

## CHAPTER 8.

### BOARD OF PUBLIC WORKS.

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Sec. 13937 (218-14 Bates). It shall be unlawful for any person or persons, or body corporate, to draw water off any of the canals of this state for the purpose of flooding ice ponds, or for any other purpose whatsoever other than navigation and hydraulic purposes, unless they shall have first complied with the requirements of this act. [76 v. 189]

Stealing water from canals.

See board of public works: G. C. § 404, et seq.

Sec. 13938 (218-15 Bates). Permission may be granted to any person or persons, or body corporate, by the board of public works, to enter upon and take ice from any reservoir, or surface of any water under the control of the public works of this state, and draw water off the canals of the state for the

Permission to take ice or water from reservoir may be granted; conditions; when considered a misdemeanor.

purpose of flooding ice ponds, or other purposes, at a price to be fixed by the board of public works, upon the following conditions:

*First*—When the water so to be drawn off is not needed, and is over and above what is necessary for navigation and hydraulic purposes already leased.

*Second*—Such water to be drawn off under and by the direction of the chief engineer of the public works, and at such times and in such quantities as he may from time to time determine.

*Third*—Such persons shall not, in any manner, during any portion of the year, cultivate any of the land to be so flooded.

*Fourth*—A bond in the penal sum of twenty-five hundred dollars must be executed to the state of Ohio, with good and sufficient security, conditioned for the faithful performance of the obligations herein imposed; and said bond is to be approved by the said board of public works, and to be filed with the treasurer of state by said board. That any person or persons or body corporate, who shall enter upon any portion of the canals of this state or in any basin, wide water, or surface of any water under the control of the public works, reservoir, or pond, belonging to or used in connection with the canals of this state, without permission from the board of public works, for the purpose of cutting or carrying away ice from said canals or waters aforesaid, for the purpose of profit, shall be deemed guilty of misdemeanor and be liable as hereinafter provided; in case of lessees of water, to be used for manufacturing purposes, it shall not be lawful for any such lessee, or assignee under said lessee, to use, or allow to pass through their mills or other hydraulic works, a greater quantity of water than the amount specified in their lease, said quantity to be determined by the chief engineer of the public works. [1881, April 19: 78 v. 229; Rev. Stat. 1880; 76 v. 189.]

For power to lease surplus water, see G. C. § 431, et seq.

Where a contract for the use of water of canal is entered into with the agents of the state, no right of action to such purchaser accrues against the state upon abandonment of the canal; nor can such purchaser claim any rights under a contract between the state and the United States to maintain such canal: *Vought v. Railroad*, 58 O. S. 123 [affirmed in *Walsh v. Railroad*, 176 U. S. 469; *Vought v. Railroad*, 176 U. S. 481]; see, also, to the same effect, *Wright v. Railroad*, 176 U. S. 481.

Owners of lands abutting on a canal, incidentally benefited by the water it affords, or its facilities for drainage, have no property interest in these incidental benefits, and can not, on such ground, enjoin the abandonment of the canal, or claim compensation therefor: *Vought v. Railroad*, 58 O. S. 123 [affirmed in *Walsh v. Railroad*, 176 U. S. 469; *Vought v. Railroad*, 176 U. S. 481]; see, also, to the same effect, *Wright v. Railroad*, 176 U. S. 481.

Contracts made with the board of public works or other agents of the state, for the use of the water of the canal, terminate with the abandonment of the use of the canal by the state, and no action will lie against the state for damages resulting from such abandonment: *Vought v. Railroad*, 58 O. S. 123 [affirmed in *Walsh v. Railroad*, 176 U. S. 469; *Vought v. Railroad*, 176 U. S. 481]; see, also, to the same effect, *Wright v. Railroad*, 176 U. S. 481.

Lands acquired for its use by a canal company, a private corporation, organized under an act of the general assembly before the adoption of the present constitution, as the Lancaster Lateral Canal Company (24 v. 71), authorizing it to acquire lands for its use by donation, grant or appropriation, without expressing the interest or estate to be acquired thereby, revert to the owner from whom they were acquired, on the abandonment of the canal, or his successor in title, the general rule being that where lands are acquired for the

public use, an easement only is taken therein, unless the taking of a greater estate, as a fee simple, is expressly authorized by law. The rule is the same where it afterwards disposes of its canal to the state, which, under the act of 1825, takes a fee simple in lands condemned by it to the uses of its canal system. Where, however, the land is only abandoned by the state for canal purposes, and is at the same time leased or conveyed to a railroad company for the construction and operation of a railroad thereon, the owner is only entitled to compensation for such additional burden thereby imposed on the land, and such damages as may result from the new use. [Hatch v. Railroad, 18 O. S. 92]; Vought v. Railroad, 58 O. S. 123 [affirmed in Walsh v. Railroad, 176 U. S. 469; Vought v. Railroad, 176 U. S. 481]; see, also, to the same effect, Wright v. Railroad, 176 U. S. 481.

**SEC. 13939** (218-16 Bates). Any person or persons, or body corporate, violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction before any court of competent jurisdiction, may be fined in any sum not exceeding one thousand dollars, and not less than fifty dollars, for each offense; and it is hereby made the duty of the common pleas judge in the counties of the state in which the canals are situated, to give this act specially in charge of the grand jury of said county. [76 v. 189.]

Penalty, etc.

**SEC. 13940** (218-17 Bates). It is hereby made the duty of the board of public works, when any of the provisions of this act have been violated, to forthwith notify the attorney-general, and said attorney-general shall immediately commence suit upon the bond so given, in the name of the state of Ohio. [76 v. 189.]

Duties of board and attorney-general.

**SEC. 13941** (218-18 Bates). This act shall apply as well to the parties who have heretofore used and are now using the waters of the canals of this state as to those who may hereafter so desire to do. The board of public works are hereby required, upon the passage of this act, to shut off and forbid the drawing of water or use of water, contrary to the requirements of this act, until the conditions herein provided shall have been fully complied with; and the chief engineer of the public works shall, by actual survey, determine the number of acres included in any pond so to be flooded, which shall be conclusive, and a record of which shall be kept in the office of the board of public works; and the cost of making such survey shall be paid by the parties so applying, and in determining the amount of such cost the certificate of said chief engineer shall be conclusive; and the board of public works are hereby authorized to increase or diminish the rates of toll as fixed by the law of 1858, when the boat travels or freight is carried less than fifty miles on any of the canals of this state. [76 v. 189.]

Duties and powers of board and engineer.

**SEC. 13942** (218-19 Bates). Should the public works of the state be leased, then the drawing of the water for the purposes herein mentioned shall be under the exclusive direction and control of said lessees, and the amount of rent so due shall be paid said lessees. [76 v. 189.]

Rent if public works are leased.

**SEC. 13943** (218-54 Bates). The board of public works are hereby authorized and required to take charge of the slack-water created by the Trenton feeder dam, in Tuscarawas county,

Board of public works to take charge of certain slack water.

extending from the head of said feeder to Uhrichsville, for the purpose of removing bars or other obstructions from the channel thereof and keeping the same open for navigation. All laws in force in relation to the navigation, protection and repair of the public works of this state be and the same are hereby extended to said slackwater. [53 v. 103.]

Sandy and  
Beaver canal may  
become part of  
public works.

SEC. 13944 (218-55 Bates). The board of public works are hereby authorized and required, in the name and for the use of the state of Ohio, to take possession of, and adopt as a part of the public works of this state, and as a feeder of the Ohio canal, that part of the Sandy and Beaver canal, extending from its Junction with the Ohio canal at the town of Bolivar, to the head of the slack-water pool, created by the dam across Sandy creek, below the town of Sandyville, in Tuscarawas county, together with all the waters, works, privileges, appurtenances, and devices of every name and nature appertaining thereto, or connected therewith. [53 v. 197; S. & C. 223.]

Upon what prior  
conditions.

SEC. 13945 (218-56 Bates). Before the board of public works shall take possession of, and adopt said Sandy and Beaver canal, as mentioned in the preceding section, the present owners thereof shall put said canal in such good and substantial repair as shall be acceptable to said board, and shall make to the state of Ohio a good and sufficient title, to be approved by the board of public works and the attorney-general, and shall execute to the state a bond to be approved by the board and the attorney-general, indemnifying the state against all claims for loss or damage accruing prior to the adoption of said work by the state, and provided that such portion of such canal shall be taken possession of and adopted only in case the present owners shall make a conveyance of the same to the state, by which the whole title of such owners may be conveyed; and provided, also, that the state of Ohio shall be compelled to pay no consideration for the same other than to agree to keep in repair such portion of such canal while the same may be the property of the state, so soon as the same shall be accepted by the board of public works, and conveyed to the state in the manner in this act provided. [53 v. 197; S. & C. 223.]

[Laws pertaining  
to canals extended  
to Sandy and  
Beaver canal.]

[SEC. 13945a.] § 3. That all laws in force in relation to the location, construction, repairing, regulation, protection, and navigation of the canals of this state, are hereby extended to said part of Sandy and Beaver canal. [53 v. 197; S. & C. 223.]

Attorney-general  
to purchase  
certain lands.

SEC. 13946 (218-57 Bates). The attorney general of this state is authorized and directed, without unnecessary delay, to purchase, on behalf of the state, from the widow and heirs of John Wolfe, deceased, the following described lands, situate in the township of Stokes, in the county of Logan, and state of Ohio, and being the southeast quarter of the southeast quarter of section twenty-seven, town[ship] six south, of range eight east, in the district of lands that were subject to sale at Lima, Ohio, containing forty acres: provided, nevertheless, that such purchase shall not be made unless it can be done at a cost of not exceeding one thousand eight hundred and ninety dollars;

and said lands shall not be paid for until there shall be executed by said widow and heirs, by good and lawful authority on their behalf, and delivered to the attorney-general, a good and sufficient deed conveying the said land in fee unincumbered to the state. [66 v. 353.]

SEC. **13947** (218-58 Bates). There is hereby appropriated from any money in the treasury not otherwise appropriated, the sum of one thousand eight hundred and ninety dollars, for the purchase of said lands of the said widow and heirs of John Wolfe, deceased, said purchase money to be certified for by the attorney-general. [66 v. 353.]

Appropriation therefor.

SEC. **13948** (218-59 Bates). It shall be unlawful for the board of public works to lease any property belonging to the State which is under their control and management, unless the same be authorized by the general assembly. [83 v. 118.]

Mode prescribed for leasing state property by board of public works.

SEC. **13949** (218-60 Bates). Whenever such action has been taken by the general assembly, it shall be the duty of the board to have an accurate survey and plat made of the property to be so leased, with a proper description of the same, which shall be filed with the auditor of State, who shall record the same in a book to be kept for that purpose, after which it shall be the duty of the board to offer the same as a whole, or if divisible it is so to be noted on the plat and then to be leased in separate tracts; and in either case it is to be offered and sold at public outcry in the city or corporation where the same is located; and should it be located outside of any city or corporation, then in the city or corporation nearest such property to be leased; provided, however, before leasing the same, the board shall cause public notice to be published at least four weeks in some newspaper published in said city or corporation, and if none [be] published in such place, then in the county seat where such property is located, giving the location, condition, and number of years to be leased. [83 v. 118.]

Survey, plat, lease, etc.

Lease shall be filed with board of public works, see G. C. § 429.

SEC. **13950** (218-61 Bates). After said property is leased, attested copies, and the collection of rents shall be the same as provided in section six and seven of the act of May 14, 1878 (75 v. 584, 3 Rev. Statutes, page 374), entitled "an act defining the powers and prescribing the duties of the board of public works," provided, however, that nothing herein contained shall prevent the board from leasing for water power or purposes as provided in section six of such act. [83 v. 118.]

Collection of the rents, etc.

SEC. **13951** (218-62 Bates). The board of public works of the state of Ohio be and they are hereby authorized, upon such terms and for such compensation as said board shall deem just, to lease to, or permit the Paulding and Antwerp railroad company to use and occupy the south bank of the six-mile reservoir, in Paulding county, for a road-bed, and also to permit said railroad company to cross the southwest corner of said reservoir with its railroad, using either trestle work or piling in crossing said reservoir at said southwest corner, as said railroad company

Board of public works authorized to lease or permit railroad company to occupy specified lands; company responsible by contract for loss or damage; privileges forfeited on failure to comply.

may deem best: provided, however, that said railroad company, before taking possession of said reservoir bank, shall enter into a contract with the state of Ohio, said contract to be prepared by the attorney-general, binding said company, their lessees, assigns, or person or persons occupying the said reservoir bank, to be responsible for and pay all damages caused by overflow of water, or otherwise resulting from the construction of the bed of said railroad, and also for all damages which may result from the flowing of water across the track of said railroad on said premises, to forever keep the same in good repair for reservoir purposes, which repairs shall be made under the direction of the board of public works; and the right of said company to use and occupy said bank shall cease, and the state shall be entitled to the immediate possession of the same, whenever said company shall fail or refuse to pay said damages or to repair said bank, or pay the compensation agreed upon, when requested by the board of public works. [76 v. 80.]

Lease to Toledo  
and G. R. R. Co.

SEC. **13952** (218-63 Bates). The board of public works be and they are hereby authorized, if the interest of the state will be subserved thereby, to lease to the Toledo and Grand Rapids railroad company and its successors the right to construct, maintain, and operate a railroad on and over the lands belonging to the state, situate within the corporate limits of the city of Toledo; said grant or lease shall include only such amount of said land and be of and over such part thereof, upon such terms and for such consideration as said board shall determine will be for the best interest of the state, and fully compensate it; but said road shall be constructed upon such part of said real estate, and over such canal at such a point as will not injure the public works or interfere with hydraulic power or navigation: provided, that the part so leased shall not exceed thirty feet in width: provided further, that the said railroad company, or its successors, shall pay to the state the amount of annual rental agreed upon when the same becomes due. The said rental may be increased every ten years, at the instance of the board of public works, by five disinterested appraisers, three of whom shall be appointed by said board and two by said railroad company; before making such appraisal, said appraisers must be duly sworn to faithfully and impartially appraise said lease; and they and their successors shall permit all other roads of like gauge, who desire, to use their track or tracks, for a reasonable compensation, to be fixed by agreement or arbitration; and upon failure to comply with any of the provisions of this act the lease shall be null and void. Nothing in this grant shall be so construed as to prevent placing said railroad property on the tax duplicate for taxation by the several counties through which it passes. [76 v. 81.]

As to manner of taxing railroads, see G. C. § 5415, et seq.

Lease and sale  
of water power,  
and land, etc.

SEC. **13953** (218-86 Bates). Whenever, in the opinion of the board of public works, there shall be surplus water in either of the canals, or in the feeders, or at the dams erected for the purpose of supplying either of said canals with water, or for the purpose of improving the navigation of any river, and

constructed at the expense of the state, over and above the quantity of water which may be required for the purpose of navigation, the said commissioners may order such surplus water, and any lands granted to, or purchased by the state, for the purpose of using the same, or such part thereof as they may deem expedient, to be sold for hydraulic purposes, subject to such conditions and reservations as they may consider necessary and proper, either in perpetuity or for a limited number of years, for a certain annual rent, or otherwise, as they may deem most beneficial for the interests of the state. [38 v. 87.]

For power to lease surplus water, see G. C. § 431, et seq.

SEC. **13954** (218-87 Bates). The provisions of the foregoing section shall extend to and include the water passing round the locks, from one level to another, on either of the canals of this state. [38 v. 87.] Same.

SEC. **13955** (218-88 Bates). No hydraulic power, nor right to the use of any water, shall be sold, leased, or conveyed, except such as shall accrue from the surplus water of the canal, feeders, or dams, or from the water passing round any lock, after supplying the full quantity necessary for the purposes of navigation. [38 v. 87.] Same.

SEC. **13956** (218-89 Bates). Every lease, grant, or conveyance of water power, shall contain a reservation and condition, that the state, or its authorized agents, may at any time resume the privilege or right to the use of water, or any portion thereof, whenever it may be deemed necessary for the purposes of navigation, or whenever its use for hydraulic purposes shall be found in any manner to interfere with, and injuriously affect the navigation of either of the canals, feeders, or streams from which the water shall be taken for such hydraulic purposes; and whenever such privilege shall be resumed, in whole or in part, the sum paid therefor, or the rent reserved, or such reasonable portion thereof as shall be determined upon, agreeably to the conditions and stipulations of the lease or deed of conveyance aforesaid, shall be refunded, or remitted to the purchaser or lessee, his heirs or assigns. [38 v. 87.] Reservations.

SEC. **13957** (218-90 Bates). All moneys received for the rent or sale of any hydraulic power, granted or conveyed under the provisions of this act, shall be paid into the state treasury, and constitute a part of the canal fund; and shall be subject to the same rules and regulations as are prescribed in the sixth section of the act to provide for the internal improvement of the state of Ohio, by navigable canals. [38 v. 87.] Proceeds of such sales or rents; how to be appropriated.

SEC. **13958** (3107-124 Bates). It shall be the duty of the state board of public works, as soon as practicable, after the passage of this act to appraise section number thirty-six (36) in township number three (3) north of range number one (1) east of Paulding county, Ohio, in tracts of not more than eighty acres each and make a record of such appraisement in their office. Upon the filing of such return in their office the said Appraisement of certain lands in Paulding county; advertisement and sale.

board shall forthwith advertise said lands for sale by giving notice of the time and place, which place shall be the courthouse of Paulding county, and terms thereof for four (4) consecutive weeks in two (2) newspapers of opposite politics published and of general circulation in said county, and upon the day and hour and at the place named in said advertisement. The said board shall offer said land for sale at public auction and then and there sell to the highest and best bidder or bidders; provided, said land or any part thereof shall not be sold for less than two-thirds [of] the appraised value thereof, nor in tracts of more than eighty acres each, to be paid for on such terms as the said board may determine, not exceeding four years, and if any part of said lands remain unsold for want of bidders, the said board shall again advertise, and again offer said lands for sale as before; and in all cases of sales as prescribed in this section, the said board shall certify the amount of money received in payment thereof into the county treasury of Paulding county to the extent of \$6,150, and balance as hereinafter provided, and receipt to the purchaser thereof and describe therein the lands sold; and the board shall enter an account between the purchasers and state, and at the time of paying of the full amount of said purchase money, together with the annual interest of six per cent. per annum, on all deferred payments from day of sale to the time of payment. The board shall properly execute and deliver to the purchaser a certificate of sale for such of said lands so purchased and paid for. And the governor of the state of Ohio shall, on receipt of said certificate, properly execute and deliver to the purchaser or his assigns a deed of conveyance of said land so sold and paid for. [89 v. 232.]

Distribution of  
proceeds of sale.

SEC. 13959 (3107-125 Bates). That the money received from such sale shall be paid by the said board as follows: Six thousand one hundred and fifty dollars to the treasurer of Paulding county to credit of expense fund to reimburse said county for the drainage of said land and the balance to the treasurer of the state of Ohio, to the credit of the Miami and Erie canal fund. [89 v. 232.]

#### JOINT RESOLUTION.

Approving certain acts of the Board of Public Works. (65 v. 299.)

Abandonment of  
Lockport Basin.

SEC. 13960. WHEREAS, The board of public works, with the consent of the lessees of the public works, did, by resolution of said board, dated November 13th, 1867, abandon the north part of Lockport basin, on the Miami and Erie canal because the same had become entirely necessary for the purposes of navigation, and very expensive to maintain in proper condition; therefore, be it

*Resolved by the General Assembly of the State of Ohio,* That the said abandonment of the north part of said basin is approved and confirmed, and all the right, title and claim thereto, on the part of the state, for public use, acquired under the dedication of October 1st, in the year 1834, is hereby released to the parties owning the reversionary interest therein.



## CANAL COMMISSION.

(See section 464 General Code.)

SEC. 13961 (218-221 Bates). The governor, by and with the advice and consent of the senate, shall appoint a commission consisting of three persons, not more than two of whom shall belong to the same political party, who shall, within thirty days after their appointment, proceed to survey and determine the boundaries of all lands heretofore appropriated for canal purposes, and owned by the state, the boundaries of which are not now accurately known and of record, as already surveyed, and to mark the same by proper monuments, and to make maps and plats of all said canal lands not already platted, together with the necessary description and location of all bridges, culverts and aqueducts, and shall clearly indicate and describe in their report any part of said property that in their judgment is not necessary for canal purposes, all of which is to be preserved as hereinafter provided; and on that part used for channel purposes, the boundaries of which are not in dispute, the courses and distances shall only be obtained for the purpose of ascertaining the lengths thereof. The members of said commission, after their appointment as above provided for, shall take an oath of office, and give bond in the sum of one thousand dollars, conditioned for the faithful discharge of their duties; and said commissioners shall each receive the sum of twelve hundred dollars per annum, and their necessary expenses while in the prosecution of their duties, to be paid out of the canal fund, said salary to be paid in quarterly installments; and all accounts for expenses shall be evidenced by [a] detailed statement duly verified by oath, and approved by the auditor of state; and the necessary amount to meet such salary and all other expense of the commission is hereby appropriated out of said canal fund of the state, which shall be paid out on the warrant of the state auditor; that the term of office of said persons so appointed shall be for the period of two years, unless sooner removed by the governor, and the governor is hereby authorized to fill any vacancy, that may occur, from the political parties as named in the preceding part of this section. [85 v. 127.]

Appointment of commission; survey of canal lands; oath; salaries; expenses; term; removals; vacancies.

Powers of canal commission are conferred on board of public works: G. C. § 464.

Cited: State v. Railway, 1 O. N. P. 292, 2 O. D. (N.P.) 300; State v. Tin & Japan Co., 66 O. S. 182.

SEC. 13962 (218-222 Bates). Said commissioners shall employ surveyors to make said surveys, maps, and plats, with necessary assistants, and fix their compensation; and said maps and plats shall be made in conformity to instructions and plans prepared by the chief engineer of the public works, and when completed they shall be approved by him and said commission, by endorsement signed by them respectively. [1889, April 12: 86 v. 270; 85 v. 127.]

Employment of surveyors; duty of chief engineer.

SEC. 13963 (218-223 Bates). Each of said commissioners is hereby authorized to issue subpoenas for, and compel the attendance of such witnesses as they, or either of them, may think necessary in fixing said boundaries, or ascertaining any

Witnesses; where testimony, maps, etc., shall be deposited.

fact which said commission should ascertain in the discharge of its duties; and the testimony so taken, together with said maps, plats, and field notes of such surveys, and the report of said commission as to the boundaries of the lands belonging to the state of Ohio, with its findings in that behalf, shall be filed for preservation in the office of the board of public works; and upon any trial in any of the courts of this state, any of said findings, maps, plats, or surveys, which may in any manner relate to or have any bearing upon the subject-matter at issue, shall be taken and held to be competent [prima facie] evidence of the truth of such findings, and the boundaries of said lands, and that the state of Ohio has the ownership of said land, or such an interest in it as may be therein stated; and a duly certified or sworn copy of such findings, plat, or map shall, when produced on said trial, have the same force and effect as the original from which it was taken would have under this section if produced on said trial. [1889, April 12: 86 v. 270; 85 v. 127.]

This section, in so far as it attempts to make the findings, maps, plats and surveys, prepared by the canal commission competent or prima facie evidence of the truth of such findings, or the boundaries of such lands, or that the state has the ownership of such lands, or an interest therein, is unconstitutional and void, being in conflict with § 19 of the bill of rights, and § 28, of Art. II, of the constitution: *State v. Tin & Japan Co.*, 66 O. S. 182; see, to the same effect, *State v. Tin & Japan Co.*, 21 O. C. C. 218, 11 O. C. D. 587 [affirmed, without opinion, *State v. Tin & Japan Co.*, 65 O. S. 105].

Arbitration and award as to rights of occupants.

SEC. 13964 (218-224 Bates.) That in all cases where any land claimed by the state is in the possession and occupancy of any person, persons, or corporation claiming the ownership thereof, and such person, persons, or corporation shall appear before said commission and submit such claim or claims to the award and decision of said commission for the purpose of determining the boundary line of said land or the ownership thereof, said commission may make an award and decision thereon, which shall be final and conclusive as to all the parties thereto having notice and not under legal disability. [1889, April 12: 86 v. 270; 85 v. 127.]

Lands not necessary for actual use may be leased.

SEC. 13965 (218-225 Bates.) That each and every tract of land, and any part of the berme bank of any canal, canal basin, reservoir and outer slope of the towing path embankment, which said commission shall find to be the property of the state of Ohio, the use of which, in the opinion of said commission, the board of public works and the chief engineer of the public works, if leased, would not materially injure or interfere with the maintenance and navigation of any of the canals of this state, shall be valued by said commission at its true value in money, and if such land shall not then be under an existing lease, may be leased for any purpose or purposes other than for railroads operated by steam, but said commission, the board of public works and the chief engineer of the public works shall have power to make leases and prescribe regulations for the crossing of the canals, canal basins or canal lands by any railroad operated by steam, electricity or other motive power, or for the necessary use, for railroad purposes, of any part of the berme banks of a canal, canal basin or any portion of the canal lands for a distance not exceeding two

miles, or if then under an existing lease, then at the expiration of such lease, may be leased on the terms and conditions hereinafter in this act provided for, but railroad companies unlawfully in the possession and use of state land at the date of the passage of this act shall take a lease thereon for the term of fifteen years, in the same manner as when lands are leased for other purposes, or remove their tracks, buildings or other structures from said land. [94 v. 345; 86 v. 270; 85 v. 127.]

A lease by the state board of public works of ground on the water front of a canal reservoir for bathhouse and dock purposes does not include the right to build a pier eighty feet out into the reservoir, and where such a pier has been built, the lessees can not by injunction prevent others from landing boats thereat: *Traction Co. v. Malinski*, 10 O. N. P. (N.S.) 374.

The act of February 7, 1826 (24 v. 58; S. & C. 1245; Bates, § 218-49), did not authorize the canal commissioners to sell, nor the governor to grant, any portion of the lands used for the construction of the canals, including "feeders, dikes, locks, dams and such other works and devices" as they had employed in their construction: *State v. Snook*, 53 O. S. 521.

**SEC. 13966** (218-226 Bates.) That if such land is not in possession of any person, or persons, or corporation having a building, or buildings, or other valuable structures thereon, it may be immediately leased for fifteen years, at an annual rental of six per cent. per annum of said valuation, to be paid semi-annually, in advance, and at such place as said commission, board of public works and the chief engineer of the public works may fix by the terms of said lease. Any tract of land so to be valued or appraised, if in the actual possession of any person, persons, or corporation who may own a building, or buildings, or other valuable structure thereon, such valuation shall not embrace the value of such building, or buildings, or other valuable structure, and the person, or persons, or corporation owning the same shall be entitled to such lease of said land or lands upon the same terms and conditions as any other person or corporation would or might be entitled to under this act if there were no building or buildings, or other valuable structure upon said land; provided always, however, that each and every building or other valuable structure erected thereon by any person, or persons, or corporation may be taxed as other property of individuals or corporation in the same locality. The said commission, board of public works and chief engineer of the public works may lease for the term of fifteen years, at six per cent. per annum, rental to be paid semi-annually in advance, on a valuation made by said commission, the right to erect buildings across any of the canals not less than ten feet above high water line, to be constructed under the direction of the chief engineer of the public works in all respects so as not to interfere with the maintenance of the embankments and operation of the canal under said buildings. [85 v. 127; 86 v. 271; 94 v. 345.]

Lease of un-occupied lands.

**SEC. 13967** (218-227 Bates.) That if the person, or persons, or corporation owning or claiming to own a building or other valuable structure on any land as aforesaid, found to be the property of the state of Ohio, shall not, within ten days after such finding and notice thereof, apply for a lease thereof and enter into a lease therefor, as herein provided, then the right of such person, or persons, or corporation to such a lease shall

When rights of occupants or persons claiming ownership forfeited; owners may remove building.

cease and from thenceforth be void; and said commission shall give a public notice by advertisement published for at least two consecutive weeks in some newspaper printed and generally circulated in the county where such land is situated, that it will lease such property upon the terms herein provided for, and it may, subject to the conditions of this act, so lease said land on the day so named in such notice, or any day thereafter; but if said commission shall find that said building, or buildings, or other valuable structure are not the property of the state of Ohio, the owner or owners may, with the assent of said commission, and on or before a day fixed by them, remove said building, or buildings, or other valuable structure from the land of the state, if such removal can be accomplished without injury to said land. [85 v. 127; 86 v. 272.]

Leases to be prepared by attorney-general; what to contain.

SEC. **13968** (218-228 Bates.) That all leases to be made under the provisions of this act shall be prepared by the attorney-general of the state, and shall state the purpose or purposes for which the land therein leased is to be used, and shall contain a condition that if any installments of rent therein agreed to be paid, shall not be paid at the time specified, or within ten days thereafter, whether a demand therefor shall or shall not be made, said lease shall, at the option of the board of public works, become and be null and void as against the state of Ohio, and that the lessee so in default, his heirs, or assigns, or any party in possession of such leased premises, shall yield up the possession thereof to said board of public works or its authorized agent, and the same may thereupon be leased to any person or persons, or corporation upon the same conditions as herein provided for in other cases. [85 v. 127; 86 v. 272; 94 v. 346.]

Lease shall be filed with board of public works, see G. C. § 429.

When and for what purpose action may be brought.

SEC. **13969** (218-229 Bates.) That if said commission shall find that any person, or persons, or corporation is unlawfully in possession, use, or occupation of any land belonging to the state of Ohio, or is unlawfully claiming an estate, or interest therein, adverse to the state of Ohio, or has taken, carried away, or in any manner injured the whole or any part of any canal lock, or weigh lock, culvert, aqueduct, or canal bridge, or any of the abutments thereof belonging to said state, or any of the materials used in the construction of any such lock, culvert, aqueduct, or canal bridge, or any of the abutments thereof belonging to said state, it shall direct the attorney general, and it is hereby made his duty, to bring a civil action or civil actions to recover the possession of such lands, or damages for the property so taken, carried away, or injured, or such other action or actions as he may consider appropriate, and any person or persons who may have advised or unlawfully aided any other person or persons to injure said property or take it or carry it away, may in every such action be made a co-defendant with the person or corporation who so took, injured, or carried away said property, and such a joint or several judgment may be had therein against him in such action as may be right and proper therein. And any suit or suits authorized to be brought by this act may

be commenced and prosecuted in the county where such property is situated, or in Franklin county, as he prefers. [95 v. 484; 90 v. 328; 87 v. 220; 86 v. 272; 85 v. 127.]

As to penalty for injuring a canal, see G. C. § 12505.

The board of public works of the state is not authorized by law to grant to a railroad corporation the right to lay its track and to maintain and operate a railroad on and along the berme bank of a navigable canal belonging to the state: State, ex rel., v. Railway Co., 37 O. S. 157.

**SEC. 13970** (218-230 Bates). The commission appointed under the provisions of this act, the board of public works, and the chief engineer of the public works, under such rules, regulations and conditions, as to semi-annual payment of rent, or otherwise, may lease to any person or persons, or to any corporation organized under the laws of this state, the right to lay one or more lines of pipe along the berme bank and along the outer slope of the towing path embankment of any canal, basin, or reservoir of any of the canals of this state, for the purpose of transporting oil or gas from the natural oil or gas-fields for fuel, lighting and other purposes, the valuation on said land for laying and maintaining a line of pipe shall be made by said commission and the rental shall be six per cent. per annum, payable semi-annually, in advance, upon the amount of said valuation. The said commission, the board of public works and the chief engineer of the public works may also lease to any person, natural or artificial, for the following purposes, any tract of land or part thereof, owned by this state, and the berme bank and [the] outer slope of the towing path embankment along any of the canals, basins and reservoirs and the land within any of said basins and reservoirs owned by this state, for the purpose of drilling therein for oil, and gas to be conveyed or transported therefrom. Such lease to be granted for a period not exceeding ten years, with the full power to contract and determine as to the conditions, terms, and the amount the state shall receive for the purposes specified in such lease or leases, and the lease therefor shall be prepared as in other cases. But no lessee, lessees, or his or their assigns or assignees, shall have any power to fill up any part of the land so leased, or in any manner to obstruct navigation therein, or permit oil to escape into the water of any canal, basin or reservoir, and no such lease shall be granted or given unless in the opinion of said commission, the board of public works and the chief engineer of the public works, the use of the land so leased would not materially injure or interfere with the navigation of any of the canals of this state. Upon the filing of each application for lease of any state land, under the provisions of this act, notice thereof shall be immediately posted by the commission in its office. [85 v. 127; 86 v. 272; 94 v. 346.]

For what purposes lands may be leased.

**SEC. 13971** (218-231 Bates). Any land or lands belonging to the state of Ohio, near or remote from the line of any canal in this state, that cannot be leased so as to yield six per cent. on the valuation thereof, as determined by said commission, may be sold by said commission at not less than three-fourths of such valuation, upon such terms of payment as may

When land may be sold; terms, etc.

be fixed by the commissioners of the sinking fund, and such land shall be offered for sale at public vendue, at the court-house in the county where the same is situated, after at least thirty days' notice given by publication in two papers of opposite politics of general circulation in such county: provided, however, that said commission, together with the governor and attorney-general of the state of Ohio, shall have power to sell any such land or lands which are appraised at five hundred dollars or less at private sale, at a price not less than the appraised value thereof; the governor to execute deeds to purchasers of any such lands, whether sold at public or private sale; provided, further, that such land or lands shall not be sold or offered for sale unless the said commission, board of public works, and the chief engineer of the board of public works shall have, by a majority vote in joint session, determined that such land or lands are not necessary or required for the use, maintenance, and operation of any of the canals of this state. [85 v. 127; 86 v. 273; 88 v. 507.]

Construing the act of February 4, 1825, in connection with this statute, being in *pari materia*, it is apparent that the title to lands donated and granted in pursuance of the provisions of the act of 1825, was the absolute estate in fee: *Malone v. Toledo*, 34 O. S. 541.

For what purposes lands may be leased.

SEC. 13972 (218-232 Bates). The term of office of the commission appointed by the authority of an act entitled "an act to provide for a commission to establish the boundaries and lines of canals, canal basins, reservoirs, etc., of the state, by an accurate survey by metes and bounds, together with maps and plats of the same, and to define and protect the ownership and titles of the state in and to all lands belonging to, and connected with said canals," passed March 28, 1888, having expired by limitation, and the work assigned to said commission not having been completed, the governor is hereby authorized to appoint by and with advice of the senate, a commission of three persons, not more than two of whom shall belong to the same political party, who shall complete the work prescribed in the above recited act, and the act amendatory thereto passed April 12, 1889, and in the manner therein provided. The term of office of said commission shall be for two years, but any member thereof may be sooner removed by the governor; and the governor is further authorized to fill any vacancy which may occur in the commission. The members of said commission shall give bond and receive the same compensation and allowance for necessary expenses as provided in section 1, of the act to which this is supplementary. [87 v. 219.]

General provisions.

SEC. 13973 (218-233 Bates). The term of office of the commission appointed by the authority of an act entitled "An act supplementary to an act entitled an act to provide for a commission to establish the boundaries and lines of the canals, and canal basins, reservoirs, etc., etc., of the state by an accurate survey by metes and bounds, together with maps and plats of the same, and to define and protect the ownership and titles of the state in and to all lands belonging to and connected with said canals," [passed] April 18th, 1890, having expired by limitation,

and the work assigned to said commission not having been completed, the governor is hereby authorized to appoint, by and with the advice and consent of the senate, two canal commissioners who shall complete, in the manner therein provided, the work prescribed in the act entitled "An act to provide for a commission to establish the boundaries and lines of canals, canal basins, reservoirs, etc., etc., of the state by an accurate survey by metes and bounds, together with maps and plats of the same, and to define and protect the ownership and titles of the state in and to all lands belong to and connected with said canals," passed March 28th, 1888 (O. L. vol. 85, p. 127), and the act amendatory thereof, passed April 12, 1889 (O. L. vol. 86, p. 270), and the act supplementary thereto (to which this act is supplementary), passed April 18th, 1890 (O. L. vol. 87, p. 219), and the act amendatory of the act of April 12th, 1889, above named, passed May 1st, 1891 (O. L. vol. 88, p. 507), and the act enlarging the duties of the canal commission, passed April 23d, 1891 (O. L. vol. 88, p. 338), and any other acts amendatory of or supplementary to the above named acts, and for such purpose the canal commissioners created by this act shall exercise the powers and perform the duties conferred and imposed upon the canal commission, or any member thereof, by the above named acts, or either of them, or by any existing law. The term of office of such canal commissioners shall be two years, unless sooner removed by the governor, who is authorized to fill any vacancy occurring in the office. The said canal commissioners, after appointment, shall take an oath of office and give bond in the sum of ten thousand dollars, conditioned for the faithful discharge of his duties, and shall receive the sum of fifteen hundred dollars per annum, and necessary expenses in the prosecution of his duties, to be paid as the compensation and expenses of the canal commission, of which such canal commissioners will be the successors, as now require by law to be paid. [89 v. 376.]

SEC. 13974 (218-234 Bates.) There is hereby appropriated out of any moneys in the treasury to the credit of the general revenue fund not otherwise appropriated, for expenses of the canal commissioners, seven thousand two hundred and sixty dollars (\$7,260.00), and for salary of the canal commissioners, three thousand dollars. [89 v. 376.]

Appropriations.

SEC. 13975 (218-235 Bates.) The term of office of the commission appointed by the authority of an act entitled "An act supplementary to an act entitled 'an act to provide for a commission to establish the boundaries and lines of the canals and canal basins, reservoirs, etc., etc., of the state by an accurate survey by metes and bounds, together with maps and plats of the same, and to define and protect the ownership and titles of the state in and to all lands belonging to and connected with said canals,'" passed April 18, 1892, having expired by limitation, and the work assigned to said commission not having been completed, the governor is hereby authorized to appoint, by and with the advice and consent of the senate, two canal commissioners, who shall complete, in the manner therein provided, the work prescribed in the act entitled "An act to provide for a

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commission to establish the boundaries and lines of canals, canal basins, reservoirs, etc., etc., of the state by an accurate survey by metes and bounds, together with maps and plats of the same, and to define and protect the ownership and titles of the state in and to all lands belonging to and connected with said canals," passed March 28, 1888 (O. L., vol. 85, p. 127), and the act amendatory thereof, passed April 12, 1889 (O. L., vol. 86, p. 270), and the act supplementary thereto (to which this act is supplementary), passed April 18, 1890 (O. L. vol. 87, p. 219), and the act amendatory of the act of April 12, 1889, above named, passed May 1, 1891 (O. L., vol. 88, p. 507), and the act enlarging the duties of the canal commission, passed April 23, 1891 (O. L., vol. 88, p. 338), and any other acts amendatory of or supplementary to the above named acts, and for such purposes the canal commissioners created by this act shall exercise the powers and perform the duties conferred and imposed upon the canal commission, or any member thereof, by the above named acts, or either of them, or by any existing law. The term of office of such canal commissioners shall be two years, unless sooner removed by the governor, who is authorized to fill any vacancy occurring in the office. The said canal commissioners, after appointment, shall take an oath of office and give bond in the sum of ten thousand dollars, conditioned for the faithful discharge of his duties, and shall receive the sum of fifteen hundred dollars per annum and necessary expenses in the prosecution of his duties, to be paid as the compensation and expenses of the canal commission, of which such canal commissioners will be the successors, as now required by law to be paid. [91 v. 55.]

Powers of canal commissioners conferred on board of public works: G. C. § 464, et seq.

The owner of property appropriated for canal purposes is entitled to compensation provided he made application therefor within one year after the taking: *Weisenberger v. Miller*, 7 O. C. C. 173, 3 O. C. D. 714 [affirmed, without opinion, on the ground that the judgment of the circuit court was in part on the weight of the evidence, *Miller v. Weisenberger*, 55 O. S. 660].

General provisions.

SEC. 13976 (218-236 Bates). The term of office of the commission appointed by the authority of an act entitled "An act supplementary to an act entitled 'an act to provide for a commission to establish the boundaries and lines of the canals, and canal basins, reservoirs, etc., etc., of the state by an accurate survey by metes and bounds, together with maps and plats of the same, and to define and protect the ownership and titles of the state in and to all lands belonging to and connected with said canals,'" passed March 13, 1894, having expired by limitation, and the work assigned to said commission not having been completed, the governor is hereby authorized to appoint by and with the advice and consent of the senate, two canal commissioners, who shall complete, in the manner therein provided, the work prescribed in the act entitled "An act to provide for a commission to establish the boundaries and lines of canals, canal basins, reservoirs, etc., etc., of the state by an accurate survey by metes and bounds, together with maps and plats of the same, and to define and protect the ownership and titles of the state in and to all lands belonging to and connected with said canals," passed March 28, 1888 (O. L., vol. 85, p. 127), and the act amendatory



thereof, passed April 12, 1889 (O. L., vol. 86, p. 270), and the act supplementary thereto (to which this act is supplementary), passed April 18, 1890 (O. L., vol. 87, p. 219), and the act amendatory of the act of April 12, 1889, above named, passed May 1, 1891 (O. L., vol. 88, p. 507), and the act enlarging the duties of the canal commission, passed April 23, 1891 (O. L., vol. 88, p. 338), and any other acts amendatory of or supplementary to the above named acts, and for such purposes the canal commissioners created by this act shall exercise the powers and perform the duties conferred and imposed upon the canal commission, or any member thereof, by the above named acts, or either of them, or by any existing law. The term of office of such canal commissioners shall be two years, unless sooner removed by the governor, who is authorized to fill any vacancy occurring in the office. The said canal commissioners, after appointment, shall each take an oath of office and give bond in the sum of ten thousand dollars, conditional for the faithful discharge of his duties, and shall each receive the sum of fifteen hundred dollars per annum and necessary expenses in the prosecution of his duties, to be paid as the compensation and expenses of the canal commission, of which such canal commissioners will be the successors, as now required by law to be paid. [92 v. 95.]

SEC. 13977 (218-236a Bates.) The term of office of the commission appointed by the authority of an act entitled "An act supplementary to an act entitled 'An act to provide for a commission to establish the boundaries and lines of the canals, canal basins, reservoirs, etc., of the state by an accurate survey by metes and bounds, together with maps and plats of the same, and to define and protect the ownership and titles of the state in and to all lands belonging to and connected with said canals,'" passed March 30, 1896, having expired by limitation, and the work assigned to said commission not having been completed, the governor is hereby authorized to appoint by and with the advice and consent of the senate, two canal commissioners, who shall complete, in the manner therein provided, the work prescribed in the act entitled "An act to provide for a commission to establish the boundaries and lines of canals, canal basins, reservoirs, etc., of the state by an accurate survey by metes and bounds, together with maps and plats of the same, and to define and protect the ownership and titles of the state in and to all lands belonging to and connected with said canals," passed March 28, 1888, (O. L., vol. 85, page 127), and the act amendatory thereof, passed April 12, 1889 (O. L., vol. 86, page 270), and the act supplementary thereto (to which this act is supplementary), passed April 18, 1890 (O. L., vol. 87, page 219), and the act amendatory of the act of April 12, 1889, above named, passed May 1, 1891 (O. L., vol. 88, page 507), and the act enlarging the duties of the canal commission, passed April 23, 1891 (O. L., vol. 88, page 338), and any other act amendatory of or supplementary to the above named acts, and for such purposes the canal commissioners created by this act shall exercise the powers and perform the duties conferred and imposed upon the canal commission, or any member thereof, by the above named acts, or either of them, or by any existing law. The term

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commissioners;  
general  
provisions.

of office of such canal commissioners shall be two years, unless sooner removed by the governor, who is authorized to fill any vacancy occurring in the office. The said canal commissioners, after appointment, shall each take an oath of office and give bond in the sum of ten thousand dollars, conditional for the faithful discharge of his duties, and shall each receive the sum of fifteen hundred dollars per annum and necessary expenses in the prosecution of his duties, to be paid as the compensation and expenses of the canal commission, of which such canal commissioners will be the successors, as now required by law to be paid. [93 v. 300.]

Canal commissioners;  
appointment.

SEC. 13978 (218-236b Bates). That the term of office of the commission appointed by the authority of an act entitled "An act supplementary to an act entitled 'An act to provide for a commission to establish the boundaries and lines of the canals, canal basins, reservoirs, etc., of the state by an accurate survey by metes and bounds, together with maps and plats of the same, and to define and protect the ownership and titles of the state in and to all lands belonging to and connected with said canals,'" passed April 26, 1898, having expired by limitation, and the work assigned to said commission not having been completed, the governor is hereby authorized to appoint by and with the advice and consent of the senate, two canal commissioners, who shall complete, in the manner therein provided, the work prescribed in the act entitled "An act to provide for a commission to establish the boundaries and lines of canals, canal basins, reservoirs, etc., of the state by an accurate survey by metes and bounds, together with maps and plats of the same, and to define and protect the ownership and titles of the state in and to all lands belonging to and connected with said canals," passed March 28, 1888 (O. L., vol. 85, page 127), and the act amendatory thereof, passed April 12, 1889, (O. L., vol. 86, page 270), and the act supplementary thereto (to which this act is supplementary), passed April 18, 1890 (O. L., vol. 87, page 219), and the act amendatory of the act of April 12, 1889, above named, passed May 1, 1891 (O. L., vol. 88, page 507), and the act enlarging the duties of the canal commission, passed April 23, 1891 (O. L., vol. 88, page 338), and any other act amendatory of or supplementary to the above-named acts, and for such purposes the canal commissioners created by this act shall exercise the powers and perform the duties conferred and imposed upon the canal commission, or any member thereof, by the above-named acts, or either of them, or by any existing law. The term of office of such canal commissioners shall be two years, unless sooner removed by the governor, who is authorized to fill any vacancy occurring in the office. The said canal commissioners, after appointment, shall each take an oath of office and give bond in the sum of ten thousand dollars, conditional for the faithful discharge of his duties, and shall each receive the sum of fifteen hundred dollars per annum and necessary expenses in the prosecution of his duties, to be paid as the compensation and expenses of the canal commission, of which such canal commissioners will be the successors, as now required by law to be paid. [94 v. 298.]

SEC. **13979** (218-236c Bates.) That the governor be and he is hereby authorized to appoint by and with the advice and consent of the senate, two canal commissioners, who shall complete, in the manner therein provided, the work prescribed in sections 218-221 to 218-231 inclusive, [G. C. §§ 13961, 13962, 13963, 13964, 13965, 13966, 13967, 13968, 13969, 13970, and 13971] and the sections supplemental thereto, of the Revised Statutes of Ohio, and for such purposes the canal commissioners created by this act shall exercise the powers and perform the duties conferred and imposed upon the canal commission, or any member thereof, by the above named sections, or either of them, or by any existing law. The term of office of such canal commissioners shall be two years, unless sooner removed by the governor, who is authorized to fill any vacancy occurring in the office. The said canal commissioners, after appointment, shall each take an oath of office and give bond in the sum of ten thousand dollars, conditioned for the faithful discharge of his duties, and shall each receive the sum of fifteen hundred dollars per annum and necessary expenses in the prosecution of his duties, to be paid as a compensation and expenses of the canal commission, of which such canal commissioners shall be the successors, as now required by law to be paid. [95 v. 271, April 25, 1902.]

Canal commissioners; appointment; duties, term, etc.

SEC. **13980** (218-236d Bates.) That the governor be and he is hereby authorized to appoint by and with the advice and consent of the senate, two canal commissioners, who shall complete, in the manner therein provided, the work of the canal commission prescribed by the statutes of Ohio, and for such purposes the canal commissioners created by this act shall exercise the powers and perform the duties conferred and imposed upon the canal commission, or any member thereof, by any existing law. The term of office of such canal commissioners shall be two years, unless sooner removed by the governor, who is authorized to fill any vacancy occurring in the office. The said canal commissioners, after appointment, shall each take an oath of office and give bond in the sum of ten thousand dollars, conditioned for the faithful discharge of his duties, and shall each receive the sum of fifteen hundred dollars per annum and necessary expenses in the prosecution of his duties, to be paid as a compensation and expense of the canal commission, of which such canal commissioners shall be the successors, as now required by law to be paid. [97 v. 184.]

Canal commissioners; appointment; powers and duties.

SEC. **13981** (218-237 Bates.) The canal commission be and they are hereby authorized and required to collect together all memoranda, papers, documents, reports, maps, plats and records, now in the office of the governor of the state, secretary of state, auditor of state, board of public works and canal commission in any wise appertaining to the title to any real estate that formerly belonged to the state, or is now owned or claimed by the state, either by cession from the United States for canal purposes or by purchase or appropriation by the state for said purpose under the laws of the state. [88 v. 338.]

Canal commission required to collect documents pertaining to title of state in land.

Such documents  
must be re-  
corded and  
preserved.

SEC. 13982 (218-238 Bates.) When so collected together said papers, plats, etc., shall be carefully recorded in books to be furnished for that purpose in chronological order, as near as may be, and a full and complete index thereof made showing the references to all such real estate by counties, townships and ranges, and in such other manner as will clearly and definitely identify the same. Said original papers, plats, etc., shall be carefully preserved in suitable wrappers or file boxes properly marked, indorsed and filed away in the office of the board of public works; and land department of the auditor of state's office, and upon any trial in any of the courts of this state a certified copy of any of said papers, records, plats, etc., duly certified to by the president or secretary of the board of public works or the auditor of state, which may in any manner relate to or have any bearing upon the subject matter at issue shall be taken and held to be prima facie evidence of said records, plats, papers, etc. [88. v. 338.]

Clerk.

SEC. 13983 (218-239 Bates.) For the purposes aforesaid said canal commission are hereby authorized and required to employ some suitable competent person at a compensation not exceeding five dollars per day for the time actually employed; but the total expense of said collecting and abstracting shall not exceed the sum of one thousand dollars. Said canal commission shall provide for said clerk all necessary desk room, stationery, etc., in the offices aforesaid to enable him to properly discharge his duties, all of said work to be done and performed under the direction and supervision of said canal commission. And said work shall be completed before the first day of January, 1892. [88 v. 338.]

Records to be  
made where  
land situated.

SEC. 13984 (218-240 Bates). As soon as said papers and records are so collected and gathered together, recorded, filed and indexed as aforesaid, said canal commission shall cause all that portion of said record in any manner affecting the title of said real estate to be carefully transcribed by counties in alphabetical order, and when so transcribed the same shall be duly certified to the recorders of the respective counties, who shall thereupon proceed forthwith to record said transcribed records in a book to be provided for that purpose, for which service they shall receive the same compensation as provided by law for similar services out of the funds appropriated for the expenses of the canal commission. All requests to the board of public works for a certified copy of any records shall be accompanied by a fee, such as is allowed in other like cases, and all such fees shall be turned into the state treasury. [88 v. 338.]

Enlarging  
powers, etc.

SEC. 13985 (218-241 Bates.) The canal commission be and they are hereby authorized and required to collect together all memoranda, papers, documents, reports, maps, plats and records now in the office of the governor of the state, secretary of state, auditor of state, board of public works and canal commission, in any wise appertaining to the title to any real estate that formerly belonged to the state, or is now owned or claimed by the

state, either by cession from the United States for canal purposes or by purchase or appropriation by the state for said purpose under the laws of the state. [91 v. 305.]

SEC. **13986** (218-242 Bates.) When so collected together, said papers, plats, etc., shall be carefully recorded in books to be furnished for that purpose in chronological order, as near as may be, and a full and complete index thereof made, showing the references to all such real estate by counties, townships and ranges, and in such other manner as will clearly and definitely identify the same. Said original papers, plats, etc., shall be carefully preserved in suitable wrappers or file-boxes properly marked, indorsed and filed away in the office of the board of public works and land department of the auditor of state's office, and upon any trial in any of the courts of this state a certified copy of any of said papers, records, plats, etc., duly certified to by the president or secretary of the board of public works or the auditor of state, which may in any manner relate to or have any bearing upon the subject matter at issue, shall be taken and held to be prima facie evidence of said records, plats, papers, etc. [91 v. 305]

Plats, etc., relating to title to property to be filed and preserved.

SEC. **13987** (218-243 Bates.) For the purposes aforesaid, said canal commission are hereby authorized and required to employ some suitable, competent person at a compensation not exceeding five dollars per day for the time actually employed; but the total expense of said collecting and abstracting shall not exceed the sum of one thousand dollars. Said canal commission shall provide for said clerk all necessary desk-room, stationery, etc., in the offices aforesaid, to enable him to properly discharge his duties, all of said work to be done and performed under the direction and supervision of said canal commission. And said work shall be completed before the first day of January, 1896. [91 v. 305.]

Clerk of commission.

SEC. **13988** (218-244 Bates.) As soon as said papers and records are so collected and gathered together, recorded, filed and indexed as aforesaid, said canal commission shall cause all that portion of said record, in any manner affecting the title of said real estate, to be carefully copied by counties in alphabetical order, and when so copied the same shall be duly certified to the recorders of the respective counties, who shall thereupon proceed forthwith to record and index said copied records in like manner as other deeds and evidences of title, for which service they shall receive the same compensation as provided by law for similar services out of the funds appropriated for said purpose to the canal commission; and there is hereby appropriated the sum of two thousand dollars (\$2,000), or so much thereof as will be necessary to complete said records and pay for recording the same in the respective counties as aforesaid, out of any money paid into the state treasury by said canal commission from the sale or lease of lands belonging to the state of Ohio; and no part of said sum hereby appropriated shall be used for any other purpose except as herein provided, and all requests to the board of public works for a certified copy of any records shall

Documents to be recorded where land situated; recorder's fees; appropriation.

be accompanied by a fee, such as is allowed in other like cases, and all such fees shall be turned into the state treasury. [91 v. 305.]

### W. R. & M. STATE ROAD.

#### AN ACT

To provide for the transfer of the custody and control of the Western Reserve and Maumee State Road, in trust, to the counties through which said road is located. (65 v. 36.)

W. R. & M.  
road withdrawn  
from re-lease, etc.

SEC. 13989. Sec. 1. *Be it enacted by the General Assembly of the State of Ohio*, That the Western Reserve and Maumee state road be and hereby is withdrawn from the operation and effect of the joint resolution of the general assembly, passed April 11, 1867, directing the extension of the lease of the public works of the state of Ohio, in accordance with the reservations and provisions contained in said resolution; on condition, however, that such withdrawal shall not take effect unless the said road is accepted by the county commissioners as hereinafter required.

For state roads, see G. C. § 6829, et seq.

When road  
shall be trans-  
ferred to  
Sandusky and  
Wood counties.

SEC. 13990. Sec. 2. That whenever and as soon as the county commissioners of the counties of Sandusky and Wood shall officially accept, and deposit a certificate to that effect with the secretary of state of the state of Ohio, the Western reserve and Maumee state road shall be thereby transferred, in trust, to said counties, from and after the first day of June, A. D. 1871; provided such acceptance shall be filed on or before the first day of March, A. D. 1871.

Powers of board  
of public works  
transferred to  
county  
commissioners.

SEC. 13991. Sec. 3. That all the authority, powers and control which is now, or was vested in the board of public works under the laws of this state prior to the leasing of said public works, having reference and applicable to said road, shall be vested in the county commissioners of the respective counties, on filing the acceptance aforesaid; and the county commissioners of each county with which any part of said road is situated; shall respectively have the control and management of such portion of said road as is within their respective counties.

Commissioners  
required to take  
charge of road.

SEC. 13992. Sec. 4. That after the filing of the acceptance aforesaid, the county commissioners of the several counties of Wood and Sandusky are hereby authorized and required to take charge of, and manage, and repair, and control so much of said road separately as lies within their respective counties, from time to time to determine and prescribe the rates of toll necessary to keep said road in proper repair, to determine the number and location of toll gates, and appoint the necessary number of gate keepers in their respective counties, and prescribe the duties and compensation of such.

Duty of county  
auditors and  
treasurers.

SEC. 13993. Sec. 5. The county auditor and county treasurer of the said several counties, respectively, are hereby required, on the acceptance of said road and custody thereof taken as aforesaid, to open and keep a separate account, to be

designated the Western Reserve and Maumee road fund. The respective gate keepers on said road shall, at the expiration of every month, and at such other times as may be ordered by the respective county commissioners, make out and file with the county auditor of the county in which his or her gate may be situated, a sworn statement of all the tolls collected by him or her during said month or other period ordered, and on certificate of the auditor shall pay all moneys so collected into the county treasury, take duplicate receipts therefor, and file one of said receipts with the county auditor.

SEC. 13994. Sec. 6. That all tolls collected on said road shall be under the direction and control of the respective county commissioners wherein collected, and be by them expended for the repair or improvement of said road, and for no other purpose.

Tolls.

SEC. 13995. Sec. 7. The present lessees of the public works of Ohio, are hereby authorized to transfer and assign the unexpired term of the original lease of the said Western Reserve and Maumee state road to the county commissioners of Sandusky and Wood counties, on such terms as said lessees and said county commissioners may agree, without impairing or violating any of the rights or obligations of said lessees in any respect, except the obligation in relation to said road; nor shall the release or assignment, if made by lessees, of the unexpired term of the lease terminating June 1, 1871, of said road, release said lessees from any obligation or liability for rent or any other obligation provided for in said lease.

Lessees may transfer to county commissioners.

SEC. 13996. Sec. 8. The county commissioners of said counties of Sandusky and Wood, are hereby authorized and empowered to accept the transfer from the lessees of the public works of Ohio, the unexpired term of the original lease of the Western Reserve and Maumee state road; and if said transfer shall be made, the said county commissioners shall control and manage as is provided in this act for the management and control thereof after June 1, 1871.

Commissioners may accept transfer, etc.

## CHAPTER 9.

### THE CANALS.

#### SECTION

18997. Leading, driving, etc., animal along the towpath or bank of canal.  
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14087. Or presenting an incorrect list.  
14088. Who considered passengers.  
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## THE CANALS.

## SECTION

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 14113. To print and distribute them.  
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## OHIO CANAL.

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- [14203-1.] Akron City permitted to occupy and use certain waters and lands of the state.
- [14203-2.] Storage rights; arbitrators; money to credit of general revenue fund.
- [14203-3.] Grant by governor.
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- [14203-5. Notification.]
- [14203-6.] Portion of Ohio canal abandoned.
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- [14203-12.] Portions of Ohio canal abandoned.
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## WALHONDING CANAL.

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14208. Granting of right to the Toledo, Walhonding Valley and Ohio railroad company.
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14210. Abandonment of portion of Walhonding canal, etc.
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## THE "ELECTRIC MULE".

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14217. State not responsible for expense of experimenting; approval of contracts.
14218. Ohio canals; policy of state as to retention and maintenance thereof.
14219. Canal boats to be purchased by state if canals are abandoned.

See board of public works: G. C. § 404, et seq.

For powers of canal commission conferred on board of public works, see G. C. § 464.

For improvement and reconstruction, see G. C. § 423.

As to taxation of canal navigation companies, see G. C. § 5404.

For deductions by assessor of the land used by a canal, see G. C. § 5561.

For rents accruing on leases of water power to be first lien upon estates, see G. C. § 433.

For lien on public works, see G. C. § 8376, et seq.

As to county building bridges on roads crossing canals, see G. C. §§ 2421 and 7555.

For bridging canals by railroads, see G. C. § 8775, et seq.

For regulation of railroad competition, see G. C. § 8981.

As to stealing water from the state, see G. C. § 12461.

As to penalty for digging near canals, building dams across streams connected with canals, injuring property, see G. C. §§ 12501 to 12506.

As to penalty for putting dead animals in canals, see G. C. §§ 12649 and 12783.

For penalty of canal collector using public money, see G. C. § 12885.

For false bill of lading on canal boats, see G. C. § 13116.

For power of municipalities to extend a canal, see G. C. § 3623.

For ship-canal companies, see G. C. § 9199, et seq.

Leading, driving, etc., animal along the tow-path or bank of canal.

SEC. 13997 (218-70 Bates.) Every person who shall lead, drive, or ride any horse, ox or ass, mule or other animal upon the towing-path, or the bank opposite the towing-path of any canal authorized by the laws of this state, except for the purpose of towing boats or other floating things upon the waters thereof, and except for the purpose of conveying articles to and from said canals, in order to their transportation on the waters of the same, or their delivery at their place of destination, or ex-

cept upon such conditions as may be prescribed by the board of public works, shall forfeit for every such offense the sum of five dollars, and pay all damages consequent upon such offense over and above the said forfeiture. [1881, April 19; 78 v. 219; Rev. Stat. 1880; 38 v. 87.]

This section was intended to prevent persons from traveling on the banks of the canal, without regard to its safety, except in certain specified cases and in cases of urgent necessity: *White v. State*, 14 O. 468.

**SEC. 13998** (218-71 Bates.) If any boat or other floating thing shall be so moored in any of the canals as to obstruct the navigation thereof, or if any person or persons shall obstruct the navigation of any of the said canals, by means of the loading, unloading, misplacing, or otherwise misconducting any boat or other floating thing, and shall not, immediately upon being required by any commissioner, engineer, superintendent or agent employed on said canals, or by any person incommoded by such obstruction, to remove the same, the boatman, or person who caused said obstruction, shall forfeit for every such offense, the sum of twenty-five dollars, over and above the expense of removing said obstruction. [38 v. 87.]

For obstructing  
the navigation.

**SEC. 13999** (218-72 Bates.) If any person or persons shall obstruct the navigation of either of said canals, by sinking any vessel, timber, stone, earth, or other thing or things, to the bottom of either of said canals, or by placing any obstruction on the towing path thereof, or on the bank opposite the towing path thereof, such person or persons shall forfeit, for every such offense, the sum of twenty-five dollars, over and above the expense of removing said obstruction. [38 v. 87.]

For obstructing  
the towing path.

**SEC. 14000** (218-75 Bates.) If any person or persons shall wantonly or unnecessarily open or shut, or cause to be opened or shut, any lock gate, or any paddle or culvert gate thereof, or any waste gate, or drive any nails, spikes, pins, or wedges, into either of said gates, or take any other mode of preventing the perfect and free use of either of said gates, or shall wantonly and maliciously break, throw down or destroy any bridge on either of the said canals, such person or persons shall, for every such offense, forfeit a sum not exceeding fifty, and not less than ten dollars, and pay all damages consequent upon such offense, over and above the said forfeiture. [38 v. 87.]

Obstructing free  
use or injuring  
gates and  
destroying  
bridges.

**SEC. 14001** (218-76 Bates.) All materials that shall have been procured by any contractor for the construction or repair of any part of said canals, or any works therewith connected, shall, from the time they are prepared for transportation to the place where they are to be used, be subject to the lien of the state for all moneys that may have been, or shall be advanced by the state during the performance of said contract, and for all damages that may be sustained in consequence of the non-performance thereof; and no sale by the said contractor, or under an execution, issued upon any judgment or decree, shall in any wise affect said lien. [38 v. 87.]

The lien of the  
state on materials  
furnished by  
contractors.

Taking water  
from the canals.

SEC. 14002 (218-79 Bates). No person shall construct any wharf, basin, or watering-place on, or make or apply any device whatever for the purpose of taking water from, either of the said canals, without first obtaining permission therefor, of one of the acting commissioners, or of the principal engineer of the canal, where such wharf, basin, watering-place or device, as aforesaid, is desired, in writing; and if any person shall offend against this section, by attempting to make any such construction, or apply such device without permission, or shall not conform to the directions of the acting commissioner or engineer, who may give such permission, in respect to the location and size of such wharf, basin, watering-place or device, as aforesaid, such person shall, for every such offense, forfeit the sum of twenty-five dollars; and the said acting commissioner or engineer shall be authorized at the expense of the person thus attempting to remove and destroy every such wharf, basin, watering-place or device, as aforesaid. [38 v. 87.]

Proceedings  
when a road is  
occupied by the  
canal.

SEC. 14003 (218-80 Bates). In all cases in which it shall be deemed necessary by the principal engineer, or acting commissioner, in laying out the line of any canal, authorized by the laws of this state, or any work connected therewith, to discontinue or alter any public road or highway, such engineer or acting commissioner shall be authorized to make such discontinuance or alteration, and upon his drawing up a plat, with a true description, in writing and figures, of all such parts of any public road or highway, as he may discontinue or new lay, on the account aforesaid, and filing the same in the office of the auditor of the county, in which such discontinuance or alteration may be situated, the same shall be lawful; and the new laid road, as described in said plat, shall be deemed a public highway, and of the same width of the road so discontinued or altered, and shall be entered on the record of roads, by the county auditor, as such: provided, however, that the board of public works shall, before they obstruct the passage of any part of a highway, now legally established, open and reasonably work, in order to render it passable, such part of said highway as may be new laid by such engineer or acting commissioners as aforesaid; and the certificate of said engineer or acting commissioner, in writing, that the part of any highway new laid, as aforesaid, is opened and reasonably worked, as aforesaid, by said commissioners, shall be sufficient for their justification; and that every alteration heretofore made by any engineer, or acting commissioners, in any public road or highway, on either of the said canals, shall, from the time of such alteration, be deemed lawful to all intents and purposes. [38 v. 87.]

In case of conflicting public use between a canal and a public highway, the public canal was regarded as of paramount use. In like manner in case of conflicting public use between a canal and a railway, the canal was regarded as of paramount use: State, ex rel., v. Railway Co., 37 O. S. 157.

County to build  
and keep up  
bridges; penalty  
for constructing  
bridge.

SEC. 14004 (218-81 Bates). In all cases where a new road or public highway is laid out by legal authority, in such direction as to cross the line of any canal or navigable feeder, authorized by the laws of this state, after the line of such canal

or navigable feeder is permanently located and established, and in such manner as to require the erection of a new bridge over such canal or feeder, for the accommodation of said road, such bridge shall be constructed and forever maintained at the expense of the county in which such bridge is situated: provided, however, that no bridge shall be constructed across either of said canals or navigable feeders, without first obtaining for the model and location thereof, the consent, in writing, of one of the acting commissioners, or the principal engineer of the canal to be intersected by said road; and if any person or persons shall undertake to construct or locate such bridge, without such consent, and shall proceed therein, so far as to place any materials for that purpose on either bank of the canal, or on the bottom thereof, he or they shall be subject to a penalty of fifty dollars for such undertaking; and either of said commissioners or engineer shall be authorized to remove all such materials, so soon as they are discovered, wholly without the banks of the canal. [38 v. 87.]

**SEC. 14005** (218-82 Bates). Any acting commissioner, engineer or superintendent, duly appointed, shall have full power and authority, at any time, to cause the water to be drawn off, either wholly or partially, from any level or levels, of either of the canals, which may be under the charge of such acting commissioner, engineer or superintendent, and to cause the water to remain wholly or partially drawn off during such time as he may deem necessary, for the purpose of repairing or preventing any breach or breaches, or removing any bar or other obstruction to navigation; or for the purpose of making, repairing or improving any work or device, or part of any work or device appertaining to, or connected with any such part of the canals; and for the purpose of so drawing off the water, or causing the same to remain drawn off, as aforesaid, to open or close any lock gate, culvert gate, paddle gate, feeder gate or waste gate, or to cut or make an opening, gap or aperture, in any bank, and to cause the said gates or apertures to remain open or shut as aforesaid, so long as the same shall, in the opinion of such person, be necessary for any of the aforesaid purposes: provided, however, that every engineer or superintendent shall, in the exercise of the authority hereby granted, be subject to the orders and instructions of the acting commissioner, or any engineer of superior grade, having charge of the part of the canal affected, or liable to be affected by the exercise of said authority. [38 v. 87.]

Drawing off the water from the canals.

**SEC. 14006** (218-83 Bates). If any person, except a commissioner, engineer, or superintendent, shall, under any pretense, or for any purpose whatever, open any gate which shall have been shut, or shut any gate which shall have been opened, as specified in the preceding section, without the express direction of the acting commissioner, engineer, or superintendent who shall at that time have charge of that part of the canal, or shall in any way interfere in raising or drawing down the water on any level of either of the canals, contrary to the directions or orders of the acting commissioner, engineer, superintendent, or lock-tender having charge of any lock, or part of the canal liable to be affected by such interference, every person so offending

Same.

shall, for every such offense, forfeit and pay the sum of twenty-five dollars, and moreover be liable for all damages consequent upon any such opening or shutting of any gate, or interference. [38 v. 87.]

Right to use  
water power.

SEC. 14007 (218-84 Bates). No person or persons shall draw water from either of the canals of this state, for the use of mills or machinery of any kind, nor for any purpose whatever; nor shall any person or persons use any water power which shall have been created by the construction of any dam or feeder, made for the purpose of supplying with water either of said canals, or for the purpose of improving the navigation of any river or stream; nor shall any person use, for any hydraulic purpose, any water conducted round any lock on either of said canals, or in any manner obstruct or interfere with the water in its passage round any lock, unless such person or persons shall, in each case, have purchased from the commissioners the right to use such water or hydraulic power; and unless such person shall, moreover, comply with all the conditions which shall have been attached to the use of such water, in such purchase. [38 v. 87.]

Penalties for  
using.

SEC. 14008 (218-85 Bates). Every person who shall offend against any of the provisions of the preceding sections shall, for every such offense, forfeit and pay the sum of one hundred dollars, to be recovered for the use of the canal fund, by indictment, before any court of competent jurisdiction; and every continuance to use, draw or interfere with the water, as specified in the preceding section, without having first purchased the right to do so, or without having complied with the conditions attached thereto, shall, for each day, be judged a new offense, and shall subject the person so offending to the same penalty hereinbefore specified. [38 v. 87.]

Lease and sale  
of water power,  
and land, etc.

SEC. 14009 (218-86 Bates). Whenever, in the opinion of the board of public works, there shall be surplus water in either of the canals, or in the feeders, or at the dams erected for the purpose of supplying either of said canals with water, or for the purpose of improving the navigation of any river, and constructed at the expense of the state, over and above the quantity of water which may be required for the purpose of navigation, the said commissioners may order such surplus water, and any lands granted to, or purchased by the state, for the purpose of using the same, or such part thereof as they may deem expedient, to be sold for hydraulic purposes, subject to such conditions and reservations as they may consider necessary and proper, either in perpetuity or for a limited number of years, for a certain annual rent, or otherwise, as they may deem most beneficial for the interests of the state. [38 v. 87.]

Cited: *Elevator Co. v. Cincinnati*, 30 O. S. 629; *Emmitt v. Lee*, 50 O. S. 662.

The abandonment of her public canals by the state creates no liability on her part to respond in damages resulting therefrom to parties holding leases of "surplus water;" under the act of March 23, 1840, "to provide for the protection of the canals of the state of Ohio, the regulation of the navigation thereof and the collection of tolls": *Hubbard v. Toledo*, 21 O. S. 379.

F was the lessee of the surplus water of lock No. 8 within the granted section, and owned land adjoining, on which was a factory operated by the power of said lock prior to and until 1855, when the same was destroyed by fire, after which he neither rebuilt nor paid rent, for the nonpayment of which his lease was subject to forfeiture. The state suffered the gates of the lock and the canal to be out of repair, so that for many years prior to the grant to the city there was no water power there, and the canal could not be and was not used for purposes of navigation. The plan of improvement approved by the state did not provide for a restoration of such power. It was held that the state was not required by said lease to repair the lock, or restore the power thereat; nor was it liable in damages for a failure to do so; nor did the act of 1863 impose that duty and liability on the city. The city, by the construction of the highway and sewer according to such plan, is not liable in damages to F, as there was no destruction or injury thereby to "the present supply of water for milling purposes" within the meaning of said act: *Fox v. Cincinnati*, 33 O. S. 492.

Under the act of March 24, 1863 (60 v. 44), the state granted to the city of Cincinnati authority and permission to enter upon, improve and occupy as a public highway and for sewer purposes, a section of one of its canals in said city, between Broadway and the Ohio river, on which there were nine locks for the descent of the water to the river, subject to all outstanding rights and claims, if any, with which such grant might conflict, reserving the revenues derived from water privileges, and on condition that it shall not obstruct the flow of water through said canal, nor destroy or injure the present supply of said water for milling purposes; and providing that no work shall be done by the city until the plan of improvement shall be approved by the board of public works. It was held that the lessees of surplus water at these locks, under the laws of the state, in force in 1836, had no such absolute title or vested interest in the premises, nor any such right or claim, as to conflict with the right of the state, to make such grant, though its effect and the improvement made was to prevent a future supply of surplus water at such locks. This grant, and the construction by the city of a highway and a sewer along the line of the canal, upon a plan of improvement approved by the authorized agents of the state, which rendered it impossible to use the same for the purposes of navigation, was an abandonment thereof for such purposes, and by operation of law was a surrender by the state of its incidental power to sell or lease surplus water on the part so abandoned, not expressly saved by the reservations and conditions of said act as incidental to the reserved right to flow the water from the canal above through to the Ohio river: *Fox v. Cincinnati*, 33 O. S. 492.

Under the provisions of this and the following sections relating to the canals of the state, it is the duty, as well as the right, of the board of public works, to resume the privilege or right to the use of surplus water, leased or sold for hydraulic purposes, or any portion thereof, whenever, at any time, it may be deemed necessary for the purposes of navigation, or whenever its use for hydraulic purposes shall be found in any manner to interfere with and injuriously affect the navigation of the canal, feeder or stream from which such water is taken: *State, ex rel., v. Board of Public Works*, 42 O. S. 607.

The board of public works is not authorized in any manner to surrender, abridge, restrict or limit its power to resume at any time the surplus water leased or sold for hydraulic purposes, whenever it may be deemed necessary for the purpose of navigation, nor to create or impose any burden or obligation upon the state by reason of the exercise of such right of resumption, other than is authorized by the 23d section of said act: *State, ex rel., v. Board of Public Works*, 42 O. S. 607.

The board of public works of the state leased the surplus water of her canals, but reserved the right to resume the use of it when it should be needed for purposes of navigation. A subsequent statute granted one of the canals within the limits so leased to the city of Cincinnati for a highway. It was held that this was not a breach of contract on the part of the state as the lessee was bound to take notice of the right of the legislature to discontinue the canals whenever they deemed expedient: *Fox v. Cincinnati*, 104 U. S. 783, 5 O. F. D. 110.

See appendix, § 14012, and note.

**SEC. 14010** (218-87 Bates). The provisions of the foregoing section shall extend to and include the water passing round the locks, from one level to another, on either of the canals of this state. [38 v. 87.] Same.

Bates, § 218-87.

Cited: *Fox v. Cincinnati*, 104 U. S. 783, 5 O. F. D. 110.

Under the provisions of the act of March 23, 1840 (3 R. S. 417, §§ 20 to 23, inclusive), relating to the canals of the state, it is the duty, as well as the right, of the board of public works, to resume the privilege or right to the use of surplus water leased or sold for hydraulic purposes, or any portion thereof, whenever, at any time, it may be deemed necessary for the purposes of navigation, or whenever its use for hydraulic purposes shall be found in any manner to interfere with and injuriously affect the navigation of the canal, feeder or stream from which such water is taken: *State, ex rel., v. Board of Public Works*, 42 O. S. 607.

Same.

**SEC. 14011** (218-88 Bates). No hydraulic power, nor right to the use of any water, shall be sold, leased, or conveyed, except such as shall accrue from the surplus water of the canal, feeders, or dams, or from the water passing round any lock, after supplying the full quantity necessary for the purposes of navigation. [38 v. 87.]

Cited: *Fox v. Cincinnati*, 104 U. S. 783, 5 O. F. D. 110.

Under the provisions of the act of March 23, 1840 (R. S. 417, §§ 20 to 23, inclusive), relating to the canals of the state, it is the duty, as well as the right, of the board of public works, to resume the privilege or right to the use of surplus water leased or sold for hydraulic purposes, or any portion thereof, whenever, at any time, it may be deemed necessary for the purposes of navigation, or whenever its use for hydraulic purposes shall be found in any manner to interfere with and injuriously affect the navigation of the canal, feeder or stream from which the water is taken: *State, ex rel., v. Board of Public Works*, 42 O. S. 607.

Reservations.

**SEC. 14012** (218-89 Bates). Every lease, grant, or conveyance of water power, shall contain a reservation and condition, that the state, or its authorized agents, may at any time resume the privilege or right to the use of water, or any portion thereof, whenever it may be deemed necessary for the purposes of navigation, or whenever its use for hydraulic purposes shall be found in any manner to interfere with, and injuriously affect the navigation of either of the canals, feeders, or streams from which the water shall be taken for such hydraulic purposes; and whenever such privilege shall be resumed, in whole or in part, the sum paid therefor, or the rent reserved, or such reasonable portion thereof as shall be determined upon, agreeably to the conditions and stipulations of the lease or deed of conveyance aforesaid, shall be refunded, or remitted to the purchaser or lessee, his heirs or assigns. [38 v. 87.]

Referred to: *Hubbard v. Toledo*, 21 O. S. 379.

The leased lands and water power of the state, upon the canals and rivers, are not subject to judgment liens: *Buckingham v. Reeve*, 19 O. 399.

Under appendix G. C. § 14009, et seq., the board of public works is not authorized in any manner to surrender, abridge, restrict or limit its power to resume, at any time, the surplus water leased or sold for hydraulic purposes, whenever it may be deemed necessary for the purposes of navigation, nor to create or impose any burden or obligation upon the state, by reason of the exercise of such right of resumption, other than is authorized by the 23d section of said act: *State, ex rel., v. Board of Public Works*, 42 O. S. 607.

Where a party became the owner of a lease made pursuant to the provisions of this section and a statute was subsequently passed whereby the canal within certain limits was granted to and appropriated by the city of Cincinnati for a highway, it was held that this was not a depriving of the lessee of his property without due process of law, because he was bound to take notice of the state's right to discontinue the canals whenever the legislature deemed it expedient to do so: *Fox v. Cincinnati*, 104 U. S. 783, 5 O. F. D. 110.



SEC. 14013 (218-90 Bates). All moneys received for the rent or sale of any hydraulic power, granted or conveyed under the provisions of this act, shall be paid into the state treasury, and constitute a part of the canal fund; and shall be subject to the same rules and regulations as are prescribed in the sixth section of the act to provide for the internal improvement of the state of Ohio, by navigable canals. [38 v. 87.]

Proceeds of such sales or rents; how to be appropriated.

SEC. 14014 (218-91 Bates). If any boatman, or person employed on board of any canal boat or other craft, on any canal in this state, shall take, without right, any timber, rails, boards, planks, staves, or other property, from the banks or vicinity of any canal, or shall wantonly injure or destroy any property thereon, or in the vicinity thereof, with the knowledge of the master, owner, boatman, navigator, or other person having charge of such boat or craft, the master, owner, boatman, navigator, or other person having charge of such boat or craft, shall forfeit to the owner, treble the value of the property taken, injured or destroyed; and the possession of such property, if taken on board of the boat or craft, shall be presumptive evidence of such taking and knowledge; and when the property is destroyed or injured, proof thereof shall be made as in other cases; and the person or boatman taking, injuring, or destroying such property, shall also forfeit and pay for every such offense, any sum not less than one, nor more than fifty dollars, to be sued for and recovered in an action of debt, in the name of the state of Ohio, before any justice of the peace in this state; and the forfeiture when collected, shall be by such justice paid into the treasury of the township in which suit is commenced, for the use of common schools in such township. [38 v. 87.]

Proceedings against boatmen, etc., for taking or for injuring private property.

SEC. 14015 (218-92 Bates). The forfeiture to the owner of the property, prescribed in the preceding section of this act, against the master, owner, boatman, navigator, or other person having charge of such boat or craft, is declared to be recoverable in an action of debt, instituted in the name of the owner of such property, before any justice of the peace of this state, against the owner, master, boatman, navigator, or other person having charge of such boat or craft, when incurred, and shall be chargeable on such boat or craft, the furniture thereof, or the horses drawing the same, and any constable of this state is authorized to execute the process to him directed in such case, in any county of this state. [38 v. 87.]

How sued.

SEC. 14016 (218-93 Bates). When any suit shall be prosecuted for any penalty or forfeiture, the justice of the peace issuing the process, by a clause to be inserted therein, may direct the officer executing the same to detain such boat or craft, and the furniture, and horses drawing the same, until the suit shall be determined, or until adequate security shall be given for the payment of any judgment that may be recovered: provided, that in all such cases the person instituting suit shall make oath or affirmation before such justice, to the facts upon which such suit is founded, which oath or affirmation, shall be reduced to writing, signed and filed with such justice. [38 v. 87.]

Attachment of boat, etc., for a penalty or forfeiture.

Proceedings  
therein.

SEC. 14017 (218-94 Bates). If such security shall be given by recognizances in writing, as shall be deemed sufficient in amount and solvency, by such justice of the peace, or if the defendant, on the trial, shall prevail, the justice shall order the boat or craft, furniture, and horses, to be released; but if no such security be given, and a judgment shall be recovered for such penalty or forfeiture, and the same, together with all costs, shall not be immediately paid, an execution shall be issued, under which the property so retained may be sold, in like manner as if the judgment had been obtained against the owner thereof: provided, that the officers and witnesses shall be entitled to the same fees as are allowed in other cases, and the case shall be tried or continued, as is provided in case of a *capias*; and provided also, that when the condition of any bond or recognizance, which may be entered into, under the provisions of this act, shall be broken, the same shall be proceeded on as is now provided by law in other cases. [38 v. 87.]

Guard-plate to be  
under keels.

SEC. 14018 (218-95 Bates). Every boat navigating upon either of the canals of this state, shall, by means of a guard or plate of iron, firmly attached to the keel, and extending back under the rudder, or by means of some other permanent device, cover and secure the opening between the keel or stern-post and the rudder, so as effectually to prevent the towing line of any other boat from entering said opening. [38 v. 87.]

Penalty for any  
spikes, nails, etc.,  
projecting from  
boats.

SEC. 14019 (218-96 Bates). It shall be unlawful for any boat, having any bolt, spike, nail, hook, or other instrument, or any end of any wale, plank, timber, board, or pin, projecting from the bottom or side thereof, in such manner as to be liable to injure any other boat, or the towing line thereof, or any work or device appertaining to the canal, to navigate on either of the canals in this state; and every master, owner, or part owner of any boat violating either of the provisions of this or the preceding section, shall, for every such offense, forfeit and pay the sum of ten dollars; and, moreover, be liable for all damages occasioned by such violation. [38 v. 87.]

Boats running  
against lock.

SEC. 14020 (218-97 Bates.) In no case shall the stern or bow of any boat or float, approaching or being about to enter, or having entered any lock, be permitted to run against, or strike the head walls of either of the gates of such lock, wilfully or negligently; and for every violation of either of the provisions of this section, the master of such boat or float shall forfeit and pay the sum of one dollar, and, moreover, be liable for all damages occasioned by such violation. [38 v. 87.]

Disputes about  
places of moor-  
ing, unloading,  
etc.

SEC. 14021 (218-98 Bates.) Whenever any dispute shall arise concerning berths, places of mooring, or of lading, or unloading, of any two or more boats or floats, at any public lading place or basin, or at any other place on either of the canals, except at a wharf or lading place which is private property, it shall be the duty of the collector, and if there be no collector present, of any superintendent, to assign berths or places to all such boats or floats; and the master of every such boat or float,

failing to comply immediately with such assignment of the collector or superintendent, shall forfeit and pay the sum of five dollars, and, moreover be liable for all damages sustained by any individual in consequence of such failure. [38 v. 87.]

**SEC. 14022** (218-99 Bates.) No boat or vessel of any kind, except such as shall have a firm and permanent bow, which shall be at least as sharp or acute as a semi-circle, shall be permitted to navigate or float on either of the canals of this state, under a penalty of ten dollars; for the payment of which, such boat or vessel, and also the owner thereof, shall severally be liable; and every time such a boat or vessel shall be moved on either of said canals, the distance of one mile or upwards, shall be considered a distinct offense. [38 v. 87.]

Bow of boats.

**SEC. 14023** (218-100 Bates.) No raft or float, composed in whole or in part of round or unhewn timber, shall be permitted to float, or be navigated on either of the canals of this state; nor shall any fire wood, or other split or sawed wood, or lumber, be transported on either of said canals, otherwise than on board of such boat as may lawfully navigate the same, under the penalty of ten dollars for every offense, in either of the cases herein specified; for the payment of which penalties, such raft or float, and also the owners thereof, shall be severally liable. [38 v. 87.]

Rafts of round timber, or fire wood, etc.

**SEC. 14024** (218-101 Bates.) If any person, in navigating or managing, or assisting in the navigation or management of any boat or other float, on either of the canals of this state, shall, through design or negligence, in the navigation or management thereof, fail or neglect to open or close any swing-bridge crossing either of the said canals, or shall injure, in such navigation or management, any lock, lock-gate, waste-gate, guard-gate, bridge, aqueduct or other work or device appertaining to either of said canals, such person shall, for every such offense, forfeit and pay the sum of twenty-five dollars, as a penalty for such offense; and every master, owner or part owner of such boat or float, and also the boat or float itself, shall severally be liable for the payment of such penalties, and moreover be liable for the payment of all damages occasioned by such failure to open or close the said swing-bridge, or by such mismanagement or negligence. [87 v. 373; 38 v. 87.]

Injuring locks or other works.

The county commissioners may maintain an action against a canal boat itself, which has negligently injured a county turn bridge: *Boat v. Commissioners*, 13 O. C. C. 263, 7 O. C. D. 137.

The remedies provided for by this section are cumulative: *Boat v. Commissioners*, 13 O. C. C. 263, 7 O. C. D. 137.

**SEC. 14025** (218-102 Bates.) No float shall move on either of the canals faster than at the rate of three miles an hour, where such canal, or the part thereof on which such float shall move, shall have been at such time navigated less than one year; and in no case shall any float move on either of the canals faster than at the rate of four miles an hour, under the penalty, in either case, of ten dollars for every violation of this

Running boats too fast.

section; for the payment of which, the master, manager, owner, or part owner, of such float, and also the float itself, shall severally be liable. [38 v. 87.]

Rule when one boat overtakes another.

SEC. 14026 (218-103 Bates.) Whenever a boat or float shall overtake any other boat or float on either of the canals, it shall be the duty of the master or manager of the latter to turn from the towing path, and give to the former every practicable facility for passing, and to stop whenever it shall become necessary, until the boat or float first mentioned shall have fully passed. [38 v. 87.]

When boats pass each other.

SEC. 14027 (218-104 Bates.) When any float, in passing on either of the canals, shall meet any other float passing in an opposite direction, it shall be the duty of the master of each to turn to the right hand, so as to be wholly on the right side of the center of the canal; and the horses or other moving power of the boat, which, in turning to the right as aforesaid, shall turn from the towing path, shall be stopped so as to allow the moving power of the other, and the float itself, to pass freely over the towing rope of the float so turned from the towing path. [38 v. 87.]

Same.

SEC. 14028 (218-105 Bates.) Whenever two or more floats, moving in opposite directions on either of the canals, shall at any time approach any place where, from the contracted breadth of such canal, or other cause, they can not safely pass each other, it shall be the duty of the master of every such float, going from Lake Erie, on the Ohio canal, or from the Ohio river, on the Miami canal, or from Columbus, on the Columbus feeder, to stop at such distance from such place as will permit the float or floats moving in the opposite direction conveniently to pass by, and there to wait until such passage is effected. [38 v. 87.]

Which boat first entitled to lock.

SEC. 14029 (218-106 Bates.) Any float moving on either of the canals, which shall have arrived within one hundred yards of any lock in which the water is on the same level with such float, shall be permitted to pass such lock before any float not on the same level. [38 v. 87.]

Who to decide.

SEC. 14030 (218-107 Bates.) If, on the arrival of any two or more floats at or near any lock, a question shall arise between their respective masters as to which shall be first entitled to pass, such question shall be determined by the lock-keeper, or any other agent of the state, having charge of such lock, if any such lock-keeper or agent be present, and each float shall be passed in the order and manner in which such lock-keeper or other agent of the state shall direct. [38 v. 87.]

Setting-poles, etc., pointed with iron.

SEC. 14031 (218-108 Bates.) No setting-pole, shaft, or hook, pointed with iron, steel, or other metal, shall be used in the navigation or management of any boat or float on either of the canals of this state, and such pole, shaft or hook being found on board any boat or float, navigating said canals, shall be considered sufficient evidence of its use. [38 v. 87.]

**SEC. 14032** (218-109 Bates.) No person shall attempt to pass any float into any lock, or out of any lock, until the main gates at the head or foot of said lock, as the case may be, between which gates such floats shall be about to pass, shall first be entirely opened into their respective recesses, nor until all paddle and culvert gates of such lock shall be closed. [38 v. 87.]

Position of lock-gates when boat enters.

**SEC. 14033** (218-110 Bates.) Neither of the main gates at the head or foot of any lock shall be closed, nor allowed to close of their own accord, while either of the paddle or culvert gates at the opposite end of such lock shall remain open. [38 v. 87.]

After it has entered.

**SEC. 14034** (218-111 Bates.) When any float shall pass out of any lock, the main gates of such lock, through or between which such float shall have passed out, shall be left entirely open, and completely within their respective recesses, and all the paddle and culvert gates of such locks shall be left closed; provided, however, that when the acting commissioner or superintendent, having charge of that part of the canal in which such lock is situated, shall direct any paddle, culvert, or other gate, to be left open for the purpose of passing water through the same, such direction shall be complied with and obeyed by the lock-keepers, masters of floats, boatsmen, and all other persons concerned in navigating such canal. [38 v. 87.]

When boat passes out.

**SEC. 14035** (218-112 Bates.) No boat or other float shall be permitted to pass into any lock, nor to strike against any part thereof with such force as to injure, or be liable to injure any part of such lock, or any gate or other work or device appertaining thereto, or designed to protect the same. [38 v. 87.]

Boats injuring locks, or their appendages.

**SEC. 14036** (218-113 Bates.) No lock-gate, culvert-gate, or paddle-gate, shall be closed, nor permitted to close itself, with such violence as to injure or be liable to injure the same. [38 v. 87.]

Violently closing gates, etc.

**SEC. 14037** (218-114 Bates.) Every master of any float who shall violate either of the provisions of the eleven sections next preceding this section, or who shall permit any boatman or other person assisting in the navigation or management of such float, to violate either of the said sections, or any provision thereof, shall, for every such violation, forfeit and pay the sum of ten dollars; and every owner or part owner of any such float, and also such float, shall severally be liable for the payment of all penalties so as aforesaid incurred, and shall moreover be liable for the payment of all damages which may be occasioned by such violation; and every lock-keeper, who shall violate either of the provisions of the five preceding sections, shall forfeit the sum of ten dollars for every such violation. [38 v. 87.]

Penalty for violating eleven preceding sections; penalty against lock-keeper under five preceding sections.

Precedence as to locks; penalty for interference.

SEC. 14038 (218-115 Bates.) When two or more boats or floats other than packet boats, are passing in the same direction on either of the canals of this state, that boat or float which shall first arrive at any lock, shall have the right first to pass said lock; and any master of a boat, or other person who shall prevent or attempt to prevent such forward boat from first passing said lock, shall for every such offense, forfeit and pay the sum of twenty dollars. [38 v. 87.]

Penalty for obstructing canal by improper mooring, etc.

SEC. 14039 (218-116 Bates.) Every person who shall willfully, or through gross negligence, obstruct the navigation of either of the canals of this state, by the improper mooring, management, or conduct of any boat or floating thing, shall, for every such offense, forfeit the sum of ten dollars. [38 v. 87.]

Or by sinking things, or obstructing towing path, etc.

SEC. 14040 (218-117 Bates.) Every person who shall willfully, or through gross negligence, obstruct the navigation of either of the canals of this state by sinking any vessel, timber, stone, earth, or other thing, in any part thereof, or by placing any obstruction on the towing path thereof, or on the bank opposite the towing path, shall forfeit the sum of twenty dollars. [38 v. 87.]

Further remedy, etc., under three preceding sections.

SEC. 14041 (218-118 Bates.) Every person who shall incur a penalty under either of the three next preceding sections, by committing any offense therein specified, shall moreover be liable to the state, and to every person injured thereby, for the payment of all damages which shall occur in consequence of such offense. [38 v. 87.]

Officers may sell articles floating, etc.

SEC. 14042 (218-119 Bates.) It shall be the duty of every engineer, collector, superintendent or agent, employed on either of the canals, to seize all boats, rafts, logs, and every floating or sunken thing, which may be found in either of said canals, and all articles found on the towing path thereof, not under the charge of any person, and to sell the same at public vendue, after giving ten days' previous notice thereof, in writing, posted up in two public places near the place where such boat or other articles or things may be found. [38 v. 87.]

How owner may stop such sale.

SEC. 14043 (218-120 Bates.) If the owner of any article so seized shall appear and claim the same before the time of sale, and pay the cost of seizure and expense of removal, such sale shall not take place. [38 v. 87.]

How proceeds of sale accounted for.

SEC. 14044 (218-121 Bates.) If the officer making such sale shall not be a collector, the avails of such sale shall be accounted for by him, within thirty days, to the nearest collector, who shall account for the same as for tolls collected; and if the same be made by a collector, he shall account for the avails thereof in the same manner. [38 v. 87.]

When proceeds may be paid to owner.

SEC. 14045 (218-122 Bates.) After any such sale shall have been made, and the proceeds thereof shall be in the hands of the collector or officer making such sale, such collector or

other officer may, on the application of the owner, and due proof of ownership, pay over such proceeds to such owner, after deducting all penalties, forfeitures, costs, and reasonable expenses, chargeable thereon. [38 v. 87.]

SEC. 14046 (218-123 Bates.) The board of public works, until otherwise provided by law, shall appoint so many collectors of canal tolls on each of the canals of this state, as they shall deem necessary for the punctual collection of tolls on such canals; shall require each collector to give bond, with sufficient security for the faithful performance of his duties, in such sum as the board shall prescribe; and shall designate the place where the office of such collector shall be kept, and shall determine what reasonable salary or other allowance shall be received by each collector for his services. [38 v. 87.]

Board to appoint collectors; their bond; salary.

SEC. 14047 (218-124 Bates.) Any clerk, duly authorized by a collector, may, in the absence of the collector, perform all the duties, and exercise all the powers legally appertaining to such collector, and the collector shall be responsible for the acts of such clerk. [38 v. 87.]

When a clerk may do the duties of collector.

SEC. 14048 (218-125 Bates.) Collectors may be authorized to refund tolls or penalties erroneously paid to them, or which equitably ought to be refunded, under such regulations as shall be prescribed by the board of public works; which regulations shall not be inconsistent with the constitution and laws of this state. [38 v. 87.]

When collector may refund tolls.

SEC. 14049 (218-126 Bates.) The owner or owners of every boat navigating either of the canals, shall subscribe and deliver to the collector, of whom the first clearance for such boat shall be demanded, a certificate, to be entitled a "certificate of registry," containing the name or names of such owners, and their respective places of abode, and also the name of the boat, and place where it is owned; if the owners reside out of the state, the certificate of registry shall be signed and delivered by the master of the boat, as the owner thereof. [38 v. 87.]

Certificates of registry for each boat.

SEC. 14050 (218-127 Bates.) If the master of the boat, of which the owners reside out of the state, shall be changed after he shall have delivered such certificate, the new master shall sign and deliver a proper certificate of registry to the collector, of whom he shall first require a clearance. [38 v. 87.]

Same.

SEC. 14051 (218-128 Bates.) Every collector receiving a certificate of registry, shall sign and deliver to the person of whom he shall receive the same as aforesaid, a written receipt therefor, and shall, without delay, record the same in a book to be provided and kept by him for that purpose; which book of registry shall be open to inspection during the usual office hours; and the name of no registered boat shall be changed without the written order of the collector in whose office the same is registered. [38 v. 87.]

Receipt for and record of certificate; record open for inspection; name of boat not to be changed unless, etc.

Collector to transmit copy of registry to other collectors, who shall record it.

SEC. 14052 (218-129 Bates.) Each collector shall, within one month from the time any boat shall have been registered, or change made in the registry in his office, transmit to each of the other collectors on the same canal a certified copy of the register of boats in his office, and of the several changes made therein; which copy shall be immediately recorded by the collector receiving it, in the same manner as is prescribed in the preceding section for original certificates of registry. [38 v. 87.]

When boat transferred, how registry changed.

SEC. 14053 (218-130 Bates.) If any person residing within this state, claiming to be owner of a registered boat, by transfer from its former owners, shall produce to the collector in whose office the same shall have been originally registered, due proof of such transfer, and shall deliver him a new certificate of registry, signed by themselves, it shall be the duty of such collector to change the register of such boat so as to correspond with such new certificate. [38 v. 87.]

Boat to be registered before clearance is granted.

SEC. 14054 (218-131 Bates.) No clearance shall be granted to any boat, unless the collector of whom it is required shall have evidence that such boat is duly registered; or if it be not registered, until the master thereof shall have delivered to such collector a proper certificate of registry, or have exhibited to him the receipt of some other collector for such certificate. [38 v. 87.]

The persons named in the certificates to be considered owners of boats.

SEC. 14055 (218-132 Bates.) The person specified in the certificate of registry of any boat, as the owners thereof, shall be deemed in law the true owners thereof, for all the purposes of enforcing the collection of tolls, and the execution of the laws, rules, and regulations for the navigation or maintenance of the canals. [38 v. 87.]

Penalty for changing name of boat.

SEC. 14056 (218-133 Bates.) Every owner of a boat who shall change its name, or the name of the place at which it is owned, from that stated in the certificate of registry then in force, without the written order of the collector in whose office the same shall have been originally registered (which written order the collector is required to grant, on the application of any owner for that purpose); and every master who shall enter or report such boat at any collector's office, by a different name from that so stated, shall, for every such offense, forfeit the sum of twenty dollars. [38 v. 87.]

New certificate when name is changed.

SEC. 14057 (218-134 Bates.) No boat, the name of which shall have been changed in the manner prescribed in the preceding section, shall receive a clearance or be permitted to pass on any of the canals of this state, till a new certificate of registry shall be presented to the collector, who shall have granted the order to change the name of said boat, which certificate shall contain the former as well as the present name of said boat, and shall be signed in like manner, as is prescribed in the sixtieth [sixty-third] and sixty-first [sixty-fourth] [G. C. §§ 14049 and 14050] sections of this act. [38 v. 87.]



SEC. **14058** (218-135 Bates.) No boat shall receive a clearance, or be permitted to pass on either of the canals, unless such boat shall have the name thereof, and the name of the place where it is owned, corresponding with its certificate of registry then in force, painted in some conspicuous and permanent part of the outside of the boat, in letters of at least four inches in height. [38 v. 87.]

How and where name of boat, etc., shall be painted on it.

SEC. **14059** (218-136 Bates.) No boat or float shall be permitted to pass on either of the canals, unless the master thereof shall first have obtained a clearance therefore, for each voyage of such boat or float, from the proper collector of tolls on such canals, except in the cases hereinafter particularly specified. [38 v. 87.]

Clearance for boats necessary.

SEC. **14060** (218-137 Bates.) Clearances for every voyage shall be required of, and issued by the collector, whose office shall be kept nearest to the place at which the voyage shall be commenced, provided that there be any collector's office within one mile of such place. [38 v. 87.]

Who shall issue clearances.

SEC. **14061** (218-138 Bates.) If there be no collector's office within one mile of the place from whence the voyage is commenced, the clearance for such voyage shall be required of the collector at whose office the boat shall first arrive in the course of the voyage; and such boat shall be permitted to proceed from the place where the voyage was commenced to such collector's office, and no further, without a clearance. [38 v. 87.]

How far boats may proceed without clearance.

SEC. **14062** (218-139 Bates.) The full amount of tolls, chargeable on any boat, and on each and every article of property which shall be on board thereof, or constitute any float, at the time such boat or float shall depart from the port or place in which there is a collector from whom a clearance is required, or that shall be taken on board within one mile of such port or place, shall be paid to such collector before he shall issue a clearance for such boat or float. [38 v. 87.]

To whom tolls are to be paid before clearance issued.

SEC. **14063** (218-140 Bates.) Every master of a boat or float, conveying property on either of the canals, shall exhibit to the several collectors hereinafter mentioned, a just and true account, or bill of lading of such property, signed by the consignor thereof, and containing, first, the name of each place on the canal where any portion of such property was shipped, and the place for which it is intended to be cleared, specifying the portion shipped at each of such places, and the portion intended to be cleared to each place; second, a statement of the weight of all articles of such property on which toll is to be charged by weight, of the number of articles on which toll is to be charged by number, and of the feet of each article on which toll is to be charged by the foot; third, a specification of the weight or quantity of each article or articles on which one rate of toll is to be charged, and which is to be transported to one place, separately from other articles on which a different rate of toll is charged, or which is to be transported to a different place. [38 v. 87.]

Bills of lading; how made out.

To whom bills of lading shall be exhibited.

SEC. 14064 (218-141 Bates.) Every such account or bill of lading shall be exhibited, first to every collector of whom a clearance shall be required; second, to every collector whose office shall be next in order in the course of the voyage, to the place where the clearance shall have been granted; third, to every collector at a place where any portion of the cargo shall be unladen, or any additional cargo received; and if there be no collector at such place, to the collector whose office shall be next in order in the course of the voyage; fourth, to every other collector who shall demand such account or bill of lading to be exhibited. [38 v. 87.]

Property taken on board during the voyage, to be reported to first collector, and tolls paid.

SEC. 14065 (218-142 Bates.) If any property shall be received on board of any boat or other float, for the purpose of being transported on either of the canals, during any voyage, after such boat or float shall have proceeded one mile from the place at which a clearance for the voyage was granted, an account or bill of lading thereof, conforming to all the requisitions hereinbefore stated, shall be exhibited to the collector whose office shall be next in order in the course of the voyage, to the place where such property was received on board, to whom the full amount of tolls chargeable on such property shall be paid; and such boat or float shall not be permitted to proceed on such voyage beyond the office at which the tolls on such property, so received on board, are payable, until the full amount of such tolls are paid. [38 v. 87.]

And bills of lading thereof exhibited to first collector, etc.

SEC. 14066 (218-143 Bates.) When any cargo shall be taken on board of any boat or float, after such boat or float shall have left the place where a clearance was granted, as specified in the preceding section, the account or bill of lading of such property shall be exhibited to the collector whose office shall be next in order in the course of the voyage, to the office at which the tolls on such additional cargo are required to be paid, and to every other collector who shall demand it to be exhibited. [38 v. 87.]

Transportation between collectors' offices to be reported and paid within ten days.

SEC. 14067 (218-144 Bates.) If there be no collector's office within one mile of the place where a voyage on the canal shall be commenced, nor within one mile of the place where the same shall terminate, nor at any intermediate place, the master of the boat or other float shall, within ten days after the termination of such voyage, exhibit a true account thereof, or bill of the lading transported on board of such boat or float, at any time during such voyage, to the collector whose office shall be nearest to the place where such voyage terminated, and shall pay to such collector the tolls due on such boat or float and lading; and every master who shall neglect to exhibit such account and bill, and to pay such tolls, within the period above named, shall, for every such offense, forfeit the sum of twenty-five dollars. [38 v. 87.]

Penalty for non-delivery of true bills of lading, or not paying tolls.

SEC. 14068 (218-145 Bates.) Every master of a boat or other float navigating either of the canals, who shall omit to exhibit or deliver a true bill of lading to any collector, or to pay the tolls thereon when required, or shall deliver any article men-

tioned in a bill of lading at a place beyond that to which such article shall have been cleared, shall forfeit the sum of twenty-five dollars. [38 v. 87.]

SEC. 14069 (218-146 Bates.) Every person who shall sign or deliver to any collector a false bill of lading, shall pay, on all property omitted in such false bill, treble the established rates of toll chargeable thereon, to any collector who shall be satisfied of such omission, for the whole distance such property is conveyed on the canal. [38 v. 87.]

And for signing or delivering false bills.

SEC. 14070 (218-148 Bates.) Every collector receiving a bill of lading, may require the master exhibiting it to verify it by his oath, which such collector is authorized to administer. [38 v. 87.]

Bills to be verified by oath.

SEC. 14071 (218-149 Bates.) The collectors of tolls on the canals shall be and they are hereby authorized to administer oaths in all cases wherein oaths may be required to be administered, in performing the duties required of them in their offices. [38 v. 87.]

Collectors may administer oaths.

SEC. 14072 (218-150 Bates.) If, on unloading any boat or float, it shall be discovered that the cargo, in consequence of an unintentional error, exceeds the quantity stated in the bill or bills of lading, it shall be the duty of the master of such boat or float, immediately to report such overplus, and pay the lawful tolls thereon, to the collector at the place where such error may be discovered, if there be any collector at such place; and if there be no collector at such place, to the next collector, at or near whose office the boat shall arrive, after the discovery of such error is made; and any master of a boat or float, who shall fail to comply with the requisition of this section, shall forfeit and pay the sum of ten dollars, besides double tolls on all property omitted in the bill or bills of lading. [38 v. 87.]

Master to report errors in bills of lading, etc.; penalty.

SEC. 14073 (218-151 Bates.) Each boat navigating the canals shall have a separate clearance, and no part of the cargo of any boat shall be cleared to a place beyond that to which the boat is cleared. [38 v. 87.]

Property to be cleared no farther than the boat.

SEC. 14074 (218-152 Bates.) No boat or other float shall proceed beyond the place to which it shall be cleared, nor shall any article of its cargo be unladen after its arrival at the place for which such article is cleared, nor proceed beyond such place, until the master thereof shall have delivered the clearance of such boat or float to the collector at the place for which it is cleared, if there be any collector at such place. [38 v. 87.]

No boat to proceed beyond place cleared to, etc., until delivery of clearance.

SEC. 14075 (218-113 Bates.) If there be no collector at such place, the master shall deliver the clearance to the last collector whose office shall be passed by the boat, in the order of the voyage, and shall receive a permit from such collector to proceed to the place to which the boat or float is cleared. [38 v. 87.]

Same.

## § 14076

Penalty for not delivering clearance.

SEC. 14076 (218-154 Bates.) Every master who shall omit to deliver a clearance to the collector to whom the same ought to be delivered, shall forfeit the sum of twenty-five dollars. [38 v. 87.]

Collector to give a certified copy of clearance, etc.

SEC. 14077 (218-155 Bates.) Every collector issuing any clearance, or in whose office any clearance is on file, shall, whenever requested, give a certified copy thereof, with the additional cargo entered thereon, and the several indorsements of other collectors, for which he shall be entitled to demand and receive from the persons applying for the same, if such certified copy does not contain over one hundred words, ten cents; and if such copy contains over one hundred words, he shall be entitled to receive pay therefor at the rate of ten cents for every hundred words. [38 v. 87.]

Validity of such certified copies.

SEC. 14078 (218-156 Bates.) Such certified copy of any clearance shall have the same validity and effect as the clearance of which it is a copy. [38 v. 87.]

When collector may detain boat and weigh cargo.

SEC. 14079 (218-157 Bates.) Whenever a difference shall arise between a collector and the master of any boat or float, as to the amount of tolls chargeable on the lading of such boat or float, the collector shall detain the boat or float, and the articles on which toll is to be charged, and shall weigh, count or measure the articles, as the case may require; and if it shall be ascertained that the weight, number, or feet, exceeds the amount stated in the bill of lading thereof, the collector shall charge tolls according to the weight, number, or feet thus found; and the master shall pay to the collector the expense of such weighing, counting, or measuring; and such expense shall be chargeable on such articles, and on the boat or float containing them. [38 v. 87.]

Detention until tolls or expenses are paid.

SEC. 14080 (218-158 Bates.) The master of every boat or float shall be liable for the payment of tolls and expenses chargeable on such boat or float, and its cargo; and it shall be the duty of every collector to detain all articles on which tolls or expenses are chargeable, and the boat or float containing them, until such tolls and expenses shall be paid. [38 v. 87.]

Collector's sale to pay tolls, etc.

SEC. 14081 (218-159 Bates.) If such payment be refused, the collector shall, in the name and on behalf of the state of Ohio, distrain so much of the property detained as shall be sufficient to satisfy the charges thereon; and at the expiration of ten days, if such charges shall remain unpaid, he shall expose to sale, at public auction, the property distrained, at his usual place of receiving tolls, and sell the same to the highest bidder, between the hours of ten o'clock a. m., and four o'clock p. m., having first given two days' notice of such sale, and a description of the property to be sold, by advertisement posted up in three of the most public places in the township in which such collector's office is situated. [38 v. 87.]

SEC. 14082 (218-160 Bates.) Any surplus avails of such sale, after the payment of the sum chargeable thereon, including costs of distress and sale, shall be paid, on demand, to the master of the boat or float, or to the owner of the property distrained. [38 v. 87.]

Surplus avails of sale.

SEC. 14083 (218-161 Bates.) Every master of a boat or float, shall make out, for every voyage, a correct list of all passengers over twelve years of age, that may have been transported on board of said boat or float for the distance of one mile or upwards; which list shall, in all cases, exhibit distinctly and legibly, written with ink, in separate columns, to be provided for that purpose, first, the name of each passenger on board of the boat at the time of the arrival thereof at any place where there is a collector's office, or who shall have been transported on board thereof during the voyage; second, the name of the place, or the distance from some place of notoriety on the canal where such passenger came on board; third, the place to which such person may have taken passage; fourth, the place where such passage actually ended, if at a place different from that to which passage was taken; which list shall in all cases be attached to the clearance of the boat, and, with the clearance to be delivered to the collector to whom the clearance is required to be delivered, whose duty it shall be to examine said list, and see that all the passengers are correctly entered on the same. [38 v. 87.]

List of canal passengers; list and clearance to be delivered to collector, etc.

SEC. 14084 (218-162 Bates.) It shall be the duty of every collector to whom any list of passengers is required to be delivered, at or near the termination of any voyage on the canal, to administer an oath or affirmation to the master of the boat, as to the correctness of any such list, which oath or affirmation shall also be attached to said list and be subscribed by the master of the boat, who shall immediately pay to such collector the amount of tolls due on said passengers. [38 v. 87.]

Master's oath to correctness of list of passengers, etc.: to pay tolls.

SEC. 14085 (218-163 Bates.) If any master of a boat or float shall refuse to make the oath or affirmation, and to subscribe the same as is required in the preceding section, or shall refuse or neglect to pay the tolls that may be due on passengers transported on board said boat, he shall, for every such refusal or neglect, forfeit and pay the sum of twenty dollars over and above the tolls that may be due. [38 v. 87.]

Penalty for refusing to make such oath, etc., or to pay tolls.

SEC. 14086 (218-164 Bates.) If any master of a boat shall wholly neglect or refuse to make out and present a list of passengers, when any passenger or passengers shall have been transported on board such boat, as is required by the ninety-sixth [ninety-eighth] section [G. C. § 14083] of this act, he shall forfeit and pay the sum of twenty-five dollars, together with double tolls on all passengers transported during the voyage. [38 v. 87.]

Penalty for refusing to make list of passengers.

SEC. 14087 (218-165 Bates.) For presenting an incorrect list of passengers, not conformable to the requirement of the ninety-sixth [ninety-eighth] section [G. C. § 14083] of

Or presenting an incorrect list.

this act, the master presenting the same shall, for every omission, forfeit and pay the sum of five dollars, together with double tolls on the number of miles omitted in said list; provided, that for each passenger whose name shall be omitted on said list, the master shall forfeit and pay the sum of ten dollars. [38 v. 87.]

Who considered passengers.

SEC. 14088 (218-166 Bates.) Every person over twelve years of age, who shall go on board of any boat for the purpose of being transported, shall be considered a passenger, whether any price may be demanded for the transportation of such person or not, and whether he may pay for his passage in money, in labor or otherwise. [38 v. 87.]

Tolls to be paid before clearance issued.

SEC. 14089 (218-167 Bates). All tolls chargeable on any boat or float for any voyage about to be made on either of the canals of this state, shall be paid to the collector (who is required to issue a clearance for such voyage), before such clearance shall be issued; and no collector shall be required to issue a new clearance for any boat, till all arrearages of tolls chargeable on such boat shall be paid. [38 v. 87.]

When permit instead of clearance may be issued.

SEC. 14090 (218-168 Bates.) Any collector, from whom is required a clearance, agreeably to the seventy-second [seventy-fourth] and seventy-third [seventy-fifth] sections [G. C. §§ 14060 and 14061] of this act, may issue a permit, instead of a clearance; provided, the voyage for which such permit shall be issued, shall not extend to, nor within a mile of any place on the canal where there is a collector's office. [38 v. 87.]

Proceedings where voyage is commenced more than a mile from a collector's office.

SEC. 14091 (218-169 Bates.) In all cases where a boat or float shall commence a voyage at any place more than one mile distant from any collector's office, and which voyage shall terminate at any place at which, or within a mile of which there is a collector's office, all tolls chargeable on such boat, float, and cargo on board thereof, shall be paid to the collector at or near whose office such voyage terminates; and a permit shall be obtained from such collector for unloading, before any part of the cargo of such boat or float, or any article composing any such float, shall be unladen, landed, or removed from the canal; and for every violation of any of the provisions of this section, the master of such boat or float shall forfeit and pay the sum of ten dollars, and also double tolls on every article so unlawfully landed, removed, or unladen; for the payment of which penalties and tolls such articles, and also every owner or part owner of any such boat, float, or article, shall be liable. [38 v. 87.]

Collectors who receive bills of lading to make out certificate, etc., which shall be signed by master, etc.

SEC. 14092 (218-170 Bates). It shall be the duty of every collector to whom bills of lading are required to be presented, in order to obtain a clearance for any voyage, agreeably to the seventy-fifth [seventy-seventh] and seventy-sixth [seventy-eighth] sections [G. C. §§ 14063 and 14064] of this act, to make out from such bill or bills of lading, in a book to be provided by him for that purpose, a certificate, containing a pertinent descrip-

tion of the articles composing the cargo of the boat or float, or composing such float, for which clearance is about to be issued, properly classified and designated with reference to the rates and amount of tolls chargeable thereon; which certificate shall be signed by the master of such boat or float, who shall also attest on oath or affirmation to the correctness thereof, if required by the collector, before the clearance for such boat or float shall be issued. [38 v. 87.]

SEC. 14093 (218-171 Bates). In case any property, not contained in the certificate prescribed in the preceding section be received on board of any boat after said boat shall have proceeded one mile from any collector's office, whose office shall be next in order in the course of the voyage, to the place where such property was received on board, shall make out a certificate of all such property, in a book to be provided by him for that purpose, conformably to the requisitions of the preceding section, which shall be signed, and, if the collector shall require, be attested by the master of such boat or float, on oath or affirmation. [38 v. 87.]

Who to make certificates of additional cargo.

SEC. 14094 (218-172 Bates). Every master of any boat or float, who shall, in any respect, refuse to comply with the requirements of the two preceding sections, or who shall sign a false certificate, shall, for every such refusal or offense, forfeit the sum of twenty-five dollars. [38 v. 87.]

Penalty under two preceding sections, and for signing false certificate.

SEC. 14095 (218-173 Bates). In every case where a certificate is required to be made out and signed, agreeably to the provisions of the one hundred and fifth [one hundred and seventh] and one hundred and sixth [one hundred and eighth] sections [G. C. §§ 14092 and 14093] of this act, the collector shall enter upon the clearance a correct list or statement of all articles of lading contained in such certificate properly classified and designated, with the amount of tolls charged and received thereon, and shall sign his name thereto. [38 v. 87.]

Articles in certificate to be entered on clearance and how.

SEC. 14096 (218-174 Bates.) On the arrival of any boat or float at the place of destination, or at any place in the course of the voyage where there is a collector's office, if in the day time, the master thereof shall immediately present to the collector the bill or bills of lading, as required by the seventy-sixth [seventy-eighth], seventy-seventh [seventy-ninth] and seventy-eighth [eightieth] sections [G. C. §§ 14064, 14065 and 14066] of this act, together with the clearance and list of passengers; and if such boat or float shall arrive in the night time, the same shall be presented between the time of arrival and one hour after sunrise. [38 v. 87.]

When clearance shall be presented to collector.

SEC. 14097 (218-175 Bates). No boat or float shall proceed on its voyage until the bill or bills of articles of lading on board thereof, or composing such float, together with the clearance and list of passengers, shall have been presented to the collector, as provided in the preceding section; nor until all

Bills of lading, cargo, and clearance to be examined and compared, and tolls paid, before boat shall proceed.

necessary examinations and comparisons of such bills of lading, clearance and cargo, shall have been made, nor until all tolls chargeable on such boat, float, or cargo, payable at such office, shall have been paid, and the necessary certificate of an additional cargo, if any, shall have been signed, and if required by the collector, attested on oath or affirmation; and the collector may detain both the bills of lading and clearance, until the necessary entries shall be made on such clearance, and until all the requisitions of this section shall be complied with. [38 v. 87.]

Penalty for passing by or leaving collector's office without clearance or permit.

SEC. **14098** (218-176 Bates). In case any boat or float shall depart from any place where there is a collector's office, without a clearance or permit, or shall pass by any place where there is a collector's office, without first having complied with each and every provision of the preceding section, the master thereof shall, in each case, forfeit and pay the sum of ten dollars, together with double tolls on all articles on which tolls were payable at such office. [38 v. 87.]

For unloading, etc., without permit.

SEC. **14099** (218-177 Bates). No part of the cargo of any boat or float, nor any article composing such float, or any part thereof, shall be unladen, landed or removed from the canal, at the termination of any voyage on such canal, nor at any place on the canal within one mile of a collector's office, until the clearance, together with the bill or bills of lading, of the whole cargo of such boat or float, shall have been presented to the proper collector, and a permit obtained from such collector for such unloading, landing or removal; which permit such collector is hereby required to grant, after a reasonable time shall have elapsed for the examination of such clearance, bills of lading and cargo, and on the payment of all tolls which shall remain due; and for every violation of the provisions of this section, the master of such boat or float shall forfeit and pay the sum of ten dollars, and also double the amount of tolls chargeable on the article or articles so unlawfully landed, removed, or unladen: provided, that in all cases where any boat shall be in a leaky condition, or from any other cause, goods or property on board any such boat shall be in danger of damage or perishing by delay, and the proper collector cannot be found, such goods or property may be landed or secured until such collector may be found, and a permit obtained for the further removal of the same. [38 v. 87.]

Boats, etc., navigating without authority, to be stopped.

SEC. **14100** (218-178 Bates). In any case where any boat or float shall navigate, or attempt to navigate, on either of the canals of this state, without being legally authorized so to do, it shall be the duty of every lock-tender, superintendent, or other authorized agent of the state, on being notified thereof, to stop and detain such boat or float, until the same shall be legally authorized to proceed. [38 v. 87.]

Clearance to be exhibited to lock-tender or superintendent, when demanded, or boat stopped.

SEC. **14101** (218-179 Bates). For the purpose of ascertaining whether any boat or float which shall be found navigating on a canal of this state is authorized so to do, it shall be the duty of the master thereof to exhibit to the lock-tender at



the first lock at which such boat or float shall arrive, after having departed from, or passed by any place at which there is a collector's office, the clearance of such boat or float; and if there be no lock-tender at such lock, then the same shall be exhibited to the first lock-tender or superintendent, who shall be passed in the order of the voyage from such collector's office, and who shall demand to see such clearance; and if the clearance shall not be so exhibited, such lock-tender or superintendent shall stop such boat or float from proceeding further on the canal, until the same shall be legally authorized so to do. [38 v. 87.]

SEC. 14102 (218-180 Bates). The master of any boat or float who shall pass or attempt to pass in contravention of the provisions of the two preceding sections, shall forfeit and pay the sum of twenty-five dollars, and also be liable for all damages that may accrue in consequence of such violation. [38 v. 87.]

Penalty, under two preceding sections.

SEC. 14103 (218-181 Bates). All boats, floats, or other property of the United States, shall be permitted to navigate, or be transported on either of the canals of this state, free from the payment of tolls: provided, satisfactory proof be made to the proper collector, that the same is, bona fide, the property of the United States; but all such boats, floats, or other property, shall be reported cleared, and in all other respects be subject to all and singular the rules, regulations, provisions, and forfeitures and liabilities prescribed by the laws of this state, or the orders of the board of public works in accordance therewith. [38 v. 87.]

Property belonging to the United States to pass free of tolls.

SEC. 14104 (218-182 Bates). Any collector may examine, on oath or affirmation, the master of any boat or float from which exemption from the payment of tolls is claimed, under the provisions of the preceding section, and the master of any boat or float, on board of which is transported any property for which such exemption is claimed, as to the ownership of such boat, float, or other property, and if he shall refuse to answer such proper questions as may be propounded by such collector in relation to such ownership; or if, from his answers, the collector shall not be satisfied that the boat, float, or property in question, is the property of the United States, tolls shall be charged and paid thereon, as in other cases. [38 v. 87.]

How to ascertain that property belongs to the United States.

SEC. 14105 (218-183 Bates). Every owner and part owner of any boat or float, and also such boat or float, shall be severally liable for the payment of all penalties and forfeitures incurred by the master thereof, or by any boatman or other person assisting in the navigation or management of such boat or float, and also for the payment of all tolls chargeable thereon or chargeable on any property or passengers transported on board thereof. [38 v. 87.]

Liability of owners, part owners, etc., to penalties, tolls, etc., incurred by master, etc.

Meaning of the term "float;" "master."

SEC. 14106 (218-184 Bates). The term "float," as used in this act, shall be construed to embrace every boat, vessel, raft, or floating thing, navigated or moved on either of the canals, under the direction of any person or persons having charge thereof; and the term "master," as so used, shall be construed to apply to every person having, for the time, the charge, control or direction of any such float. [38 v. 87.]

When collector to deposit, in auditor's office, accounts, clearances and books.

SEC. 14107 (218-185 Bates). The collectors of tolls shall keep accounts of all tolls received by them, in such form as shall be prescribed, from time to time, by the auditor of state, and shall deposit the original books of accounts, together with such clearances and other papers as he shall require, in the auditor's office, on or before the tenth day of December, in each year. [38 v. 87.]

Daily abstracts to be kept by collectors, and when to be transmitted to auditor.

SEC. 14108 (218-186 Bates). Each collector shall make abstracts from such books, showing the amount of tolls received by him each day, and transmit the same by mail to the auditor, once in each month, and as often as the auditor shall require, if he shall think proper to require such abstracts more frequently than once in each month. [38 v. 87.]

Collector to be removed and sued if he neglects to deposit, or to transmit abstract and account.

SEC. 14109 (218-187 Bates). If any collector of tolls shall omit to transmit any abstract or certificate of deposit, or to deposit in the office of the auditor of state the original book of account, clearance, or other paper, as required by the preceding sections, for the space of one month after the same should have been done, the auditor shall immediately notify the president of the board of public works of such omission; and such collector shall be immediately removed from office, and the auditor shall immediately cause suit to be instituted against such collector and the sureties on the bond of such collector. [38 v. 87.]

Auditor of state to open account with collectors.

SEC. 14110 (218-189 Bates). The auditor of state shall open and keep a correct account with each collector of tolls, in a book to be provided by him for that purpose; and for the purpose of making out such account, shall carefully examine and compare the books, abstracts, and other papers returned by each collector; and shall also compare the same with the abstracts and papers returned by other collectors, which may furnish a corresponding account of any items contained in such abstracts. [38 v. 87.]

Board to furnish auditor with names and salaries, etc., of collectors, and deposit collectors' bonds with him.

SEC. 14111 (218-190 Bates). It shall be the duty of the board of public works to furnish the auditor with a statement, exhibiting the names of the several collectors of tolls, and of the place where each is to keep his office; the amount allowed each collector for his salary, office rent, or any other allowance authorized by the board; and of all changes from time to time made in the foregoing particulars; and to deposit in his office all bonds given by collectors for the purpose of enabling the auditor to comply with the requisitions of the foregoing sections. [38 v. 87.]

**SEC. 14112** (218-191 Bates). The board of public works shall, from time to time, make such rules and regulations, not inconsistent with the laws of this state, in respect to the size and structure of boats, rafts, and other floats, on the waters of the canals, and the weighing and inspecting of boats, and their loading, and in respect to all matters connected with the navigation of the canals, and impose such forfeitures of money, for the breach of such rules and regulations, as they may judge reasonable; and to provide for the detention and sale of any such boats, rafts, or other floats, as shall or may contravene such rules and regulations, in cases where the owner or owners of such boats, rafts, or other floats shall neglect or refuse to pay such forfeiture: provided, that no forfeiture so imposed shall, for a single offense, exceed the amount of actual damage done thereby, more than twenty-five dollars; and provided, also, that nothing in this section shall be construed to prevent said forfeitures being recovered by action of debt, at the suit of any commissioner, or any of the officers or agents employed by said commissioners, who are hereby authorized to sue for and recover the same for the use of the state. [38 v. 87.]

Board authorized to make rules and regulations.

**SEC. 14113** (218-192 Bates). The board of public works shall cause a sufficient number of all such rules and regulations, including the forfeitures for the breach thereof, to be printed; and shall distribute the same to the superintendents, the collectors of tolls, and lock-keepers, to be kept in their respective offices for public inspection. [38 v. 87.]

To print and distribute them.

**SEC. 14114** (218-193 Bates). The captain, or master, and the owner or part owner of any boat or other float, on either of the canals authorized to be made in this state, and likewise the boat or float itself, shall severally be liable to the payment of any penalty or forfeiture, and likewise to all damages which may accrue in consequence of the violation of any of the provisions of any law of the state, or any order of the board of public works duly made and published, relating to the canals, the navigation thereof, or the collection of tolls thereon, by any person navigating any such boat, or assisting in the navigation or management thereof at the time of such violation; and every such boat or water float may, at the discretion of either acting commissioner, resident engineer, or any collector of tolls, be prevented from navigating either of said canals, until such penalty, forfeiture, and damages, and costs accrued in prosecuting therefor, shall be fully paid. [38 v. 87.]

Masters, owners, part owners, and boats liable for payment of penalties, etc.; boat may be prevented navigating canal.

**SEC. 14115** (218-194 Bates). When any such suit shall be prosecuted for any such penalty or forfeiture, the magistrate issuing the process, by a clause to be inserted therein, may direct the officers serving the same to detain such boat or float, and the furniture and horses belonging thereto, until the suit shall be determined, or until adequate security shall be given for the payment of any judgment that may be recovered. [38 v. 87.]

Clause in process to detain boat.

## § 14116

Proceedings thereon.

SEC. 14116 (218-195 Bates). If such security shall be given or the defendant in such suit shall prevail, the magistrate shall order the boat or other float and property detained, to be released; but if no such security be given, and a judgment shall be recovered for such penalty or forfeiture, and the same, together with the costs, shall not be immediately paid, an execution shall be forthwith issued, under which the property so detained may be sold, in like manner as if the judgment had been rendered against the owner or owners thereof. [38 v. 87.]

What penalties may be chargeable on boat.

SEC. 14117 (218-196 Bates). Every penalty and forfeiture prescribed by this act, or any order of board made in pursuance thereof, and for which any owner, master, boatman, navigator, or other person having charge of any boat or float, or assisting in the management thereof when such penalty or forfeiture is incurred, may be liable, shall be chargeable on such boat or float; and a suit in the name and on behalf of the state of Ohio, for the recovery of such penalty or forfeiture, may be brought by any collector, lock-tender, superintendent, engineer or acting commissioner, before any justice of the peace, or before any court of competent jurisdiction, either against the person who was master of the boat at the time the penalty or forfeiture was incurred, or against any person having charge or possession of such boat or float at the time such suit is commenced. [38 v. 87.]

Liability of party commencing suit without probable cause.

SEC. 14118 (218-197 Bates). If any collector, superintendent, acting commissioner, engineer or other person, shall commence any suit, or institute any other proceeding under the provisions of this act, or any order of the board, and judgment shall be rendered for the defendant, in such suit or other proceeding, or discontinued without the consent of the parties, such collector, superintendent, acting commissioner, engineer or other person commencing such suit or other proceeding, shall be liable to the defendant, or other person interested therein, for all costs, hindrances, delay, and other damages sustained thereby, to be recovered by action on the case, in any court of competent jurisdiction, unless the court or jury, as the case may be, shall be satisfied by evidence produced by the defendant in the action brought for the recovery of such damages, that there was probable cause for commencing and carrying on such former suit or other proceeding. [38 v. 87.]

In a suit in the name of the state against an individual to recover a penalty incurred by a violation of the canal law, a collector of tolls, who has instituted the prosecution is a competent witness, notwithstanding he may be liable in damages to the party aggrieved, where he has commenced the suit without probable cause: *Smith v. State*, 18 O. 89.

The right of appeal.

SEC. 14119 (218-198 Bates). In all prosecutions and proceedings under this act, it shall be lawful for either party to appeal to the court of common pleas of the proper county, upon the same conditions and in the same manner as appeals are allowed by law in civil cases, cognizable by justices of the peace. [38 v. 87.]

SEC. 14120 (218-199 Bates). Either of the acting members of the board of public works, resident engineers, superintendents, lock-tenders or collectors, shall be authorized to commence suit against any person charged with the commission of any offense, or made liable under the provisions of this act, or the orders of the board, before any justice of the peace in any county in the state where the person so charged or made liable may be found, or in the county where the offense was committed; and if any person so charged or made liable shall, when before the justice for trial, ask for an adjournment of the trial, or a continuance of the case, and the justice shall deem it expedient to grant such adjournment or continuance, it shall thereupon be his duty to reduce to writing the testimony of each witness in attendance, on the part of the state, and to cause the same to be subscribed and sworn to; the defendant shall have a right to cross-examine witnesses, and the depositions so taken shall be competent evidence on the trial of the case, before said justice; and should the case be appealed, they shall be competent evidence upon the trial in the appellant court. [38 v. 87.]

Where suit may be brought under this act.

To prevent vexatious prosecutions and to insure prompt action in cases requiring it, a discretion is vested in the officers having charge of the canal, and they exclusively are authorized to institute the prosecution: *White v. State*, 14 O. 468.

In a suit in the name of the state against an individual to recover a penalty incurred by a violation of this law (§ 5), a collector of tolls who instituted the prosecution was held to be a competent witness, notwithstanding his liability in damages to the party aggrieved, where the suit was commenced without probable cause: *Smith v. State*, 18 O. 89.

SEC. 14121 (218-200 Bates). Any person who shall neglect or refuse to pay over moneys received or collected by him, agreeably to the provisions of the preceding section, shall, on conviction thereof, forfeit and pay twenty-five per centum on the amount so detained by him, as a penalty, which penalty and amount detained shall be sued for and collected by the collector, to whom the money so detained should have been paid, in an action of debt, for and on behalf of the state. [38 v. 87.]

Penalty for neglecting or refusing to pay over such money, and how collected.

SEC. 14122 (218-201 Bates). So much of the thirty-fifth section of an act to provide for the protection of canals of the state of Ohio, the regulation of the navigation thereof, and for the collection of tolls, passed March twenty-third, eighteen hundred and forty, as prohibits the rafting of round or unhewn timber on any of the canals of this state, be and the same is hereby repealed; and that the board of public works may, if in their opinion it be expedient, make such regulations as they may think proper and necessary to regulate the rafting of such timber as aforesaid, and the tolls to be paid thereon. [44 v. 67; S. & C. 222.]

Rafting unhewn timber on canal.

SEC. 14123 (218-202 Bates). If the captain of any canal boat, or other person employed upon or traveling on such boat, shall take and carry away any rail or rails, stake or stakes, or other materials used or prepared for fencing, without permission of the owner, the captain or other person having charge of such boat shall, for every such act committed by himself, or

Penalty, etc., for taking fencing.

other person employed upon or traveling on such boat, pay any sum not less than ten nor more than twenty-five dollars, to be recovered by action in the name of the owner, and for his use, before any justice of the peace having jurisdiction; and such judgment shall be a lien upon such boat, its furniture and teams, any of which property may be taken and sold on execution upon such judgment, to enforce such lien. [54 v. 78; S. & C. 223.]

Losses on canals,  
etc., will not be  
paid by state.

SEC. 14124 (218-203 Bates). No claim for any damages arising from any loss or injury of, or to any property or merchandise passing along, or being on the canals, navigable feeders, slack-water improvements, roads or other improvements of any kind whatsoever, belonging to this state, shall hereafter be allowed or paid by the state or out of its treasury, in any manner directly or indirectly; and the words property or merchandise shall be construed to extend both to the goods and to the vehicle in which they may be contained. [46 v. 65; S. & C. 224.]

Insurers shall  
have no recourse  
on the state.

SEC. 14125 (218-204 Bates). No insurer or insurance company shall have any recourse on the state or its treasury, to be reimbursed for any loss such as is mentioned in the first section [G. C. § 14124] of this act, by reason of such insurer or insurance company having paid or being liable to pay the same; but nothing herein contained shall be construed so as to take away or impair any right of action which any person or company may at any time have against any person for negligence or delinquency in the discharge of his duties. [46 v. 65; S. & C. 224.]

When water is  
drawn off canals.

SEC. 14126 (218-205 Bates). In all cases where the water shall be partially drawn off from any part of either of the canals in consequence of a breach, or for the purpose of making repairs, or from any other cause, so as to prevent the passage of heavily laden boats thereon, every boat or other float, detained or prevented from proceeding on its voyage thereby, shall be so moored and placed as not to obstruct the passage of other boats or floats requiring less depth of water to enable them to navigate the canal; and if any boat or float, so detained or prevented from proceeding in consequence of the want of sufficient water, shall, either by design, or by accident or inadvertence, be so moored or placed as to prevent the passage of other boats, the master or other person having for the time being the care of the boat or float so moored or placed, on the application of the master of the boat or float whose passage is obstructed thereby, shall immediately cause the boat or float occasioning such obstruction to be removed, if practicable, so as to permit the free passage of other boats or floats. [76 v. 185.]

Lights, and name  
of boat.

SEC. 14127 (218-206 Bates). Every boat passing on either of the canals of this state, or on any feeder of either of them, is required at all times during the night to carry conspicuous lights on the bow of the boat. No boat or float shall be permitted to navigate any of the canals of this state without hav-

ing the name of such boat or float painted on some conspicuous, permanent part of the said boat or float, in letters at least four inches in height. And no boat or float shall carry any canvas, cloth, or other covering, so as to hide such name, unless said name shall be painted and fully displayed on said canvas, cloth, or other covering so carried. [76 v. 185.]

SEC. **14128** (218-207 Bates). The master or owner of any boat or float, who shall violate any of the provisions of the two preceding sections, shall forfeit and pay, for every such violation, the sum of ten dollars. [76 v. 185.] Penalty.

SEC. **14129** (218-208 Bates). No boat or float shall be permitted to navigate either of the canals of the state having the name of any other boat on the same canal, and the master of any boat or float who shall violate this provision shall forfeit and pay the sum of ten dollars for each and every offense; and every mile navigated in contravention thereof shall be considered a distinct offense. [76 v. 185.] Name of boat.

SEC. **14130** (218-209 Bates). No boat or other float, strapped or faced with iron on the front of the stem, or other most prominent part of the bow thereof, so as to be liable to strike with such iron facing against any part of any lock, lock-gate, guard-gate, bridge, or other work or device appertaining to the canal, shall be permitted to navigate, or be moved, on either of the canals of this state, unless there shall be suspended and thoroughly secured in front of the stem, or other most prominent part of the bow of such boat or float, in such a manner as effectually to prevent the iron facing or strap thereof from striking upon or against any lock, lock-gate, guard-gate, bridge, or other work or device appertaining to the canal, a good and sufficient fender, composed of rope or rope yarn, at least six inches in diameter. And no clearance shall be granted to any boat or float which shall not at the time of applying for such clearance, be provided with such fenders; and it shall be the duty of every collector of tolls, inspector, resident engineer, lock-tender, or superintendent of repairs, to see that the said order be strictly enforced. [76 v. 185.] Boats faced with iron.

SEC. **14131** (218-210 Bates). No boat or float shall be permitted to navigate the canals of this state without a good and sufficient bow-line, and each collector of tolls, superintending engineer, superintendent of repairs, or lock-tender on the canal where such boat or float shall pass, is hereby authorized to determine the sufficiency of the bow-line. [76 v. 185.] Bow-line.

SEC. **14132** (218-211 Bates). The master of any boat or float, which shall be found navigating or moving on either of the canals of this state, in contravention of the two preceding sections, shall forfeit and pay the sum of five dollars for each offense; and each mile that a boat or float shall be moved in contravention of the provisions thereof shall be considered a new offense. [76 v. 185.] Penalty.

Horses of boats.

SEC. 14133 (218-212 Bates). The horse or horses of any boat navigating the canals of this state shall not pass over a towing-path bridge faster than a walk, nor pass into or out of any boat or float over or upon the walls or sides of any lock, on either of the canals of this state; and the master of any boat or float, who shall violate this regulation, or permit it to be done by others, shall forfeit and pay the sum of five dollars. [76 v. 185.]

Refuse matter  
and fire.

SEC. 14134 (218-213 Bates). No hay, straw, manure, or other litter of any kind, shall be deposited in any part of either of the canals of this state, nor on either of the banks thereof. No person shall carry fire, in any form, on or across any wooden structure on any of the public works of this state, unless the same shall be inclosed in a lantern or some other closed vessel. [76 v. 185.]

Penalty.

SEC. 14135 (218-214 Bates). Any person violating the provisions of the preceding section shall forfeit and pay the sum of ten dollars for each offense, and all damages incident thereto. [76 v. 185.]

Embankment;  
excavation;  
proviso.

SEC. 14136 (218-215 Bates). Where the canal is composed, either wholly or in part, of embankment, no fence, pen, wall, house, or other thing, shall in any way occupy or be placed on any part of the embankment, levee, or landing attached to the canal, side-cut, or basin. Where the canal is composed, either wholly or in part, of excavation, no fence shall be placed within fifteen feet of the front edge of the towing path, nor within ten feet of the front edge of the berme bank: provided, that when the canal may be of extra width, the acting commissioner may, at his discretion, permit such deviation from the foregoing regulations as he may deem proper, so far as the construction of fences on the berme side of the canal is concerned; and any person who shall violate either of the provisions of the foregoing section shall forfeit and pay the sum of ten dollars for each violation, and, moreover, be liable for all expenses incurred by the agents of the state in removing any fence, pen, wall, house, or other things placed or constructed in contravention of the foregoing section. [76 v. 185.]

Issuing clearance.

SEC. 14137 (218-220 Bates). Whenever, in the opinion of any collector of tolls, any boat for which a clearance is demanded, at his office is, either from age, the rottenness of its timbers, its leaky condition, or other cause, unsafe, and liable to obstruct or suspend navigation by sinking or otherwise, said collector may refuse to issue said clearance unless the owner, or manager in charge of said boat, shall first give bond, with sufficient security, that said owner or manager will pay all expenses and damages caused by such obstruction or suspension of navigation. In case the owner or manager of any such boat shall be dissatisfied with the decision of the collector in such case, said owner or manager may apply to the acting commissioner in



charge of that portion of the public works, who shall immediately, upon said application being made, appoint three judicious, disinterested freeholders of the county where such case may be located, as a board of survey, who shall, after being first duly sworn, examine personally said boat, and certify to the collector whether, in their opinion, said boat is safe and seaworthy or not, and thereafter said collector shall be governed by the opinion of said board so expressed. [76 v. 185.]

#### HOCKING CANAL.

SEC. 14138 (218-288 Bates). The board of public works be and they are hereby authorized and empowered to sell and transfer, upon such terms as they may deem best for the interests of the state, that part of the Hocking canal extending from its terminus in the town of Athens to the Hocking river, to such party or parties as shall make application therefor for the purpose of filling up, using, and occupying the same for roadway or other like public purposes. [70 v. 306.]

Authority to sell and transfer a portion of Hocking canal.

This section is constitutional; and even one who has leased water from the state is not such a party to the original contract, if any, between the state of Ohio and the United States, that he can raise the question of the unconstitutionality of such statute: Vought v. Railroad, 58 O. S. 123 [affirmed in Walsh v. Railroad, 176 U. S. 469; Vought v. Railroad, 176 U. S. 481]; see, also, to the same effect, Wright v. Railroad, 176 U. S. 481.

SEC. 14139 (218-289 Bates). Before such transfer is made, the written consent thereto of the lessees of the public works shall be filed with said board, but such transfer shall not release said lessees from any of their duties, responsibilities or liabilities, under their contract for the lease of the public works, except so far as relates to the canal so transferred, as to which such transfer shall operate as a full release to said lessees from further responsibility or liability. [70 v. 306.]

Written consent of lessees requisite.

SEC. 14140 (218-290 Bates). The purchaser or purchasers of said canal, shall be responsible for any and all claims or damages that may occur by reason of the transfer, vacation and use of said canal for the purposes aforesaid, and shall also agree to remove the state dam near the mouth of said canal, so as to do away with the slack-water in said Hocking river, at that place, and shall deposit with the board of public works a good and sufficient bond in the penal sum of \$50,000, indemnifying the state from all such claims and damages, and for the fulfilment of their said agreement to remove said dam; whereupon the governor shall execute and deliver to said purchaser or purchasers, a grant for said canal for the purposes aforesaid, and all persons except said lessees suffering any injury or loss by reason of such sale and transfer and filling up of said canal, for which they would have a right to recover against the state, did the right to sue the state exist, shall have a right of action on said bond on account of such loss or injury against said transferee or transferees and sureties. [70 v. 306.]

Responsibility of purchasers; governor to execute grant; suits, etc.

## § 14141

Vacation of  
portion of canal;  
copy of rules to  
be filed.

SEC. 14141 (218-291 Bates). So much of the Hocking canal as lies eastward of the lock, at the village of Chauncey, Athens county, Ohio, including the state dam in Hocking, below said lock, and thence to the present terminus of said canal at the river northward of Athens, near Henold's salt works, be and the same is hereby vacated and abandoned: provided, that all stone, timber, and material of every kind, composing the locks, dams, or other structures on so much of said canal and river, as is vacated and abandoned by this act, is expressly reserved to the state, and that the board of public works of the state is authorized by its agents, within six months after the passage of this act, to enter upon so much of said canal and the premises adjoining said dam, and remove said material to any other portion of said canal, or sell the same as may be deemed for the best interest of the state; and provided, that it is not intended hereby to relieve the lessees of said canal, or their assigns, from any responsibility or liability imposed upon them by "an act to provide for the leasing of the public works of the state," passed May 8, 1861, or by the instrument of lease, executed in pursuance of said act, for any such liabilities or responsibilities as two or more persons, said canal lands shall revert and the title thereto vest in each, divided by a line drawn along the center of said canal, half over from the line of one of such owners to the line of the other; and in all cases when said canal runs through the land of any person or persons, then such canal lands shall revert to such land owner. [74 v. 166.]

Land to revert to  
owners of ad-  
joining lands.

SEC. 14142 (218-292 Bates). That the land upon which the bed of said canal so vacated is located, shall revert absolutely to the owners of the lands adjoining said canal on each side in the manner following, to-wit: where the canal divides the land of two or more persons said canal lands shall revert, and the title thereto vest in each divided by a line drawn along the center of said canal, half over from the line of one of such owners to the line of the other, and in all cases when said land runs through the land of any person or persons then such canal land shall revert to such land owner. [73 v. 168.]

Duty of board of  
public works  
respecting such  
vacation.

SEC. 14143 (218-293 Bates). That it is made the duty of the board of public works immediately after the passage of this act to remove and tear out the dam in the Hocking river described in the first section [§(218—291)] of this act, and the lessees of the public works aforesaid shall, within reasonable time, provide for the protection of the land-owners along the portion of said canal so vacated from the overflow and influx of said Hocking river through the head of said canal so vacated, at its intersection with said river, and from all other breaks in said canal, existing at the date of the passage of this act. [73 v. 168.]

Vacation of  
Hocking canal  
below and east of  
Nelsonville and  
Chauncey.

SEC. 14144 (218-294 Bates). So much of the Hocking canal as lies between the first lock below and east of Nelsonville, and the village of Chauncey, Athens county, be and the same is hereby vacated and abandoned: provided, that all stone, timber, and material of every kind composing the locks, dams,

or other structures on so much of said canal as is vacated and abandoned by this act, is expressly reserved to the state, and that the board of public works of the state is authorized, by its agents, within six months after the passage of this act, to enter upon so much of said canal and the premises adjoining said canal, and remove said material to any other portion of said canal, or sell the same, as may be deemed for the best interests of the state; and provided, that it is not intended hereby to relieve the lessees of said canal, or their assigns, from any responsibility or liability imposed upon them by "an act to provide for the leasing of the public works of the state," passed May 8th, 1861, or by the instrument of lease executed in pursuance of said act for any such liabilities or responsibilities as have accrued prior to the passage of this act, nor for any negligence as in the care of said canal or any portion of the same, as the said lessees may have been guilty of; and provided further that the lessees shall execute and file with the board of public works a release of all claims for damages growing out of such vacation. [74 v. 166.]

SEC. 14145 (218-295 Bates). The land upon which the bed of said canal so vacated [is located] shall revert absolutely to the owners of the lands adjoining said canal on each side in the manner following, to-wit: where the canal divides the land of two or more persons, said canal lands shall revert and the title thereto vest in each, divided by a line drawn along the center of said canal, half over from the line of one of such owners to the line of the other; and in all cases when said canal runs through the land of any person or persons, then such canal lands shall revert to such land owner. [74 v. 166.]

Bed of canal vacated to revert to adjoining land owners and how.

SEC. 14146 (218-296 Bates). The lessees of the public works aforesaid shall provide for the protection of land owners along the portion of said canal so vacated from overflow, and from all other breaks in said canal existing at the date of the passage of this act. [74 v. 166.]

Lessees to provide for overflow and breaks.

#### AN ACT

To provide for the abandonment of the Hocking canal for canal purposes, and for leasing the same to the Columbus, Hocking Valley & Athens railroad company. (91 v. 327.)

SEC. 14147. *Be it enacted by the General Assembly of the State of Ohio,* That the Hocking canal, from its junction with the Ohio canal in the village of Carroll, Fairfield county, to its southeastern terminus in the village of Nelsonville, Athens county, be and the same hereby is abandoned for canal purposes, and the same shall not be used for canal purposes during the pendency of the lease provided in the next section of this act.

Providing for the abandonment of a portion of the Hocking canal.

SEC. 14148. Said instalment of fifty thousand dollars shall be paid into the state treasury before the construction of said railroad is begun, and for the remaining instalments of rental the state of Ohio shall have a first lien upon said railroad, together with its switches, side-tracks, bridges and

Lien of the state for purchase money and rentals.

other structures erected on said property of the state of Ohio, which shall be superior to any and all other liens of every kind upon the same. The said Columbus, Hocking Valley and Athens railroad company shall further execute unto the state of Ohio to be approved by the auditor of state, secretary of state and attorney-general, or any two of them, a good and sufficient bond in the sum of one hundred thousand dollars conditioned that said company will faithfully build said railroad in compliance with the condition and terms of this act, and upon failure to build said road within the time herein specified they shall be liable to the state of Ohio in the full sum of one hundred thousand dollars as stipulated damages. Said bond shall be executed and filed with the secretary of state within ten days after the passage of this act.

Consideration of transfer to railroad company.

SEC. 14149. In consideration of the payments aforesaid, said railroad company, its successors and assigns, shall have the exclusive right during the term aforesaid to use and occupy the property aforesaid, or so much thereof as may be necessary, for the purpose of constructing, maintain and operating a railroad thereon. Said company shall not disturb any vested rights or privileges of abutting property-holders along said canal, and shall hold the state harmless from all loss or damage resulting to such property-holders by reason of the construction and operation of said railroad. Provided, that when said railroad, its successors and assigns cease to use said canal for railroad purposes said canal property shall revert to the state for canal purposes.

Taxation.

SEC. 14150. This act shall not be construed to prevent the levying and collecting of taxes on said railroad in the same manner as they are levied and collected on other railroad property in this state.

#### AN ACT

To amend sections 2 and 6 of an act entitled "An act to provide for the abandonment of the Hocking canal and the leasing of the same to the Columbus, Hocking Valley and Athens railroad company," passed May 18th, 1894 (91 O. L., 327), as amended April 23, 1898 (93 O. L., page 216.) (94 v. 236.)

WHEREAS, By an act passed by the general assembly of the state of Ohio, on May 18th, 1894, the said state leased and conveyed to the Columbus, Hocking Valley and Athens railroad company, its successors and assigns, the Hocking canal and property of the state of Ohio, adjacent thereto, and said company has paid into the treasury of this state the sum of fifty thousand (\$50,000) dollars as provided in said act; and

WHEREAS, The title of the state of Ohio to said premises was attacked in court by numerous suits and the said railroad company was compelled to defend the title thereto through all the courts of the state of Ohio and through the supreme court of the United States, at large expense to itself, and the state of Ohio did not defend said suits and maintain its title and right to lease said premises; and

WHEREAS, Said suits were decided by the supreme court of Ohio, March, 1898, and were thereupon taken to the supreme court of the United States and by said court finally determined and decided February 26th, 1900, and said court has sustained said lease so made by the state of Ohio to said railroad company; and

WHEREAS, The said long continued litigation and attacks upon the title of said railroad company to said premises, has rendered it impossible to construct said railroad until said title was rendered valid by the decree of said last named court; therefore,

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That section 2 and section 6 of an act entitled "An act to provide for the abandonment of the Hocking canal and the leasing of the same to the Columbus, Hocking Valley and Athens railroad company," as amended April 23, 1898 (93 O. L., page 216), to be and the same is hereby amended so as to read as follows:

SEC. 14151. There is hereby granted the right, franchise, and privilege of constructing, maintaining and operating over, upon and along the Hocking canal and property of the state of Ohio adjacent thereto, a railroad, with single or double tracks, side tracks, switches, bridges, stations and other structures usual and incidental to the operating of a railroad, to the Columbus, Hocking Valley and Athens railroad company, its successors and assigns, for the term of ninety-nine years, renewable forever, for and in consideration of the payment by said company, its successors or assigns, to the treasurer of the state of Ohio on the first day of July, 1894, the sum of fifty thousand dollars, and on the first day of January, 1905, and of each and every year thereafter during the term of this lease, the sum of ten thousand dollars annual rental. Provided such company, or its assigns, shall, within thirty days after the passage of this act file a written waiver with the auditor of state, releasing all claims to any amount of money already paid to the state by it or its assigns, and further waiving and releasing all claims to damages against the state by reason of any acts of the state heretofore taken.

Lease to  
Columbus, Hock-  
ing Valley and  
Athens railroad  
company.

SEC. 14152. The work of constructing said railroad shall be commenced within six months after the passage of this act, and the same shall be completed on or before the first day of October, A. D. 1905.

When work of  
construction to  
be completed.

SECTION 2. Said original sections 2 and 6 as amended April 23, 1898, are hereby repealed and this act shall take effect and be in force from and after its passage.

## AN ACT

To abandon the Hocking canal, and to provide for the selling and leasing of all lands connected therewith, and to repeal certain acts relating thereto. (102 v. 490.)

*Be it enacted by the General Assembly of the State of Ohio:*

Abandonment  
of Hocking  
Canal.

**[SEC. 14152-1.]** § 1. That the portion of the Hocking canal, including the full width thereof between its junction with the Ohio canal in the village of Carroll, Fairfield county, Ohio, and the lower end of the lower canal lock in the city of Nelsonville, Athens county, Ohio, be and the same is hereby abandoned for canal purposes.

Survey, maps  
and plats.

**[SEC. 14152-2.]** § 2. That the state board of public works and the chief engineer of the public works, acting jointly, shall cause such surveys to be made of said canal property as in their judgment is necessary for the purpose of carrying out the provisions of this act, together with such maps and plats of the same as will facilitate the selling or leasing of said canal lands, which plats shall be preserved as permanent records in the office of the state board of public works.

Appraisalment,  
lease and sale.

**[SEC. 14152-3.]** § 3. As soon as such surveys and plats have been completed, the state board of public works and the chief engineer of the public works, acting as a joint board, shall proceed to appraise, and lease or sell, as they may deem for the best interest of the state, subject to the approval of the governor and attorney general, said canal lands in strict conformity with the various provisions of the statutes of Ohio relating to the leasing and selling of state canal lands, except that the grant of such leases shall be for a term of not less than fifteen nor more than twenty-five years, and that the bed and banks of said abandoned canal property may be included in any lease of such canal lands.

If a sale is agreed upon, it shall be made as follows:

How sale shall  
be made.

**[SEC. 14152-4.]** § 3-a. The board of public works and canal commission of the state of Ohio, acting jointly may at their option make an appraisalment of all the aforesaid abandoned property in divisions or sections of such length or amounts and appraise separately and as a whole, as in their opinion will best suit the convenience of purchasers and facilitate the sale thereof, to the best advantage and for the highest price for the state. They shall make a complete report in writing in which they shall itemize each division and as a whole with its value as appraised by them, which shall be returned to the auditor of state within thirty days from the date of said appraisalment.

Report of ap-  
praisalment in  
writing.

Filing of ap-  
praisalment and  
advertisement  
for sale.

**[SEC. 14152-5.]** § 3-b. The auditor of state shall receive and file the said appraisalment, and the said joint board shall forthwith proceed to advertise the aforesaid abandoned canal property for sale by giving notice of the time, place and terms thereof for three consecutive months in two newspapers of opposite politics published and having a general circulation in said

county; and upon the day and hour named in such advertisement said joint board shall offer the same for sale at public auction at the court house in Hocking, and Fairfield and Athens counties and then and there sell the same to the highest and best bidder or bidders; provided the same or any part thereof shall not be sold for less than three-fourths of the appraised value thereof, and that if all or any part of said property remains unsold for want of bidder the joint board shall again advertise and sell the claims as aforesaid. And if any of said property remains unsold after having been twice offered for sale the same shall be appraised agreeably to section 3-a of this act, and again offered for sale as above provided, the state reserving the right to reject any or all bids.

**[SEC. 14152-6.]** § 4. The county commissioners of any county, likewise the council of any municipality, through which said abandoned canal passes, shall have the right to remove all existing bridges crossing any portion of said abandoned canal over which public highways or the streets of any municipality pass, and to grade such highways and streets by filling and grading across the channel and banks thereof, but must provide for all necessary drainage underneath the same; there is, however, reserved to the state of Ohio, its lessees, grantees, and their assigns, an unobstructed right-of-way, for any and all purposes across the land occupied by the highways and streets extending across said abandoned canal, as provided for above.

Right to remove  
bridges and  
make grade.

**[SEC. 14152-7.]** § 5. All accounts of expenses, incident to surveying, platting and monumenting said abandoned canal lands, together with the necessary expenses of advertising, selling or leasing the same, shall be verified and approved by the chief engineer and the board of public works, and paid out of the canal funds, or other funds provided for the survey of canal lands, and the auditor of state is hereby directed to credit back to the fund or funds from which such payments are made, a like amount in any sum not to exceed five thousand (\$5,000.00) dollars from the receipts derived from the sales and leases of said lands.

Verified account  
of expense and  
payment.

**[SEC. 14152-8.]** § 6. Nothing in this act shall interfere with any leases, rights or privileges heretofore granted by the state of Ohio and in force at the date of approval of this act.

Existing rights  
remain.

**[SEC. 14152-9.]** § 7. That the act entitled, "An act to provide for the abandonment of the Hocking canal for canal purposes, and for leasing the same to the Columbus, Hocking Valley and Athens railroad company," passed May 18, 1894 (Vol. 91, O. L. page 327), also an act entitled, "An act to amend sections 2 and 6 of an act entitled, 'An act to provide for the abandonment of the Hocking Valley and Athens railroad company,'" passed May 18, 1894 (91 O. L. 327), as amended April 23, 1898 (93 C. L. page 216), and as amended April 16, 1900 (94 O. L. page 236), be and the same are hereby repealed.

Repeals.

## MIAMI AND ERIE CANAL.

Miami, Miami extension, and Wabash and Erie, to be Miami and Erie canal.

SEC. 14153 (218-246 Bates). The Miami canal, the Miami extension canal, and Wabash and Erie canal, shall hereafter constitute one canal, which shall be known and designated by the name of the Miami and Erie canal, and but one account of toll shall be kept, and one form of clearances issued at the several collectors' offices on said canal. [47 v. 44; S. & C. 224.]

Abandonment of the Wabash and Erie canal and Six Mile reservoir; lands and material to be sold; reservation of material; notice thereof; use of abandoned canal for drainage purposes.

SEC. 14154 (218-247 Bates). The use for canal purposes of the Wabash and Erie canal from the place of its intersection with the Indiana and Ohio State line to the first lock below the Six Mile reservoir, all in Paulding county, Ohio, together with the Six Mile reservoir in said county, is hereby abandoned as hereinafter provided for, and all right, title and interest of the state in any land, in or adjacent thereto, together with all timbers, stone or other material, belonging thereto, shall be appraised, advertised and sold as hereinafter provided. But the state board of public works shall have full power to reserve for the use of other canals any timbers or stone which can be economically transported from the said canal and reservoir to the other canals on which it is desired to so use the said material; provided, that the said board, prior to the appraisalment of said canal property, shall notify the commission hereinafter provided for of the amount of said material which they desire to use; and the commissioners of Paulding county are hereby authorized to deepen and widen under the drainage laws of the state any portion of said canal so abandoned. [85 v. 207.]

Terms of sale to be fixed by sinking fund commissioners; inspection to be made by canal commission; appraisalment of property; report to auditor of state.

SEC. 14155 (218-248 Bates). That upon the passage of this act the commissioners of the sinking fund of the state shall determine the terms of payment on which said property shall be sold, and the commission appointed by the governor, by and with the advice and consent of the senate under S. B. No. 21, passed March 24, 1888, shall proceed to make a personal inspection of the said canal and reservoir property, and if, in their opinion, it would be to the best interest and welfare of the citizens of Paulding county and the state of Ohio that said portion of the Wabash and Erie canal and the Six Mile reservoir, or either of them, should be abandoned, they shall proceed to appraise and sell said property as hereinafter provided for, and in appraising said property shall have such assistance from the chief and resident engineers and secretary of the board of public works as they may require; and, in making such appraisalment, may appraise said property in divisions or sections of such lengths or amounts, and appraise separately, as, in their opinion, will best suit the convenience of purchasers and facilitate the sale thereof to the best advantage and for the most money. They shall make a complete report, in writing, in which they shall itemize each division with its value as appraised by them, which shall be returned to the auditor of state within ninety (90) days from the date of their appointment. [85 v. 207.]



SEC. 14156 (218-249 Bates). The auditor of state shall receive and file the same, and the said commission shall forthwith proceed to advertise the said canal and reservoir property for sale, by giving notice of the time, place and terms thereof, for four (4) consecutive weeks in two (2) newspapers of opposite politics published and having a general circulation in said county, and also in two newspapers of opposite politics published and having a general circulation in the state. And upon the day and hour named in such advertisement shall offer the same for sale at public auction at the court-house in Paulding, Ohio, and then and there sell the same to the highest and best bidder or bidders; provided, the same or any part thereof shall not be sold for less than two-thirds ( $\frac{2}{3}$ ) of the appraised value thereof nor in tracts of more than eighty (80) acres each, and that if all or any part thereof of said property remains unsold for want of bidders, the said commission shall again advertise and sell the same as aforesaid. And if any of said property remains unsold after having been twice offered for sale, the same shall be appraised agreeable to section[s] two (2) and three (3) [G. C. §§ 14155 ad 14156] of this act, and again exposed to sale the same as above provided for. [85 v. 207.]

Auditor of state to advertise and sell said property; proviso; re-advertising and sale of property unsold; re-appraisement.

SEC. 14157 (218-250 Bates). That upon making sale of said property as provided in section three [G. C. § 14156] of this act, the said commission shall make a report of their proceedings to the governor, and upon receiving his approval in writing, they shall submit all their findings and action to the attorney general, who shall examine the same, and if found regular and legal, according to the provisions of this act, he shall endorse his approval thereon, which shall be filed with the auditor of state. The auditor shall record said report with the approval of the attorney-general, and shall enter an account between all purchasers and the state; and on the payment by the purchasers of the proper amount, as determined by the report of said sale, and the terms as agreed upon by the commissioners of the sinking fund, the auditor shall properly execute and deliver to the purchaser a certificate of sale for such of said property so purchased and paid for. And at the time of the payment of the full amount of said purchase money, together with annual interest of six (6) per cent. per annum on all deferred payments from day of sale no time of payment, the evidence of which payment shall be shown by a receipt from the auditor of state, the governor of the state of Ohio shall properly execute and deliver to the purchaser or his assigns a deed of conveyance of said lands so sold and paid for. [85 v. 207.]

Report of commission to governor; their acts to be approved by attorney-general; record of said report; deeds for lands purchased.

SEC. 14158 (218-251 Bates). The auditor shall pay the proceeds of such sale into the state treasury to the credit of the Ohio and Miami and Erie canals. [85 v. 207.]

Disposition of proceeds of such sale.

SEC. 14159 (218-252 Bates). The Wabash and Erie canal, from the bulk-head of Six-mile reservoir to one foot below the lock one mile west of the junction of the Miami and Erie canal, and the Wabash and Erie canal, all in Paulding county, Ohio, be and the same hereby is abandoned. [88 v. 72.]

Wabash and Erie canal; abandonment.

Reversion of  
land.

SEC. **14160** (218-253 Bates). And the land occupied by said canal, towing path and berme banks in total be, and the same hereby is transferred to the owners of the tracts of land through which said canal runs, except so much thereof as has been sold heretofore by the state, but subject to all legal highways and legally established ditches and water courses along, across or upon the same. [94 v. 172; 88 v. 72.]

Wabash and  
Erie canal;  
abandonment of  
portion of.

SEC. **14161** (218-253a Bates). That the portion of the Wabash and Erie canal, lying between the junction of said canal with the Miami and Erie canal and the lock one mile west from said junction, all in Paulding county, Ohio, be and the same is hereby abandoned. [95 v. 77, March 31, 1902.]

Said canal lands  
shall be sold.

SEC. **14162** (218-253b Bates). Said canal lands shall be sold subject to the provisions of section 218-231 of the Revised Statutes of Ohio [G. C. § 13971]. [95 v. 77, March 31, 1902.]

Said lands to be  
transferred to  
owners of land  
through which  
canal runs.

SEC. **14163** (218-253c Bates). And the land occupied by said canal, towing path and berme banks in total be, and the same is hereby transferred to the owners of the tracts of land through which said canal runs, except so much thereof as has been sold heretofore by the state, but subject to all legal highways and legally established ditches and watercourses along, across, and upon the same. [95 v. 78, March 31, 1902.]

Board of public  
works authorized  
to grant right of  
way.

SEC. **14164** (218-254 Bates). The board of public works are hereby authorized to grant the right of way to the Cincinnati and Eastern Connection Railway Company for a single or double track railway across a certain strip of ground owned by the state of Ohio, situated in section twenty-one (21) Mill Creek township, Hamilton county, Ohio, upon such terms and conditions, and for such price as may be approved by the board of public works. [80 v. 198.]

City of Cincin-  
nati authorized  
to occupy a por-  
tion of Miami  
and Erie canal.

SEC. **14165** (218-255 Bates). Authority and permission shall be granted, in the manner hereinafter pointed out, to the city of Cincinnati to enter upon, improve and occupy forever as a public highway and for sewerage purposes, all or any of that part of the Miami and Erie canal which extends from the east side of Broadway in said city, to the Ohio river including the width thereof as owned or held by the state: but the said grant shall be made subject to all outstanding rights or claims, if any, with which it may conflict: *Provided*, That no work shall be done by said city authorities on the premises hereby granted until the plan of improvement shall be approved of by the board of public works. [60 v. 44.]

Cited: State, ex rel., v. Railway, 12 O. C. C. (N.S.) 321, 21 O. C. D. 377.

This grant left the title in the state and did not give to the city any right which it could transfer: State, ex rel., v. Railway, 53 O. S. 189.

Under § 18 of "an act to provide for leasing the public works of the state," passed May 8, 1861 (S. & S. 61), the state reserved to itself the right as against the lessees of the public works to grant to the city of Cincinnati permission to enter upon and improve as a public

highway and for sewerage purposes, that part of the Miami and Erie canal which extends from the east side of Broadway in said city to the Ohio river: *Elevator Co. v. Cincinnati*, 30 O. S. 629.

The rights acquired by the lessees of the public works, under the provisions of said act of 1861, to the surplus water connected with said section of the canal, or appertaining thereto, and owned by the state, for the purpose of being used therewith, and also the right to "additional surplus water," were held by said lessees, subject to be divested by the exercise of the power reserved to the state by the 18th section of said act, to make such grant to the city for a public highway and for sewerage purposes: *Elevator Co. v. Cincinnati*, 30 O. S. 629.

By the act of March 23, 1863 (1 Saylor Stat. 379), the state exercised the power reserved to itself by the 18th section of the act of 1861, and thereby granted authority and permission to said city to enter upon, improve and occupy forever, as a public highway and for sewerage purposes, said portion of the canal, according to a plan of improvement to be approved by the board of public works. This act provides that said grant should be subject to all outstanding rights or claims, if any, with which it may conflict; that it shall not extend to the revenues derived from water privileges; that the city in the use of the same should not obstruct the flow of water through the granted portion, nor injure the present supply of water, and should do no work until the plan for the improvement by the city should be approved by the board of public works. It was held that these reservations and conditions annexed to the grant to the city were not intended to reserve to the state, nor to the lessees of the public works, the right, after that part of the canal had been abandoned, and after the title had vested in the city, and it was in possession engaged in making the intended improvement according to an approved plan, to create new water rights not therefore existing: *Elevator Co. v. Cincinnati*, 30 O. S. 629.

This grant and the construction by the city of an avenue and sewer along the line of the land, upon a plan of improvement approved by the board of public works, in such manner that the canal could no longer be used for purposes of navigation, was an abandonment of it by the state for the public uses for which it was held; and this, by operation of law, was a surrender by the state of the incidental right to the surplus water along the part so abandoned, not expressly saved, as outstanding rights or claims, under contracts existing at the time of such abandonment under the reservations and conditions of the act of March 24, 1863 (L. Saylor's Stat. 379): *Elevator Co. v. Cincinnati*, 30 O. S. 629.

Under the act of March 24, 1863 (60 v. 44), the state granted to the city of Cincinnati authority and permission to enter upon, improve and occupy as a public highway, and for sewer purposes, a section of one of its canals in said city, between Broadway and the Ohio river, on which there were nine locks for the descent of the water to the river, subject to all outstanding rights and claims, if any, with which such grant might conflict, reserving the revenues derived from water privileges, and on condition that it shall not obstruct the flow of water through said canal, nor destroy or injure the present supply of said water for milling purposes; and providing that no work shall be done by the city until the plan of improvement shall be approved by the board of public works. It was held that the lessees of surplus water at these locks, under the laws of the state, in force in 1836, had no such absolute title or vested interest in the premises, nor any such right or claim, as to conflict with the right of the state, to make such grant, though its effect, and the improvement made was to prevent a future supply of surplus water at such locks. This grant, and the construction by the city of a highway and a sewer along the line of the canal, upon a plan of improvement approved by the authorized agents of the state, which rendered it impossible to use the same for the purposes of navigation, was an abandonment thereof for such purposes, and by operation of law was a surrender by the state of its incidental power to sell or lease surplus water on the part so abandoned, not expressly saved by the reservations and conditions of said act, as incidental to the reserved right to flow the water from the canal above through to the Ohio river: *Fox v. Cincinnati*, 33 O. S. 492.

Pursuant to the authority conferred by law, the board of public works leased the surplus water of her canals, but reserved the right to resume the use of it when it should be needed for the purposes of navigation. A statute was subsequently passed whereby one of the canals was appropriated to the city of Cincinnati for highway and sewage purposes. It was held this was not a law impairing the obligations of contract because the lessee was bound to take notice of the right of the state to discontinue the canals whenever the legislature deemed it expedient: *Fox v. Cincinnati*, 104 U. S. 783, 5 O. F. D. 110.

Revenues reserved, and water privileges not to be obstructed.

SEC. 14166 (218-256 Bates). The said grant shall not extend to the revenues derived from the water privileges in said canal which are hereby expressly reserved; and the said grant shall be made upon the further condition that the said city, in the use as aforesaid of all or any of said portion of said canal, shall not obstruct the flow of water through said canal nor destroy nor injure the present supply of said water for milling purposes, and that said city shall be liable for all damages that may accrue from such obstruction or injury; but it is not intended hereby to relieve the lessees of said canal or their assignees from any responsibilities imposed upon them by "an act to provide for leasing the public works of the state" passed May 8, 1861, or by the instrument of lease executed in pursuance of said act, except as and to the extent that they may be interfered with, as said city may, from time to time, enter upon, improve, and occupy any part of said grant. [60 v. 44.]

When governor is required to execute a grant to city of Cincinnati.

SEC. 14167 (218-257 Bates). Whenever the council of said city, by a vote of not less than two-thirds of the whole number of members thereof, shall decide to use said canal as herein authorized, the said council shall make known its decision to the governor, and thereupon the governor, in behalf of the state, shall execute and deliver to the city of Cincinnati a grant of the part of said canal herein described for the uses and purposes before mentioned and upon the terms and conditions specified in this act. The attorney general shall prepare the form of said grant. [60 v. 44.]

Restrictions as to taxation, etc.

SEC. 14168 (218-258 Bates). This act shall not be construed to confer upon said city any new power of taxation or to borrow money, or to contract debts in the use as aforesaid of said canal. [60 v. 44.]

Conveyance of certain canal lands; conditions; rental reduced.

SEC. 14169 (218-259 Bates). The governor be and he is hereby empowered to make a conveyance to the Pittsburgh, Cincinnati, Chicago and St. Louis railway company, its successors and assigns, of the following lands, to wit:

First: Situated in the city of Cincinnati, county of Hamilton, and state of Ohio, and being all that part of what was formerly the Miami and Erie canal, including the width thereof, lying between Pearl street and the Ohio river, also a certain lot used in connection therewith, fronting on Lock street about ninety feet and running back about ninety-four feet parallel with Front street to the said canal, subject, however, to the easement in said premises of the city of Cincinnati for sewerage purposes and also of the right of the state to maintain or have maintained the existing raceway and waterpowers or privileges and to receive the revenues therefrom expressly reserved by the state under the act of March 24, 1863, (60 Ohio Laws, 44). [G. C. § 14166]; the entire appraised value of said premises being fifty-seven thousand dollars.

Second: Situated in the City of Hamilton, county of Butler, and state of Ohio, and being all that part of Hamilton basin so called as is described in a certain lease made by the state of Ohio

to the said railway company, dated the sixth day of February, 1896; the entire appraised value thereof being thirty thousand dollars.

The said conveyance to be made upon condition that the said railway company pay into the state treasury the sum of eighty-seven thousand dollars, twelve thousand dollars of which shall be paid into the canal fund, and the balance into the general revenue fund, and consent to a modification of a lease between the state of Ohio and the Pittsburgh, Cincinnati, Chicago and St. Louis railway company, dated October 24, 1895, as to that part of Eggleston avenue north of Pearl street so that the said lease shall include only so much of the roadway as is now occupied by the railroad tracks and such additional tracks as the city of Cincinnati may authorize. Upon compliance with the conditions aforesaid and the delivery of the conveyance herein authorized the rental to be paid under the said lease of the 24th day of October, 1895, shall be reduced to six per cent. upon the valuation of the re [s] idue of the property herein leased, to wit: One hundred thousand dollars (\$100,000), and the rental to be paid under the said lease of the sixth day of February, 1896, shall cease. [92 v. 293.]

**SEC. 14170** (218-260 Bates). Authority and permission shall be granted in the manner hereinafter pointed out, to the city of Toledo to enter upon, improve and occupy forever as a public highway, and for the use of water pipes and for sewerage purposes, all that part of the Miami and Erie canal (known as the Manhattan branch), which extends from a point to be hereafter designated by the board of public works, at or near the southerly bank of Swan creek, where the aqueduct crosses the said creek and continuing to the Maumee river, including the width thereof as owned and held by the state; but the said grant shall be made subject to all outstanding rights or claims, if any, with which it may conflict; provided, that all material composing the aqueduct, and the locks at the terminus of said canal, are hereby expressly reserved to the state, to be removed by her agents whenever the city of Toledo, by the authority of this grant, enters upon and occupies said canal. [61 v. 67.]

City of Toledo authorized to occupy part of Miami and Erie canal for sewerage purposes; proviso.

The execution of the grant, pursuant to the act of March 20, 1864, "to authorize the city of Toledo to enter and occupy a part of the Miami and Erie canal as a public highway and for sewerage and water purposes," was an abandonment by the state of that part of her public canals known as the Manhattan branch: *Hubbard v. Toledo*, 21 O. S. 379.

The obstruction of a navigable stream can not be maintained to promote private interests. Hence, when the state abandoned the Manhattan branch canal, the aqueduct, a part thereof, spanning and obstructing Swan creek, which is a navigable stream, became a common nuisance, to abate which any riparian proprietor injured thereby had the legal right to invoke judicial proceedings: *Hubbard v. Toledo*, 21 O. S. 379.

Property was appropriated in fee by the state, through its canal commissioners, for the purpose of a canal. Subsequent statutes gave the city of Toledo power to enter upon a portion of the appropriated premises, and occupy the same "as a public highway, and for the use of water pipes and for sewerage purposes," and also released to the city all right of the state in the premises in question. Under such legislation, one who claims to own a portion of the canal bed can not contest the right of the city, on the ground that the change of use authorized by the legislature has terminated the public interest in the property: *Malone v. Toledo*, 28 O. S. 643.

In an action of ejectment to recover possession of canal lands by a purchaser thereof from the city of Toledo under defense of adverse possession it was held that the full title to such land was not vested in the city of Toledo until the act of 1871; and that accordingly adverse possession did not begin to run until that time: *Paige v. Cherry*, 17 O. C. C. 579, 9 O. C. D. 364 [affirmed, without report, *Paige v. Cherry*, 52 O. S. 644].

City liable for all damages therefrom.

SEC. 14171 (218-261 Bates). The said city shall be liable for all damages that may accrue from the vacation of said canal; but it is not intended hereby to relieve the lessees of said canal, or their assigns, from any responsibilities imposed upon them by "an act to provide for the leasing of the public works of the state," passed May 8th, 1861, or by the instrument or lease executed in pursuance of said act, except as and to the extent that they may be interfered with as said city may enter upon and occupy said grant. [61 v. 67.]

City to signify vote of acceptance to governor, and to indemnify the state from liability and damages.

SEC. 14172 (218-262 Bates). Whenever the city council of said city, by a vote of not less than two-thirds of the whole number thereof, shall decide to use said canal as herein authorized, the said council make known the said decision to the governor, and deposit with him a written release, executed by the lessees of the public works, relinquishing any rights they may have in that part of said canal, or a bond duly executed and to the satisfaction of the governor, indemnifying the state from all liabilities and damages which may result from said vacation, and thereupon the governor in behalf of the state, shall execute and deliver to the city of Toledo a grant of that part of the canal herein described for the uses and purposes before mentioned, and upon the terms and conditions specified in this act. The attorney general shall prepare the form of the said grant, and also the form of the said release or bond. [61 v. 67.]

Saving clause.

SEC. 14173 (218-263 Bates). This act shall not be construed to confer upon said city any new sources of taxation, or to borrow money, or to contract debts in the use as aforesaid of said canal. [61 v. 67.]

Certain interests transferred to Toledo; provisos.

SEC. 14174 (218-264 Bates). Whatever interest remains to the state of Ohio in the bed of that part of the Miami and Erie canal which has been abandoned in pursuance of the act entitled "an act to authorize the city of Toledo to enter upon and occupy a part of the Miami and Erie canal as a public highway, and for sewerage and water purposes," passed March 26, 1864, is hereby relinquished and transferred to the city of Toledo: provided said city shall be responsible for any and all damages that may accrue by reason of such relinquishment and transfer: provided, further, that the governor in behalf of the state, shall execute and deliver to said city of Toledo, a grant or quit claim, in conformity with this act. The attorney-general shall prepare the form of said grant or quit claim. [68 v. 17.]

Abandonment, etc., of portion of side-cut in Toledo.

SEC. 14175 (218-265 Bates). So much of the side-cut (so-called), of the Miami and Erie canal in the city of Toledo, Ohio, as lies northwesterly of the southeasterly line of St. Clair street and southeasterly of its intersection with Swan creek northwesterly of said St. Clair street in said city, be and the

same is hereby abandoned for canal purposes; and the city of Toledo, Ohio, is hereby authorized to enter upon and construct an embankment across said side-cut on the line of St. Clair street, including the necessary ground for slopes, and that portion of said side-cut lying between the other lines of said street is granted to said city. [92 v. 219.]

SEC. 14176 (218-266 Bates). The balance of the land upon which the bed of said cut so abandoned is located, shall be appraised by the canal commission and sold at public auction to the highest bidder, at not less than three-fourths of the appraised value thereof, after having been duly advertised in some newspaper of general circulation in Lucas county, Ohio. [92 v. 219.]

Sale.

SEC. 14177 (218-267 Bates). Any city of the second class containing more than thirty thousand inhabitants, and located in a county having a superior court, may, until otherwise provided by the general assembly, maintain a bridge of a permanent character across the Mad River feeder of the Miami and Erie canal at its intersection with Third street, in the city of Dayton, similar to the bridge now located at said point, and may also build and maintain a bridge of like character to connect Bainbridge street with said Third street bridge. [72 v. 175.]

Certain cities authorized to build bridges over feeder.

SEC. 14178 (218-268 Bates). Whenever the general assembly shall so direct either or both of said bridges shall be removed by the city building the same without expense to the state and said bridge at Bainbridge street shall not be built until the lessees of the public works shall have executed and filed in the office of the board of public works a written agreement that said bridge may be so built and maintained as hereinbefore provided, and relinquishing all claim for damages on their part by reason thereof. [72 v. 175.]

Lessees of canals to give their consent.

SEC. 14179 (218-245 Bates.) The canal commission and board of public works of the state of Ohio are hereby authorized to lease for a period not to exceed fifteen (15) years, and upon such terms as they may deem satisfactory, to the Troy wagon works company or its assigns, to be used for a roadway or railway purposes, that portion of the embankment of the Miami and Erie canal in the city of Troy, Miami county, Ohio, commencing at the westerly right of way line of the Cincinnati, Hamilton and Dayton railway company at its intersection with the berme-bank of the Miami and Erie canal and running thence northwesterly along the westerly line of said canal a distance of four hundred and twenty-five (425) feet, except that portion occupied by the main building, boiler house and corn crib of Allen and Wheeler under the terms and restrictions following: The state reserves all right in the premises for canal purposes. The state reserves the right to regulate the occupancy of the said premises by the said party of the second part, all change in the towing path, the moving and rebuilding of the change bridge and the necessary piling and planking and occupancy to be under the supervision of the chief engineer of public works, and at the expense of the said party of the second part. [92 v. 7.]

Lease of portion of embankment; reservations.

## AN ACT

To authorize the city council of the city of Hamilton to fill up a part of the canal basin in said city. (69 v. 271.)

*Be it enacted by the General Assembly of the State of Ohio:*

City of Hamilton  
authorized to fill  
part of canal  
basin.

SEC. 14180. That the city council of the city of Hamilton, is hereby authorized to fill up so much of the canal basin in said city as lies west of the line where Eleventh street, as laid out on the south side of said basin, would cross the same if extended, provided, that said measure shall be approved by a two-thirds of the voters of said city; provided, also, that the said city council shall first procure the written consent of the lessees of the public works of this state to the filling up of said basin, and a release from said lessees of all claim for damages from the state on account of such filling up.

Must be sub-  
mitted to vote.

SEC. 14181. That the said city council shall provide that a vote shall be taken of the qualified electors of said city for and against said proposed filling up of the canal basin, at any time, of which ten days' previous public notice shall be given; and if a two-thirds of votes shall be cast in the affirmative, at any of said elections, the city council shall be authorized to execute the said work: Provided, however, the said city of Hamilton shall be liable for all damages to property which may be occasioned thereby, to be ascertained as hereinafter provided.

Thirty days'  
notice; claims  
for damages.

SEC. 14182. That the city council shall give thirty days' notice of their determination to fill up said basin, by publication in at least two public newspapers published and of a general circulation in said county; and any person or persons claiming damages, by reason of the proposed filling up of said canal basin, shall, within thirty days after it shall have been decided by the vote aforesaid that the same shall be so filled up, and after the publication of said notices for thirty days as aforesaid, present to the said city council a written application setting forth distinctly the grounds upon which such damages are claimed and the amount thereof.

Commissioners to  
assess damages.

SEC. 14183. That on the application of the said city council, the judge of the court of common pleas of Butler county shall appoint three judicious disinterested freeholders of said county, who shall be commissioners whose duty it shall be to ascertain and determine the amount of damages, if any, which each claimant may be subjected to by reason of said improvement. Said commissioners shall be first duly sworn faithfully and impartially to discharge the duties of their office; they shall examine such witnesses, under oath, as either the claimant or said city council may call before them; and they shall make personal examination of the premises alleged to be damaged or rendered less valuable; and they shall, within one month after their appointment, make to the said city council a written report of their conclusions in each case; and the said city of Hamilton shall be held liable to pay to each claimant the amount which the said majority of commissioners may so assess.



**SEC. 14184.** That the city or any claimant of damages Appeal. may appeal from the decision of said commissioners to the court of common pleas of said county, which appeal shall be effected by the appellant, within ten days after the filing of such report with the city clerk, giving to the opposite party an undertaking, with sureties, to be approved by the clerk of said court, in the sum of two hundred dollars, conditioned to pay all costs that may be by said court awarded against such appellant on such appeal; and on filing such undertaking with the clerk of said court, and notice thereof being given to said city clerk, the said city clerk shall forthwith make and certify to said court a copy of so much of said report as relates to such claim; and said court shall, as early as practicable, hear and determine the question between the parties, without further pleadings, either party being entitled to have the question of damages submitted to trial, by jury, on such appeal; and the costs incurred on such appeal shall be by the court assessed as equity may require.

## AN ACT

Supplementary to an act to authorize the city council of the city of Hamilton to fill up a part of the canal basin in said city, passed April 27, 1872. (O. L. vol. 69, p. 271.) (73 v. 275.)

WHEREAS, At an election held in the city of Hamilton, Ohio, on the 18th day of May, A. D. 1875, under the act of the general assembly recited above, and to which this supplementary; and

WHEREAS, At said election more than two-thirds of all the votes cast in said city were in favor of filling up said basin; and,

WHEREAS, The city council of said city have been unable to procure the written consent of the lessees of the public works of this state to the filling up of said basin, and a release of all claim for damages from the state on account of such filling up, as is provided for in said original act; therefore,

*Be it enacted by the General Assembly of the State of Ohio:*

**SEC. 14185.** That the city council of the city of Hamilton may, by resolution or ordinance, provide for the filling up of said canal basin, as is provided in the act to which this act is supplementary, without first procuring the written consent of the lessees of the public works of this state to the filling up of said canal basin, and a release from said lessees of all claim from damages from the state on account of such filling up. Whenever the city council of said city shall decide to fill up so much of said basin as is herein authorized, the said council shall make known their said decision to the governor of the state, and shall deposit with the governor a bond duly executed and to the satisfaction of the governor, indemnifying the state from all liabilities and damages which may result from said filling up; said bond to be prepared by the attorney-general of the state.

Consent of lessees not necessary.

**SEC. 14186.** That if the said lessees of the public works of this state claim damages by reason of the proposed filling up of said canal basin, either from the city of Hamilton or from the state of Ohio, after said city council of said city

Damage claims by lessees.

of Hamilton has given thirty days' notice by publication, as is required by the third section of the act to which this is supplementary, said lessees of said public works shall, within thirty days after said publication, present to said city council a written application setting forth distinctly the grounds upon which such damages are claimed, and the amount thereof, in the same manner as is provided for in said original act for claimant for damages; and if such claim for damages should be so made by said lessees, said claim shall be submitted to the commissioners to be appointed by the judge of the court of common pleas of Butler county, as other claimants are required to do by the fourth section of the act to which this act is supplementary; provided, that said lessees shall have the same right of appeal from the decision of said commissioners to the court of common pleas of Butler county, as is provided for other claimants in said section; and said city of Hamilton shall have six months after the final assessment of said damages in which to pay the same or to decline to do so, in which latter case they shall be considered as abandoning said filling up.

State not liable.

**SEC. 14187.** The state of Ohio shall not be liable to pay any expenses, cost or damages arising from the filling up of said canal basin, but the said city of Hamilton shall pay all costs and expenses of whatsoever nature accruing from said proposed filling up of said canal basin.

Repealing clause.

**SEC. 14188.** Any part or parts of the said act to which this is supplementary, inconsistent with the provisions of this act, are hereby repealed.

#### AN ACT

To provide for leasing a part of the Miami and Erie canal to the city of Cincinnati as a public street or boulevard, and for sewerage and subway purposes. (102 v. 168.)

*Be it enacted by the General Assembly of the State of Ohio:*

Lease of part of Miami and Erie canal to Cincinnati for certain purposes.

**[SEC. 14188-1.]** § 1. Permission shall be given to the city of Cincinnati, in the manner hereinafter provided, to enter upon, improve and occupy forever, as a public street or boulevard, and for sewerage, conduit and if desired for subway purposes, all of that part of the Miami and Erie canal which extends from a point three hundred feet north of Mitchell avenue to the east side of Broadway in said city, including the width thereof, as owned or held by the state, but such permission shall be granted subject to all outstanding rights or claims, if any, with which it may conflict, and upon the further terms and conditions of this act.

Conditions.

**[SEC. 14188-2.]** § 2. Such permission shall be granted upon the further condition that said city, in the uses aforesaid of all or any portion herein mentioned of such canal, shall construct or cause to be constructed suitable and sufficient works for a

convenient outlet for the discharge of the water of said canal, at a point three hundred feet north of Mitchell avenue, so as not to obstruct the flow of water through the remaining part of such canal, nor destroy nor injure the present supply of water for mechanical or commercial purposes. Such outlet shall be constructed in accordance with plans and specifications to be drawn or approved by the state engineer, and the city of Cincinnati shall give bond in such sum as shall be prescribed by the state board of public works, to be approved by the attorney general for the faithful performance of the work.

And such permission shall be granted upon the further condition that said city shall adopt and construct appropriate works for the purpose of supplying water to the lessee users of said water along that portion of the canal to be abandoned, in order to and for the purpose of enabling the state fully to carry out and discharge the obligations now resting upon it by virtue of certain contracts now subsisting and in force between it and said lessee water users, during the remainder of the terms of said contracts, in the same quantity and under the same conditions and at the same rate of rental provided for in said contracts, and provided further that during the period of construction of a street or subway or of appropriate works for the purpose of supplying water to the lessee users of said water, as herein provided said city of Cincinnati shall cause no cessation or diminution of the supply of water to the said lessee water users to which they are entitled under their respective contracts or leases with the state of Ohio except insofar as such cessation or diminution of such supply of water may be absolutely necessary.

Further conditions.

**[SEC. 14188-3.]** § 3. Upon the passage of this act the governor shall appoint three (3) arbitrators, none of whom shall be residents of Hamilton county, who shall, whenever the council of said city decided that such canal be used for all the purposes mentioned in section one (1) hereof [G. C. § 14188-1] proceed to act as provided in section four (4), of this act [G. C. § 14188-4].

Arbitrators.

**[SEC. 14188-4.]** § 4. The arbitrators thus selected shall constitute a board of arbitration whose duty it shall be, without reasonable delay, to ascertain and fix the actual value of the property of the state specified in section one hereof. The annual rental to be paid by the city of Cincinnati to the state for the use of such property shall be a sum equal to four (4) per cent. of such valuation so ascertained and fixed. Such board of arbitrators shall report the valuation as above provided for in writing to the governor and the council of such city respectively. And such board of arbitration shall have authority to hear the testimony of witnesses as to the fair value of such canal so to be taken by said city, to employ such assistants as it may deem necessary, and to fix their compensation, and to incur the expenses incident to its work. Each arbitrator shall receive for his services not exceeding twenty-five dollars a day for the period of time actually employed in the work of acting as arbitrator on such board; and all such expenses and such compensation shall be paid by said city, one-half of the amount so paid to be a credit

Duties of arbitrators.

upon the first installment of rent payable under the lease that may be entered into pursuant to this act. In case of any vacancy occurring in such board from any cause, such vacancy shall be filled in the same manner in which the appointment so becoming vacant was made. Provided that all rentals accruing to the state under this act, shall be paid into the state treasury to the credit of the general revenue fund.

Lease shall be granted upon approval by council and governor.

**[SEC. 14188-5.]** § 5. Upon approval by resolution of the council of said city of the amount of such valuation as fixed by such board of arbitration or a majority of them, and upon the governor being satisfied that the interests of the state are fully protected and that the valuation placed upon such property is adequate, which fact shall be endorsed upon such lease by the governor, he shall execute and deliver to the city of Cincinnati a lease for ninety-nine years, renewable forever, which lease shall not be assignable, of such canal so to be taken by the said city of Cincinnati for the uses and purposes before mentioned, and upon the terms and conditions specified in this act; and such lease shall contain covenants on the part of said city for payment of said rental to the state in equal semi-annual payments during such term of such lease, and for compliance with this act, and on the part of the state for quiet enjoyment by said city of Cincinnati of the demised premises, and the attorney general shall prepare such lease, and such lease shall contain the further provision that if said city of Cincinnati fails, neglects or refuses to perform all or any of the terms and conditions of said lease or fails, neglects or refuses to comply with each and every of the terms and provisions of this act, the said lease shall become null and void and said city and the users and occupiers of said property shall forfeit all rights in said lease and in the property located upon the land therein described and such other covenants and provisions as, in the judgment of the attorney general, will protect the interests of the state.

Conditions.

In case the state of Ohio shall at any time build a canal of not less than nine-foot gauge from Lake Erie to the Ohio river at Cincinnati, the city of Cincinnati shall reimburse the state for the amount of its expenditure in procuring right of way either by purchase or condemnation, or both, for said canal, from a point three hundred feet north of Mitchell avenue, through the Mill Creek valley, to the Ohio river.

Regulations.

**[SEC. 14188-6.]** § 6. The surface of such street or boulevard when completed shall not be occupied or used for the purpose of any street, steam, electric, elevated or other kind of railroad whatsoever, nor shall any rights by way of appropriation be exercised or permitted as against such property; but nothing herein shall prevent the construction by said city or its grantee, of a subway beneath such street or boulevard, for use of a street, electric, suburban or interurban railway; provided, however, that the right to construct such subway or to use the same when constructed for any street, electric, suburban or interurban railway thereunder, shall never be granted or permitted to any person, persons or corporation other than said city, except on

terms that shall provide for competitive bidding for the right to construct or use the same as aforesaid and on terms that shall secure to street, electric suburban, interurban or underground electric railways the right to use the subway, all tracks, appliances, services and electric current in and incident thereto, on equal and proportionate terms, said terms to be determined on the basis of the total cost of operation and a reasonable return on the investment, provided further, that any street, electric, suburban or interurban railway using such subway shall permit the use of its tracks by any other electric, suburban or interurban railway for a reasonable compensation for such distance as is necessary to secure entrance to such subway, and provided further that should a gauge other than standard gauge be established for the tracks in said subway, a standard gauge shall likewise be provided for the tracks therein and for such tracks as are necessary to secure entrance thereto.

Any grant or franchise made to any person, firm or corporation to construct or operate a subway under the property mentioned in section one hereof, shall be subject to all the provisions of sections 9147, 9148 and 9149 of the general code relating to underground railroads.

**[SEC. 14188-7.]** § 7. All laws and parts of laws inconsistent herewith are hereby repealed. [Repeals.]

**[SEC. 14188-8.]** § 8. If any section or portion of this act shall for any reason be declared to be unconstitutional, such invalidity shall not affect any other section or portion hereof. [Independent sections.]

#### OHIO CANAL.

**SEC. 14189** (218-269 Bates.) Authority and permission shall be granted, in the manner hereinafter stated, to the city of Cleveland to take, enter upon, improve, and occupy, as a public highway, or for other purposes, and for laying therein gas and water pipes, and for sewerage purposes, as the city council of said city may determine, all that part of the Ohio canal which extends from the Cuyahoga river, where it enters said river, southerly to a point sixteen hundred feet north of the south line of said city of Cleveland, where said line crosses said canal, together with the basin, tow-path, and appurtenances thereto belonging, including the entire width of said canal, its basin, and appurtenances, in so far as the same is owned and held by the state; but said grant shall be made subject to all outstanding rights or claims, if any, with which it may conflict. City of Cleveland authorized to appropriate a certain portion of canal.  
[69 v. 182.]

The act entitled "an act to authorize the city of Cleveland to enter upon and occupy a part of the Ohio canal," passed April 29, 1872 (69 v. 182; see Bates, § 218-269 to § 218-271), does not authorize the conveyance of a fee simple estate by the governor of Ohio to said city of Cleveland; but only the right to occupy the lands therein described for the purposes specified, or similar purposes (State, ex rel., Attorney-General, v. P. C. C. & St. L. Ry., 53 O. S. 189, followed): State, ex rel., v. Railway, 12 O. C. C. (N.S.) 321, 21 O. C. D. 377.

In an action in quo warranto, brought by the attorney-general against said railway lessee and its successors and assigns, to oust the same from said premises, the city of Cleveland is not a necessary party: State, ex rel., v. Railway, 12 O. C. C. (N.S.) 321, 21 O. C. D. 377.

## § 14190

Liability for damages; lessees not relieved of responsibility, etc.; settling claims for damages.

SEC. 14190 (218-270 Bates.) Said city of Cleveland shall be liable for all damages that may accrue from the vacation and abandonment of so much of said canal as shall be taken by said city; but nothing herein shall relieve the lessees of said canal, or their assigns, from any responsibilities imposed upon them by law, or in any way arising from the instrument or instruments of lease held by them and executed pursuant to any law of the state of Ohio, except as and to the extent of so much of said canal as shall be by said city taken and occupied under the grant herein authorized. Any person, persons, or corporation, including the lessees of said canal, who may claim damages by reason of the vacation or abandonment of any part of said canal, shall file their claim therefor in writing with the clerk of said city of Cleveland, within one year after the expiration of the time required for the publication of the notice hereinafter required. And for the purpose of ascertaining whether any of the claims so filed are valid against the state, and if so, for the purpose of ascertaining the amount thereof, the lessees of said canal, or any other person or party filing such claim, are hereby authorized and empowered to bring an action in the court of common pleas of Cuyahoga, Portage, or Franklin county, Ohio, against said city of Cleveland, and said action shall be conducted in all respects to final judgment, as other civil actions in cases between private individuals, and either party shall have the right to second trial, and appeal from the judgment and order of the said court of common pleas, and prosecute writs of error as provided for in suits between individuals, under the act to establish a code of civil procedure passed March 11, 1853, or any act supplementary thereto. [69 v. 182.]

Notice preliminary to city's occupation, etc.; connection with Cuyahoga river; rate of charges; channel to be kept open, etc.

SEC. 14191 (218-271 Bates.) Whenever the city council of said city, by a vote of not less than two-thirds of the whole number of members thereof, shall decide to take and use so much of said canal as is herein authorized, the said council shall publish notice thereof, as required by section five hundred and sixty-three of the act to provide for the organization and government of municipal corporations, passed May 7, 1869, and shall also make known their said decision to the governor of the state, and shall deposit with the governor a written release executed by the lessees of the public works, relinquishing any rights they may have in that part of said canal, proposed to be taken and occupied by said city, or a bond duly executed and to the satisfaction of the governor, indemnifying the state from all liabilities and damages which may result from said vacation, and shall in like manner deposit a bond securing the performance of an agreement on the part of said city, to be also filed with the governor; that before said city shall take possession of said part of said canal, or disturb the use thereof, for canal purposes, the said city shall, at its expense and under the direction of the board of public works, connect said canal with the Cuyahoga river, at or near the southerly terminus of that portion to be occupied by said city, procure the right of way, unless the same shall be owned by the state at the desired locality, make the necessary excavations, embankments, walls, gates, and locks, needed to connect

said canal with said river at the point aforesaid, and remove the present weigh-lock to such place as shall be determined by the board of public works; said city shall have the power, and shall provide by ordinance to regulate and prescribe the rate to be charged by tug-boats, for towing boats and floats navigating the Ohio canal, to and from the locks at the intersection with the Cuyahoga river, to the wharves, docks, or any point on said river, where said boats or floats may desire to discharge or receive freight, which rate shall be graduated according to distance, and shall in no case exceed two dollars and fifty cents for each trip; said city having the right to appropriate to its own use, the gates, locks, and material taken from that portion of the canal taken by said city: provided, the said city of Cleveland shall forever, or so long as the Ohio canal shall be used for the purposes of navigation, keep the channel of the Cuyahoga river, by dredging or otherwise, in good navigable order, for any boats that may now or hereafter be employed in navigating said canal, from the point of intersection to Lake Erie, and, thereupon, the governor, on behalf of the state, being satisfied that said connection has so been made and approved, and accepted by the board of public works, shall execute and deliver to the city of Cleveland, a grant of all the interest of the state in that part of said Ohio canal, herein described, to be forever used and occupied by said city, as its council shall determine, for any or all of the purposes before mentioned. The attorney-general shall prepare the form of said grant, also the form of the release, bonds and agreement herein named. [69 v. 182.]

SEC. 14192 (218-272 Bates.) The court of common pleas of the county of Cuyahoga, shall, upon application of the city solicitor of Cleveland, appoint a commission, consisting of not less than three nor more than five suitable persons, who shall at once proceed to survey and determine the boundaries of the land formerly owned by the state, for the purposes of said canal before its abandonment, and to mark the same by proper monuments, and to make maps and plats of the said land with necessary descriptions, to be preserved as hereinafter provided. [79 v. 105.]

Court of common  
pleas shall ap-  
point a com-  
mission.

SEC. 14193 (218-273 Bates.) Said commissioners, in the performance of their duties as such shall be governed in all respects in accordance with law prescribing the duties of county surveyors as laid down in section[s] 1187-1189 [G. C. §§ 2807, 2808 and 2809] of the revised statutes of Ohio, and upon the completion of their work they shall deliver their report with all the evidence taken to the county surveyor who shall forthwith dispose thereof as directed in cases of surveys made and evidence taken by law under the requirements of [section] 1190 of said statutes, as amended April 20, 1881, and the legal effect and use of such plat, survey, and deposition shall be governed as the effect and use of the plat, survey and depositions are governed by the provisions of section 1191 of said statutes, as amended April 20, 1881. [79 v. 105.]

Their duties.

## § 14194

Their costs and expenses.

SEC. 14194 (218-274 Bates.) All costs and expenses of these proceedings, including the compensation of said commissioners, shall, after allowance by said court of common pleas, be paid by the person or persons, or corporation at whose instance or request said proceedings were instituted by the said city solicitor, and the payment of the same shall be secured by a good and sufficient bond to said city, by such person, persons or corporation to the acceptance of the city council of said city; provided, however, that all costs made by the taking of said case or proceedings, or any part thereof, to the district or supreme courts, shall be taxed and paid as the court may direct. [79 v. 105.]

Granville side-cut abandoned.

SEC. 14195 (218-275 Bates.) The Granville feeder of the Ohio canal be and the same is hereby abandoned; provided, that all stone now owned by the state on said canal or feeder, if so abandoned by this act, is reserved to the state, and that the board of public works of the state is authorized by its agents, at any time after the passage of this act, to enter upon so much of said canal or feeder and remove said stone or sell the same as may be deemed for the best interest of the state; and provided, that it is not intended hereby to relieve the lessees of said canal or feeder, or their assigns, from any responsibility or liability imposed upon them by an act to provide for the leasing of the public works of the state, passed May 8, 1861, or by the instrument of lease, executed in pursuance of said act, for any such liabilities or responsibilities as have accrued prior to the passage of this act, nor for any negligence, as in the care of said canal or feeder, or any portion of the same, as the said lessees may have been guilty of: provided, further, that the said lessees shall execute and file with the board of public works a release of all claims for damages growing out of such vacation. [73 v. 198.]

Lands to revert to owners adjoining; how, etc.

SEC. 14196 (218-276 Bates.) That the land upon which the bed of said canal or feeder so abandoned is located shall revert absolutely to the owners of the lands adjoining said canal on each side, in the manner following, to wit: where the canal divides the lands of two or more persons, said canal lands shall revert and the title thereto vest in each, divided by a line drawn along the center of said canal, half over from the line of one of such owners to the line of the other, and in all cases when said canal runs through the land or lands of any person or persons, then such canal lands shall revert to such owners, and all water privileges taken and used for the use of said canal revert back to the legal owners of the property to which it belonged before the location of said canal or feeder. [73 v. 198.]

Board of public works may abandon certain feeder of Ohio canal.

SEC. 14197 (218-277 Bates.) The board of public works of said state, if in their opinion and judgment it will be conducive to the public health and welfare of the people of Jackson township, Coshocton county, Ohio, are hereby authorized and empowered to vacate and abandon the feeder to the Ohio canal, running from the Walhonding river across lands now owned by Elias Haight and William Maxwell, in the second quarter of the fifth township and sixth range, in said Coshocton county, and emptying into the basin of the Ohio canal, south-west of the



aqueduct across the Walhonding river; and said board of public works are hereby authorized and empowered to locate and construct across said feeder, as in their judgment is necessary, as embankment of sufficient size and strength to prevent the water from flowing from said basin into said feeder, and to do whatever is necessary to effectually vacate and abandon said feeder and to protect the interest and property of the state appertaining to said Ohio canal. And if the board of public works shall determine to abandon said feeder, the land occupied by the same shall be disposed of by the board for the best interests of the state. [81 v. 100.]

**SEC. 14198** (218-278 Bates.) The board of public works are hereby authorized to grant upon such terms and conditions, as to annual rental not less than the annual average of toll received from the local traffic on that part of the canal between Yellow Bud and the city of Chillicothe for the five years preceding the passage of this act or otherwise as in their judgment will subserve the best interests of the state, the right of way to the Cincinnati, Hocking Valley and Huntington railroad company, or its successors or assigns, to construct, maintain and operate a railway on the berme bank of the Ohio canal, and to construct the necessary bridges across the same, from a point between the village of Yellow Bud in Ross county, and what is known as the Deer Creek aqueduct, thence southwardly to the Marfield's mill; the same shall be constructed so as to not in any manner interfere with the navigation or use of the canal. Provided, that the said railroad company shall forever maintain, to the acceptance of the board of public works, a good and substantial berme bank along that part occupied by said railroad. This act shall not be construed to grant any exclusive right of way or privilege to the use of said lands to said railway company, and the right to grant similar privileges to other corporations is hereby reserved, and this act shall not be construed to abridge the rights of any person or persons for damages caused them by reason of building the road hereby authorized, and on failure of said railway company to fully complete said road to the Marfield's mill within two years from the date of the passage of this act, or upon failure of the road to fully comply with any of the provisions of this act, and also of any contract made with the board of public works on behalf of the state this grant shall be null and void and nothing herein contained shall prevent the levying and collection of taxes on said part of said road in the same manner as they are by law levied and collected on other railroad property in this state. It is further provided that the board of public works may allow said railroad company to deflect their line to the east, from the north to the south end of what is known as the big basin. [80 v. 215.]

Board of public works authorized to grant portion of berme bank of Ohio canal for railway.

**SEC. 14199** (218-279 Bates.) The board of public works is hereby authorized to grant, upon such terms and conditions as to price or otherwise as in their judgment will subserve the best interest of the state, the right of way, not exceeding one hundred feet in width, to the Columbus, Jeffersonville and Cincinnati railway company, its successors and assigns, to construct,

Right of way granted to Columbus, Jefferson and Cincinnati railway company across certain lands of the state.

maintain, and operate a railroad on and across a certain tract of land, containing about thirty acres, lying adjacent to the Columbus feeder, and in the southwest corner of section nine, township four, range twenty-one, Marion township, Franklin county, Ohio, in such manner as will not in any way interfere with the use of said feeder as a means of water supply, or the purpose of navigation: provided, further, that this act shall not be construed to grant any exclusive right or privilege to the use of said lands to the said railway company, and the right to grant similar privileges to other corporations is hereby reserved. [77 v. 174.]

Board of public works authorized to grant a right of way to the Cincinnati and Eastern railway company; proviso.

**SEC. 14200** (218-280 Bates.) The board of public works is hereby authorized to grant, upon such terms and conditions as to price, or otherwise, as in their judgment will subserve the best interest of the state, the right of way, to the Cincinnati and Eastern railway company, or its successors or assigns, to construct, maintain, and operate a railroad on the tow-path of the Ohio canal, from the mouth of Scioto Brush creek in Rush township, in Scioto county, southwardly through a portion of Rush and Washington townships, in said county, to a point near George Davis' distillery, and to cross the same by bridge or otherwise, in such manner as will not in any way interfere with the navigation or use of said canal; provided, that said railway company shall construct and forever maintain to the acceptance of the board of public works a good and substantial tow-path on the present berme bank side, in every way equal to the one relinquished by this act, and this act shall not be construed to grant any exclusive right of way, or privilege to the use of said lands to the said railway company, and the right to grant similar privileges to other corporations is hereby reserved. This act shall not be construed to abridge the rights of any person or persons for damages caused them by reason of building the road or roads hereby authorized, and on failure of the road or roads to fully comply with the provisions of this act, and also of any contract made with the board of public works on behalf of the state, this grant shall be null and void and nothing herein contained shall prevent the levying and collection of taxes on said part of said road in the same manner as they are levied and collected by law on other railroad property in this state. [79 v. 91.]

#### AN ACT

To authorize the governor, by and with the approval of the board of public works, to grant, bargain, sell, and convey certain real estate in Pickaway county, to Norfolk & Western Railway Company. (101 v. 308.)

WHEREAS, The board of public works, the canal commission and chief engineer of public works, have declared that the lands hereinafter described, are not necessary for the actual use, efficiency and operation of a canal of the state; and

WHEREAS, Norfolk and Western Railway Company has for many years been maintaining and operating its railway on said lands, under a lease from the state; and,

WHEREAS, Said railway company is now making extensive, lasting and permanent improvements to its railway, is undertaking to obtain a fee simple title to all of its rights of way; and it is necessary for said railway company, in order to accommodate its existing and future traffic, to lay down and operate in the state of Ohio, a double track railway system, and the real estate hereinafter described is necessary for such purpose and not necessary for canal purposes; therefore,

*Be it enacted by the General Assembly of the State of Ohio:*

**[SEC. 14200-1.]** § 1. The governor, by and with the approval of the board of public works, be and he is hereby empowered to grant and convey to Norfolk and Western Railway Company, its successors and assigns, the following real estate, to-wit:

Sale of land  
to N. & W. Ry.  
Co.

Situated in Pickaway county, Ohio, commencing at a point in the east water line of the Ohio canal, opposite Station ox80, of J. W. Stump survey of the encroachments of the Norfolk and Western Railway Company's railway on the berme bank of said Ohio Canal, which point is in the north line of High street in the city of Circleville in said county, and running thence S. 57 degrees 30' E. 25 feet; thence N. 34 degrees 45' E. 150 feet; thence N. 36 degrees 20' E. 100 feet; thence north 29 degrees 50' E. 75 feet; thence N. 25 degrees E. 100 feet; thence N. 27 degrees E. 200 feet; thence N. 14 degrees E. 200 feet; thence N. 12 degrees E. 100 feet; thence N. 14½ degrees E. 300 feet; thence N. 10 degrees E. 100 feet; thence N. 14 degrees 45' E. 400 feet; thence N. 13 degrees 20' E. 200 feet; thence N. 11 degrees 30' E. 200 feet; thence N. 14 degrees 40' E. 85 feet; thence N. 50 degrees 15' E. 55 feet; thence N. 26 degrees 40' E. 105 feet; thence N. 18 degrees 20' E. 200 feet; thence N. 11 degrees 20' E. 300 feet; thence N. 76 degrees 10' W. 50 feet; thence N. 10 degrees 30' E. 167 feet; thence N. 5 degrees 30' E. 317 feet; thence N. 14 degrees 30' E. 75 feet; thence N. 6 degrees 45' E. 215 feet; thence N. 3 degrees 20' E. 275 feet; thence N. 38 degrees 45' W. 30 feet; thence N. 5 degrees 10' E. 2000 feet along the west rail of the main track of the Norfolk and Western Railway; thence N. 2 degrees E. 200 feet; thence N. 45' E. 100 feet; thence N. 5 degrees 45' W. 100 feet; thence N. 1 degree 20' W. 85 feet; thence N. 30 degrees 30' E. 65 feet; thence N. 1 degree 15' W. 100 feet; thence N. 7 degrees 40' W. 225 feet; thence N. 35 degrees 20' W. 45 feet; thence N. 3 degrees 40' W. 1030 feet along the west rail of the main track of the said railway; thence N. 6 degrees 20' W. 175 feet; thence N. 30' E. 300 feet; thence N. 4 degrees W. 350 feet; thence N. 8 degrees W. 85 feet; thence N. 4 degrees 30' W. 300 feet; thence N. 10 degrees 15' W. 150 feet; thence N. 6 degrees 45' W. 125 feet; thence N. 15 degrees 45' W. 100 feet; thence N. 9 degrees 15' W. 90 feet; thence N. 15 degrees 10' W. 600 feet along the east rail of the main track of the said railway; thence N. 10 degrees W. 125 feet; thence N. 14 degrees W. 82 feet; thence N. 21 degrees 15' W. 95 feet; thence N. 2 degrees 10' E. 100 feet; thence N. 8 degrees 15' W. 100 feet; thence N. 10 degrees 40' W. 900 feet; thence N. 19 degrees 45' W. 175 feet; thence N.

Description.

13 degrees W. 150 feet; thence N. 10 degrees 30' W. 280 feet to a point opposite Station 122 of said survey; thence N. 10 degrees 15' E. 25 feet to the west bank of Mud Run; thence with the westerly line of Mud Run 2962 feet to a point in the west bank of said run, opposite to Station 150x90 of said J. W. Stump survey of the canal north of Circleville; thence N. 52 degrees 50' W. 40 feet to a point on the south bank of said run; thence S. 64 degrees 15' W. 58 feet to a point 20 feet east of the east water line of said Ohio Canal, which point is at the east end of a stone culvert which carries the waters of Mud Run under said canal; thence S. 23 degrees 30' E. 215 feet to a point 12 feet from the east water line of said Ohio Canal and opposite Station 149 of said Stump survey of said canal; thence S. 10 degrees 40' E. 100 feet to a point in the east water line of said canal; thence southerly along said east water line of the said canal, 4100 feet to a point opposite Station 107 of said Stump survey of said canal; thence S. 17 degrees 10' E. 100 feet to a point opposite Station 106 of said Stump survey of said canal; said point being 12 feet east of the east water line of said canal; thence southerly and parallel with said east water line of said canal and 12 feet easterly therefrom, 2385 feet to a point opposite Station 82 of said Stump's survey of said canal and 12 feet easterly from said east water line of said canal; thence S. 4 degrees 30' E. 200 feet to a point in the east water line of said Ohio Canal; thence southerly along said east water line of said canal 7920 feet; more or less, to the place of beginning, containing thirteen and four-tenths (13.4) acres, reserving and excepting, however, a strip twelve and twelve one-hundredths (12.12) feet in width off the west side of said real estate, the same being necessary for the berme bank of said canal, and the entire appraised value of said premises being three thousand dollars (\$3,000.00).

Conditions of sale.

Said conveyance is to be made upon the condition that said railway company pay into the state treasury such sum of money as the governor and board of public works may determine to be the reasonable value of said premises, and that the watercourse known as Mud Run be maintained as a ditch, or another waterway, satisfactory to the board of public works, be furnished in its place by and at the expense of said railway company.

Governor to appoint board of commissioners to investigate condition of Ohio canal. Report.

SEC. 14201 (218-244f Bates.) It is hereby declared as the settled policy of this state that the water supplies, reservoirs, dams, feeders and adjacent lands thereto of the southern division of the Ohio canal from Dresden Junction to Lockbourne, and from Columbus to Portsmouth shall be retained and maintained. That within sixty (60) days after the passage of this act, the governor of the state shall appoint a non-partisan commission consisting of two members, who, together with the state engineer, shall constitute a board of commissioners. The board of commissioners when appointed shall, with the assistance of a stenographer, which it is hereby authorized to employ to take all necessary testimony, proceed to investigate fully the condition of the southern division of the Ohio canal, and all the facts bearing upon the question of its improvement, maintenance, its present and future usefulness as a canal, together with all pos-

sible information bearing upon this subject, and report the same, together with recommendations to the next general assembly, pending which report the same shall be kept open for navigation. [95 v. 119, April 9, 1902.]

## AN ACT

To authorize the sale of a canal basin in the city of Massillon.  
(94 v. 500.)

*Be it enacted by the General Assembly of the State of Ohio:*

SEC. 14202. That authority be and hereby is granted to the governor, attorney-general and canal commission to sell the canal basin situate on the west side of the Ohio canal, between Main and Plum streets, in the city of Massillon, Stark county, Ohio, at an appraisal to be made by said commission. Provided, that each lessee of the three pieces of land in the south end of said basin, and now under existing leases from the state of Ohio, shall have the right to purchase the land described in his lease at the valuation entered therein. Provided, further, that when the amount for which any one of said three pieces of land has been paid into the state treasury, the governor shall make a deed conveying the same to the lessee, and the board of public works shall then cancel and annul said lease.

Governor,  
Attorney-General  
are canal com-  
mission empow-  
ered to sell  
canal basin.

SEC. 14203. That a strip of land across said basin about thirty feet wide, the south line of which is one hundred and twenty feet north of and parallel to the north line of Main street, and extending easterly, from a point forty feet east of the east line of Clay street, to a point in the outer line of the towing path embankment of the Ohio canal, the same being an extension eastward of the alley lying between lots 37 and 38, as shown on the plat of said city of Massillon, is hereby dedicated to the use of the public for street and alley purposes.

Street and alley  
dedicated.

SECTION 3. This act shall take effect and be in force from and after its passage.

## AN ACT

To provide for granting to the city of Akron, Ohio, the right to use and occupy certain waters and lands of the state for waterworks and park purposes. (102 v. 175.)

*Be it enacted by the General Assembly of the State of Ohio:*

[SEC. 14203-1.] § I. That there is hereby granted to the city of Akron, in the county of Summit, and state of Ohio, the right to divert and use forever for the purpose of supplying water to said city of Akron and the inhabitants thereof, the Tuscarawas river, the big Cuyahoga and little Cuyahoga rivers, and the tributaries thereto, now wholly or partly owned or controlled by the state and used for the purpose of supplying water to the northern division of the Ohio canal, provided, however, and this grant is upon the condition that at no time shall said

Akron city per-  
mitted to occupy  
and use certain  
waters and  
lands of the  
state.

city use the waters of any such stream, to such extent or in such manner as to diminish or lessen the supply now necessary, to maintain the flow in and through the canal as said canal now exists or as hereafter may become necessary for navigation purposes for an enlarged canal and upon the further condition that the city of Akron shall at all times save the state harmless from all claims arising from such grant and construction thereunder.

**Storage rights.**

**[SEC. 14203-2.]** § 2. There is hereby granted to said city of Akron for the waterworks purposes as aforesaid the right to enter in and upon and occupy the lands of the state in said Summit county to develop additional storage either by the construction of new reservoirs or dams, or the enlargement of those already constructed by the state on said rivers, always provided that said construction or enlargement will not result in any interference with or diminution of the supply now necessary for said canal for navigation purposes. And, provided further, that before any such construction of reservoirs or dams, or enlargement of reservoirs or dams now existing shall be commenced, the plans and specifications therefor be first approved by the chief engineer of the state board of public works. And further provided, that any diversion or impounding on the lands of the state of said Tuscarawas river and the tributaries thereto, by said city of Akron, shall be east of highway known as South Main street extended south. And if the waters of said Tuscarawas river are impounded, used or diverted by said city, the amount of the flow as now or hereafter used and controlled by the state shall not be diminished by such impounding, use or diversion by said city during the months of June, July, August, September, October and November; and at no time shall said city of Akron take or use from any reservoir constructed on the Tuscarawas river an amount of water in excess of an annual average of fifteen million gallons per day, unless with the approval of the board of public works and upon such terms and conditions as may be agreed upon between the said board of public works and said city of Akron, and the chief engineer of the said board of public works shall at all times have access to said property for the purpose of ascertaining the amount of water that is being used by said city of Akron.

**Arbitrators.**

The governor shall appoint a commission of three arbitrators to fix the compensation to be paid the state by the city of Akron for any lands or property, exclusive of water, taken by the city of Akron under the provisions of this act.

**Money to credit of general revenue fund.**

Provided that any money accruing to the state under this act shall be paid into the state treasury to the credit of the general revenue fund.

**Grant by governor.**

**[SEC. 14203-3.]** § 3. The governor, upon behalf of the state shall execute and deliver to the city of Akron, Summit county, Ohio, a grant of the right to use forever the waters of such streams, as herein provided, under the provisions herein set forth and for the purposes herein stated.

The attorney general shall prepare the form of said grant.

## AN ACT

To permit the city of Newark, Licking county, Ohio, to use and occupy as a street a part of the bed of the Ohio canal within the city limits of said city. (102 v. 177.)

*Be it enacted by the General Assembly of the State of Ohio:*

**[SEC. 14203-4.]** § 1. That there is granted to the city of Newark, Licking county, Ohio, the right to use and occupy for street purposes that part of the bed and banks of the Ohio canal in such city on what is known as Canal street, extending from the east side of Front street to the west side of Sixth street, within the limits of such city, and for that purpose to fill and level the same, but upon and subject to these conditions, viz: That such city shall, at its expense, lay and maintain at or near the present bottom of the canal bed an iron pipe of the diameter of not less than one and one-half feet, wherever the bed of such canal is filled up, through which to conduct and flow from the canal bed at the west side of Sixth street to the east side of Front street, in such city, water to supply the factories or establishments which now use, or which may hereafter apply to use water for manufacturing purposes, and provide on demand the usual facilities for connections with such pipe; and upon the further condition that such city whenever said part of such canal is desired by the state of Ohio for any use, purpose or sale, it shall give notice in writing through its board of Public Works or any other board having the management and control of such canal, to the city of Newark, Ohio, that the State of Ohio has revoked the privilege herein granted, which it hereby reserves the right to do without any consideration to such city, then such city shall within six months after such notification restore such canal within the limits aforesaid, to its present condition and remove such pipe; and upon the further condition that the such city of Newark by its council shall accept this grant and its conditions by ordinance duly passed and approved.

Newark city granted the right to occupy and use Ohio canal in city limits.

Conditions.

The said city shall pay to the State for the use of said property an annual amount equal to four (4) per cent. of its actual value, so long as such property is so occupied by said city. Such value shall be determined by three commissioners to be appointed by the Governor and the rights granted under this act shall not become effective until after the Governor shall have approved such valuation.

Annual payment of 4% actual value.

Approval.

Such moneys so paid in to the state shall be credited to the General Revenue fund.

**[SEC. 14203-5.]** § 2. That such grant and privilege shall continue in force until the notification aforesaid is given.

[Notification.]

## AN ACT

To abandon the Columbus feeder to the Ohio canal and to provide for the selling and leasing of all lands connected therewith. (102 v. 318.)

*Be it enacted by the General Assembly of the State of Ohio:*

**[SEC. 14203-6.]** § 1. That the canal, known as the Columbus feeder to the Ohio canal, commencing at a point 30 feet north of the head of the intake lock at the junction of said

Portion of Ohio canal abandoned.

feeder with the Scioto river, near the foot of Main street in the city of Columbus, Franklin county, Ohio, and extending thence southerly along the line of said feeder, and including the full width thereof, to its intersection with the Ohio canal in the village of Lockbourne, Franklin county, Ohio, be and the same is hereby abandoned for canal purposes.

Survey.

**[SEC. 14203-7.]** § 2. That the state board of public works and the chief engineer of the public works, acting jointly, shall cause such surveys to be made of said canal property as in their judgment is necessary for the purpose of carrying out the provisions of this act, together with such maps and plats of the same as will facilitate the selling or leasing of said canal lands, which plats shall be preserved as permanent records in the office of the state board of public works.

Appraisalment  
and sale or  
lease.

**[SEC. 14203-8.]** § 3. As soon as such surveys and plats have been completed, the state board of public works and the chief engineer of the public works, acting as a joint board, shall proceed to appraise, and lease or sell, as they deem for the best interest of the state, subject to the approval of the governor and attorney general, said canal lands in strict conformity with the various provisions of the statutes of Ohio relating to the leasing and selling of state canal lands, except that the grant of such leases shall be for a term of not less than fifteen nor more than twenty-five years, and that the bed and banks of said abandoned canal property may be included in any lease of such canal lands.

Removal of  
bridges, etc.

**[SEC. 14203-9.]** § 4. The county commissioners of any county, likewise the council of any municipality, through which said abandoned canal passes, shall have the right to remove all existing bridges crossing any portion of said abandoned canal over which public highways or the streets of any municipality pass, and to grade such highways and streets by filling and grading across the channel and banks thereof, but must provide for all necessary drainage underneath the same; there is, however, reserved to the state of Ohio, its lessees, grantees, and their assigns, an unobstructed right-of-way, for any and all purposes across the land occupied by the highways and streets extending across said abandoned canal, as provided for above.

Expenses.

**[SEC. 14203-10.]** § 5. All accounts of expenses, incident to surveying, platting and monumenting said abandoned canal lands, together with the necessary expenses of advertising, selling or leasing the same, shall be verified and approved by the chief engineer and the board of public works, and paid out of the canal funds, or other funds provided for the survey of canal lands.

[Prior rights  
not affected.]

**[SEC. 14203-11.]** § 6. Nothing in this act shall interfere with any leases, rights or privileges heretofore granted by the state of Ohio and in force at the date of approval of this act.



## AN ACT

To abandon certain portions of the Ohio canal and to provide for the selling and leasing of the lands connected therewith. (103 v. 293.)

*Be it enacted by the General Assembly of the State of Ohio:*

**[SEC. 14203-12.]** § 1. That the portion of the Ohio canal commencing at the junction of said canal with what is known as the Dresden Side Cut near Trinway in Muskingum county, Ohio, and extending thence southwesterly to the southerly end of the aqueduct across Raccoon creek in West Newark, Licking county, Ohio, also that portion of said Ohio canal commencing at the flume that connects Buckeye lake with said Ohio canal at the west end of said reservoir in Fairfield county, Ohio, and extending thence southwesterly and southerly with the line of said Ohio canal to its junction with the Ohio river, near Portsmouth in Scioto county, Ohio, be and the same is hereby abandoned for canal purposes.

Portions of  
Ohio canal  
abandoned.

**[SEC. 14203-13.]** § 2. That the state board of public works and the chief engineer of the public works, acting jointly, shall cause such surveys to be made of said canal property as in their judgment is necessary for the purpose of carrying out the provisions of this act, together with such maps and plats of the same as will facilitate the selling or leasing of said canal lands, which plats shall be preserved as permanent records in the office of the state board of public works.

Surveys.

**[SEC. 14203-14.]** § 3. As soon as such surveys and plats have been completed, the state board of public works and the chief engineer of public works, acting as a joint board, shall proceed to appraise, and lease or sell, as they may deem for the best interest of the state, subject to the approval of the governor and attorney general, said canal lands, except as hereinafter noted, in strict conformity with the various provisions of the statutes of Ohio relating to the leasing and selling of state canal lands, except that the grant of such leases shall be for a term of not less than fifteen nor more than twenty-five years, and that the bed and banks of said abandoned canal property may be included in any lease of such canal lands.

Appraisalment,  
lease and sale.

**[SEC. 14203-15.]** § 4. The portion of said Ohio canal lying between Raccoon creek and Buckeye lake in Licking county, Ohio, shall be reserved as a hydraulic raceway for the purpose of supplying water to parties desiring to purchase the same from the state, but the berme and towing path embankments of this portion of the canal may be leased for any purpose not inconsistent with its use for such purposes.

Reservation.

**[SEC. 14203-16.]** § 5. The portion of said Ohio canal between the flume at Buckeye lake and a point a short distance south of Lockbourne, Ohio, to be determined by the chief engineer of the public works, shall be reserved as a possible feeder in case the Scioto river should be canalized in any scheme of improvements to connect Lake Erie with the Ohio river, but the

Reservation.

berme and towing path embankments of this portion of the canal may be leased for any purpose not inconsistent with its use as a feeder for the purpose above mentioned.

Authority of commissioners to remove bridges and make grades.

**[SEC. 14203-17.]** § 6. The county commissioners of any county, likewise the council of any municipality, through which said abandoned canal passes, shall have the right to remove all existing bridges crossing any portion of said abandoned canal over which public highways or the streets of any municipality pass, and to grade such highways and streets by filling and grading across the channel and banks thereof, but must provide for all necessary drainage underneath the same; there is, however, reserved to the state of Ohio, its lessees, grantees, and their assigns, an unobstructed right-of-way, for any and all purposes, across the land occupied by the highways and streets extending across said abandoned canal, as provided for above.

Reservation.

Expense accounts to be verified and approved.

**[SEC. 14203-18.]** § 7. All accounts of expenses incident to surveying, platting and monumenting said abandoned canal lands, together with the necessary expenses of advertising, selling or leasing the same, shall be verified and approved by the chief engineer and the board of public works, and paid out of the canal funds, or other funds provided for the survey of canal lands, and the auditor of state is hereby directed to credit back to the fund or funds from which such payments are made, a like amount in any sum not to exceed twenty thousand dollars (\$20,000.00) from the receipts derived from the sale and leases of said lands.

Prior action not affected.

**[SEC. 14203-19.]** § 8. Nothing in this act shall interfere with any leases, rights or privileges heretofore granted by the state of Ohio and in force at the date of approval of this act.

#### WALHONDING CANAL.

Board of public works authorized to sell and transfer the Walhonding canal.

**SEC. 14204** (218-297 Bates.) Upon application in writing, filed in the office of the board of public works by the "Pittsburgh, Mt. Vernon and Indianapolis railroad company," or any other railroad company, said board of public works is hereby authorized and empowered to sell and transfer to said railroad company, the Walhonding canal, for the purpose of enabling said railroad company to use the towing path thereof, or so much of the same as may be deemed necessary for the track or road bed of said company. [65 v. 68.]

Written assent of lessees of public works requisite.

**SEC. 14205** (218-298 Bates.) Before said board of public works shall make any disposition of said canal as aforesaid, the said railroad company shall first procure the written assent of the lessees of the public works thereto; provided, however, that such assent shall not relieve said lessees of the public works from any of the obligations and covenants by them to be kept and performed as provided in the contract of lease of said public works, except so far as said covenants relate to the superintendence and repair of the Walhonding canal; and to that

extent, upon the transfer of said canal to said railroad company, said covenants and liabilities shall cease and determine. [65 v. 68.]

SEC. 14206 (218-299 Bates.) In any transfer that may be made of said canal to any railroad company under this act, said railroad company shall be required to keep repaired and maintain said canal for the purpose of furnishing water to all mills, factories, and other hydraulic works now erected and in process of erection, and propelled or to be propelled by water taken from said canal under leases from the state, and in accordance with the terms and conditions of said leases; and before any transfer of said canal to any railroad company shall be made as above provided, the board of public works shall obtain the written consent thereto, and release to the state from all liability, of all persons or companies holding water leases from the state along the line of said canal; or shall obtain from said railroad company such security, as in the judgment of said board of public works, may be necessary to secure the faithful performance by said railroad company of the obligations of the state to any and all lessees of water power along the line of said canal. [69 v. 175; 65 v 68.]

Condition of transfer; release from liability to be obtained.

SEC. 14207 (218-300 Bates.) That under the restrictions herein set forth, said board of public works are hereby authorized to dispose of said canal and tow path to any railroad company making application for the same, on such terms as to said board may seem best for the interest of the state and the full protection of the rights of the lessees of water-power on said canal. [65 v. 68.]

Board may sell to railroad; how.

#### AN ACT

Relating to the settlement of the controversy concerning the location of the road-bed and construction of the bridges of the Toledo, Walhonding Valley and Ohio railroad company, along the bank of and over the Walhonding canal. (91 v. 232.)

WHEREAS, There exists a controversy between the canal commission and the board of public works of the state of Ohio, on the one hand, and the Toledo, Walhonding Valley and Ohio railroad company, on the other, in reference to the location of a part of said company's road-bed; said canal commission and said board of public works claiming that the said road-bed has been placed, at several points, upon the berme bank of the Walhonding canal, in Coshocton county, Ohio; and further, that some of the bridges of said railroad company do not conform to the lawful regulations and requirements of said commission and said board; nor the requirements of the laws of the state; and

WHEREAS, A suit has been brought in the supreme court of Ohio, by the attorney-general of the state, against said the Toledo, Walhonding Valley and Ohio railroad company concerning said matters; and

WHEREAS, It is desired by said canal commission and board of public works and the said the Toledo, Walhonding Valley and Ohio railroad company to settle amicably all said disputes and controversies; and

WHEREAS, Said parties have made a provisional agreement to the following effect, to wit: That the said Toledo, Walhonding Valley and Ohio railroad company shall have the perpetual right to maintain its existing road-bed upon the berme bank of the Walhonding canal at the following places, to wit:

(1) Beginning at a point where the bridge of said railroad company crosses the locks of the Walhonding canal, in the village of Roscoe, Coshocton county, Ohio, and extending from said point along the berme bank of the Walhonding canal northwestwardly for a distance of 2,450 feet.

(2) Beginning again at a point 7,450 feet from the crossing of the locks of the Walhonding canal at Roscoe, and extending along the berme bank of the Walhonding canal in a westwardly and northwestwardly direction for a distance of 11,300 feet.

(3) Beginning again at a point 24,150 feet from the crossing of the Roscoe locks, and extending for a distance of 3,500 feet westwardly and northwestwardly along the berme bank of the Walhonding canal.

(4) Beginning again at a point 30,050 feet from the crossing of the locks at Roscoe, and extending along the berme bank of the Walhonding canal in a westwardly direction for a distance of 700 feet, making in all a distance of 17,950 feet, for which the road-bed of the Toledo, Walhonding Valley and Ohio railroad company occupies to a greater or less extent parts of the berme bank of the Walhonding canal and of the property claimed by the state of Ohio; that said railroad company shall, whenever called upon by said board of public works, or directed by joint resolution of the general assembly, make such changes in the location of the bridges which span the locks of the canal at Roscoe, in Coshocton county, Ohio, as to place said structures beyond the chamber of the middle lock of the canal, and will, whenever called upon by said board, or directed by joint resolution of the general assembly, so change the grade and location of its railroad at the crossing of the bridges over the Walhonding canal at Fry's lock, and the first lock east of Walhonding, and at the bridge near Cavallo dam, as to afford the lawful clearance height of ten (10) feet above normal water-level, and provide an unobstructed width for the passage of the navigable water in the regular channel of the canal, and full and unobstructed clearance width for the towing-path; and that all of said railroad company's bridges and structures over the Walhonding canal shall be maintained in a safe and proper condition as to spans and clearance heights; and that at the wide-water basin, about two and one-half ( $2\frac{1}{2}$ ) miles above the village of Roscoe, Ohio, where the road-bed of the said railroad company occupies a part of the shallow basin outside of the normal canal section, said railroad company will place a line of iron pipe, twenty-four (24) inches in diameter, under its road-bed, so as to connect the basin with the navigable channel; said pipe to be placed at such depth and at such location as may be satisfactory to the chief engineer of the board of public works, and to maintain the same there forever; and that said railroad company should pay for said rights, grants and privileges the sum of five thousand dollars, upon the execution, on the part of the board

of public works, of a proper contract and grant covering the terms of said agreement; as herein provided and authorized therefor[e],

**SEC. 14208.** *Be it enacted by the General Assembly of the State of Ohio,* That the canal commission and the board of public works of the state of Ohio be and they are hereby authorized, upon the payment of the sum of five thousand dollars as aforesaid, by said the Toledo, Walhonding Valley and Ohio railroad company, and upon its executing a contract to keep and perform the conditions of said preliminary agreement, to grant, convey and assure to the said the Toledo, Walhonding Valley and Ohio railroad company, its successors and assigns, the perpetual right to maintain its existing road-bed and bridge structures as aforesaid, and as the same now are or may be when changed in compliance with said preliminary agreement, as herein provided and authorized.

Granting of right to the Toledo, Walhonding Valley and Ohio railroad company

**SEC. 14209.** The [said] sum of five thousand dollars shall be paid to the collector of rents and tolls at the village of Roscoe, Coshocton county, Ohio, or to such other agent as the state shall authorize, for the use, at the discretion of the board of public works, of the first grand division of the public works of Ohio.

Disposition of money received for such grant.

**SEC. 14210** (218-301 Bates.) The use for canal purposes of so much of the Walhonding canal as lies west and north of Lock No. 5 in Coshocton county, state of Ohio, together with any basins or reservoirs adjacent to said abandoned portion is hereby abandoned as hereinafter provided for, and all right, title and interest of the state in any land heretofore used as such canal or to any land near or adjacent thereto, together with all timbers, stone or other material belonging thereto, shall be appraised, advertised and sold as hereinafter provided. But the state board of public works shall have full power to reserve for the use of the other canals, any timbers, stone or other material which can be economically transported from said abandoned canal or said property, to the other canals on which it is desired to so use the said materials. [92 v. 380.]

Abandonment of portion of Walhonding canal, etc.

**SEC. 14211** (218-302 Bates.) Upon the passage of this act, the board of public works and canal commission of the state of Ohio, acting jointly may at their option make an appraisal of all of the aforesaid abandoned property in divisions or sections of such length or amounts and appraise separately and as a whole, as in their opinion will best suit the convenience of purchasers and facilitate the sale thereof, to the best advantage and for the highest price for the state. They shall make a complete report in writing in which they shall itemize each division and as a whole with its value as appraised by them, which shall be returned to the auditor of state within thirty days from the date of said appraisal. [92 v. 380.]

Appraisal of abandoned property and report thereof.

## § 14212

Receipt and  
filing of  
appraisement, etc.

SEC. 14212 (218-303 Bates.) The auditor of state shall receive and file the said appraisement, and the said joint board shall forthwith proceed to advertise the aforesaid abandoned canal property for sale by giving notice of the time, place and terms thereof for three consecutive months in two newspapers of opposite politics published and having a general circulation in said county; and upon the day and hour named in such advertisement said joint board shall offer the same for sale at public auction at the court-house in Coshocton county, and then and there sell the same to the highest and best bidder or bidders; provided the same or any part thereof shall not be sold for less than three-fourths of the appraised value thereof, and that if all or any part of said property remains unsold for want of bidder the joint board shall again advertise and sell the claim as aforesaid. And if any of said property remains unsold after having been twice offered for sale the same shall be appraised agreeably to section 2 of this act, [§(218-302)] and again offered for sale as above provided, the state reserving the right to reject any or all bids. [92 v. 380.]

Removal of  
bridges, con-  
struction of  
roads, drainage,  
etc.

SEC. 14213 (218-304 Bates.) The county commissioners of Coshocton county are hereby granted the right to remove all existing bridges crossing said abandoned portion of said canal over which county roads pass, and to grade and construct such county roads across the channel of said abandoned portion by necessary fills and grades in the channel thereof, and are authorized to drain the water of said abandoned portion and to prevent the water from the river from flowing into or through said abandoned part of said canal, but reserving all rights of the state of Ohio across said roadways for any and all purposes said state or its grantees may hereafter desire to use said roadways. [92 v. 380.]

## AN ACT

To authorize the canal commission to sell at private sale a section of the Walhonding canal between Dutch Run culvert and the Walhonding bridge. (94 v. 733.)

*Be it enacted by the General Assembly of the State of Ohio:*

Sale of section  
near "Dutch  
Run" culvert.

SEC. 14214. That the governor, attorney-general and the canal commissioners of the state of Ohio be, and are hereby authorized to sell at private sale, that part of the Ohio canal abandoned by act of the legislature April 11, 1896, and comprising a section thereof, commencing at a point known as the "Dutch Run" culvert, and terminating at the east center line of the Walhonding river bridge, on the lands of G. W. Darling in the county of Coshocton, upon such terms and for such consideration, as said commissioners may deem best, and execute to the purchaser a deed of conveyance therefor.

## AN ACT

To provide for the sale and lease of such portions of the abandoned Wauhonding canal lands as now remain unsold. (102 v. 293.)

*Be it enacted by the General Assembly of the State of Ohio:*

**[SEC. 14214-1.]** § I. The board of public works and the chief engineer of the public works, subject to the approval of the governor and attorney general, be and they are hereby authorized to sell or lease the portions of the abandoned Wauhonding canal lands that lie north of lock No. 5 of said canal, in Coshocton county, Ohio, in accordance with the provisions of the statutes of Ohio governing the selling and leasing of other canal lands.

Authority to lease or sell portions of Wauhonding canal lands.

## THE "ELECTRIC MULE."

WHEREAS, It is due to the taxpayers of the state of Ohio to obtain from the canals and inland waterways under the control of said state the greatest amount of revenue compatible with their most efficient use, which can only be done by affording merchants, manufacturers and shippers more rapid and economical transportation thereon for their products; and

Preamble.

WHEREAS, As a motive power on land it has been demonstrated that electricity, because of its cheapness and practicability is eminently successful, and it is believed that the same results can be accomplished on water and that efforts to that end should be speedily made, provided the same is done without any expense to the state; therefore,

*Be it enacted by the General Assembly of the State of Ohio:*

**SEC. 14215** (218-244a Bates.) The board of public works of this state be and is hereby authorized and empowered to grant by lease or permit to any party or parties or company the right to make any experiment with electricity as a motive power for the propulsion of boats or other craft on the Miami and Erie canal by poles and overhead wires erected for such purpose, or by traction power on the berme banks or towing paths in such manner and under such regulations as said board of public works may direct, provided that animal or other motive power for the propulsion of boats as used at present is not to be in any manner interfered with. And, if such experiments with electricity when made should be found successful, said board may further grant by lease or license to such party or company, the right to operate and propel boats and other craft on said Miami and Erie canal as aforesaid under the following regulations: [93 v. 370.]

Experiments with electricity for propelling boats on canals; lease or license of company to operate boats.

**SEC. 14216** (218-244b Bates.) Any party or company to whom a grant or license as provided for in section I, is made, may operate its own boats, but it shall be obligated to propel and operate all boats for hire when the owner may so desire, under and pursuant to such reasonable rules as to tonnage per mile or otherwise as the board of public works may fix if the parties are unable to agree. [93 v. 370.]

Obligations of license.

## § 14217

State not responsible for expense of experimenting; approval of contracts.

SEC. 14217 (218-244c Bates.) In any experiments made as aforesaid, or any act done in developing the practical application of electricity as a motive power, no expense shall be incurred by the state or the board of public works, and no contract for same shall be in force and effect until approved by the governor and attorney-general. [93 v. 370.]

Ohio canals; policy of state as to retention and maintenance thereof.

SEC. 14218 (218-244d Bates.) That it is hereby declared as the settled policy of this state that the Miami and Erie canal, together with its water supplies, reservoirs, dams, feeders and adjacent lands from Cincinnati to Toledo shall be retained and maintained as a public canal; also that the same policy is hereby declared as to the northern division of the Ohio canal, together with its water supplies, reservoirs, dams, feeders and adjacent lands from Cleveland to Dresden on the Muskingum river. [95 v. 118, April 9, 1902.]

Canal boats to be purchased by state if canals are abandoned.

SEC. 14219 (218-244e Bates.) That all boats hereafter built for use upon either of said lines of canal for freight transportation shall be paid for by the state at their then true value in money if, at any time in the future, the policy of the state shall be changed by abandonment of either or both of said lines of canal so as to make such boats useless for transportation purposes. [95 v. 119, April 9, 1902.]