a plat of the road, it shall be the duty of the board of county commissioners, if in their opinion the public good requires it, to declare the same a public highway, and thereupon the plat shall be filed and recorded and the said road shall become a public highway from and after that date. [Sec. 20, said act.]

2973. Private over other's land public—How right of way secured.]

SEC. 21. The manner of laying out any private wagon road from the dwelling of any person to any public road, and of condemning the lands necessary therefor, shall be the same as hereinbefore provided, excepting that the viewers of the same shall only receive compensation for one day's service, and mileage to and from their respective places of residence; and the petition in such cases need be signed only by such person, and the expense of viewing and surveying such road and the damages which may accrue, to any person by reason of laying out the same, and the expense of opening such road, shall be paid by such petitioner. [Sec. 21, said act.]

2974. County clerk give notice to overseer—Fees.]

SEC. 22. When any highway is to be altered, widened, changed or laid out, the county clerk shall notify the overseer of the proper district, and for such notice the clerk shall receive fifty cents from the county treasury. [Sec. 22, said act.]

2975. Crossing streams.]

SEC. 23. When any public road heretofore laid out or traveled as such, or hereafter to be laid out or traveled, crosses any creek or stream of water, and such stream during any part of the year is usually fordable where such road crosses, or shall cross the same, the said ford and the banks of the stream adjacent thereto, and the roadway or track usually traveled leading thereto from such highway shall be deemed and taken to be part of such highway, and any person who shall obstruct any such ford, or the road leading thereto, or shall dig down the banks of such ford, or who shall erect any dam or embankment or other obstruction in such stream, or wing dam or other obstruction on the banks of said stream, for the purpose of raising the water of said stream upon the said ford, so as to render the said ford impassable, or more