

location, *And provided further*, That such locations shall be made and patents issued therefor, under the same regulations and restrictions, as if the locations had been made under the provisions of the second section of the act of the twenty-sixth April, one thousand eight hundred and twenty-two, entitled "An act to perfect certain locations and sales of the public lands in Missouri."

Proviso.

Act of April 26, 1822, ch. 40.

SEC. 2. *And be it further enacted*, That this act shall remain in force for the term of eighteen months from the passage thereof.

APPROVED, March 2, 1831.

STATUTE II.

March 2, 1831.

CHAP. XCVII.—*An Act declaring the assent of Congress to an act of the general assembly of the state of Ohio, hereinafter recited. (a)*

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the consent of the United States shall be, and is hereby, given to an act of the General Assembly of the state of Ohio, entitled "An act for the preservation and repair of the United States' road," passed the fourth day of February, in the year of our Lord one thousand eight hundred and thirty-one, which act is in the words and figures following, to wit:

Cumberland road.

"Be it enacted by the General Assembly of the state of Ohio, That whenever the consent of the Congress of the United States to this act shall be obtained, the governor of this state shall be, and he is hereby, authorized to take under his care, on behalf of this state, so much of the road commonly called the National Road, within the limits of this state, as shall then be finished, and also, such other sections or parts thereof as may thereafter be progressively finished within the limits aforesaid, whenever the same shall be completed; and he shall be, and is hereby authorized to cause gates and toll-houses to be erected on said road, at such finished parts thereof as he shall think proper, for the purpose of collecting tolls, as provided by the fourth section of this act: *Provided*, The number of gates aforesaid shall not exceed one on any space or distance of twenty miles.

Toll gates.

"SEC. 2. That a superintendent shall be appointed by the governor, whose duty shall be to exercise all reasonable vigilance and diligence in the care of the road committed to his charge; to contract for, and direct the application of the labour, materials, and other things necessary for the preservation, repair, and improvement thereof; he shall pay for the same out of such sums as the governor shall furnish him for that purpose, subject to such responsibility and accountability as the said governor shall dictate; and shall conform to such instructions as the governor shall prescribe for his conduct, in all particulars relative to his said trust: he may be empowered to suspend the functions of any toll-gatherer for alleged misconduct, till the pleasure of the governor shall be known, and to fill the vacancy thereby occasioned during such interval; and it shall be his duty to give information of the facts in such case to the governor, without any unnecessary delay; the said superintendent shall hold his office during the pleasure of the governor, who shall allow him a reasonable compensation for his services.

Superintendent.

"SEC. 3. That the governor be, and he is hereby, authorized to appoint Toll-collectors.

(a) Under the acts of Congress, and of the state of Ohio, relating to the surrender and acceptance of the Cumberland road, a toll charged upon passengers travelling in mail carriages, without being charged, also, on passengers travelling in other carriages, is against the contract, and void. Neil, Moore & Co. v. The State of Ohio, 3 Howard, 720.

It rests altogether in the discretion of the Postmaster General, to determine at what hours the mail shall leave particular places, and arrive at others, and to determine whether it shall leave the same place only once a day, or more frequently. *Ibid.*

It is not, therefore, the mere frequency of the departure of the carriages, carrying the mail, that constitutes an abuse of the privilege of the United States, but the unnecessary division of the mail-bags among a number of carriages, to evade the payment of tolls. *Ibid.*

the necessary collectors of tolls, and to remove any of them at his pleasure; and also, to allow them, respectively, such stipulated compensation as he may deem reasonable, it shall be the duty of each and every toll-collector to demand and receive, at the gate or station assigned to him by the governor, the tolls prescribed and directed by the fourth section of this act; and to pay monthly into the treasury, according to the directions they may receive from the treasurer of the state, all the moneys so collected by said collectors, that shall remain, after deducting their compensation aforesaid; the said collectors shall be governed in all respects relative to their office, by such regulations as the governor shall ordain, in order to insure a due responsibility, and faithful discharge of their duties.

Toll rates.

“SEC. 4. That, as soon as the said gates and toll-houses shall be erected, it shall be the duty of the said toll-collectors, and they are hereby required, to demand and receive for passing the said gates the tolls and rates hereafter mentioned; and they may stop any person riding, leading, or driving any horses, cattle, sulky, chair, phaeton, cart, chaise, wagon, sleigh, sled, or other carriage of burden or pleasure, from passing through the said gates, until they shall respectively have paid for passing the same, that is to say: For every space of twenty miles in length on said road, the following sums of money, and so in proportion for every greater or lesser distance, to wit: For every score of sheep or hogs, ten cents; for every score of cattle, twenty cents; for every led or drove horse, three cents; for every mule or ass, led or driven, three cents; for every horse and rider, six and one fourth cents; for every sled or sleigh drawn by one horse or ox, twelve and one half cents; for every horse or ox in addition, six and one fourth cents; for every dearborn, sulky, chair, or chaise, with one horse, twelve and one half cents; for every horse in addition, six and one fourth cents; for every chariot, coach, coachee, stage, or phaeton, with two horses, eighteen and three fourth cents; for every horse in addition, six and one fourth cents; for every other carriage of pleasure, under whatever name it may go, the like sum, according to the number of wheels and horses drawing the same; for every cart or wagon whose wheels do not exceed the breadth of two and one half inches, twelve and one half cents; for each horse or ox drawing the same, six and one fourth cents; for every cart or wagon whose wheels shall exceed two and one half inches in breadth, and not exceeding four inches, six and one fourth cents; for every horse or ox drawing the same, three cents; and for every other cart or wagon whose wheels shall exceed four inches, and not exceeding five inches in breadth, four cents; for every horse or ox drawing the same two cents; and all other wagons or carts whose wheels shall exceed six inches in breadth, shall pass the said gates free and clear of all tolls: *Provided*, That nothing in this act shall be construed so as to authorize any tolls to be received or collected from any person passing to or from public worship, or to or from any musters, or to or from his common business on his farm or wood land, or to or from a funeral, or to or from a mill, or to or from his common place of trading or marketing, within the county in which he resides, including their wagons, carriages, and horses or oxen drawing the same; *Provided, also*, That no toll shall be received or collected for the passage of any stage or coach conveying the United States' mail, or horses bearing the same, or any wagon or carriage laden with the property of the United States, or any cavalry or other troops, arms or military stores belonging to the same, or to any of the states comprising this Union, or any person or persons on duty in the military service of the United States, or of the militia of any of the states.

Proviso.

Proviso.

Proceeds of
tolls, how dis-
posed of.

“SEC. 5. That the moneys so collected shall constitute a fund, to be denominated the United States' road fund; and so much thereof as may be paid into the treasury agreeably to the provisions above recited, shall

be subject to the order of the governor, who shall pay out of said fund the salary of the superintendent, and the expenses incident to the superintendence and collection, other than those particularly provided for in this act, and shall cause the remaining net proceeds of the revenue collected as above mentioned to be applied solely and exclusively to the preservation, repair, and improvement of said road, and to no other purpose whatever.

“Sec. 6. That directors shall be set up at proper and convenient situations, to caution all conductors or drivers of carriages on the road aforesaid, that they shall at all times pass on the left of each other, under the penalty of five dollars for every offence; and there shall also be set up at some conspicuous place at each gate, a board, on which shall be legibly painted the rates of toll, as is provided for in this act.

Caution boards,
&c.

“Sec. 7. That, if any of the toll-collectors shall unreasonably delay or hinder any passenger or traveller at any of the gates, or shall demand or receive more toll than is by this act established, he shall, for each and every such offence, forfeit and pay to the party aggrieved the sum of ten dollars.

Unreasonable
delay, &c.

“Sec. 8. That if any person shall purposely and maliciously deface, or otherwise injure any of the mile-stones, parapet walls, culverts, or bridges, or any of the masonry whatsoever, or any of the gates or toll-houses of and belonging to the said national road in this state, as the same is now constructed, or may hereafter be constructed, every person so offending shall, upon conviction thereof, be fined in a sum not more than five hundred dollars, or be imprisoned in the dungeon of the jail of the county, and be fed on bread and water only, not exceeding twenty days, or both, at the discretion of the court.

Injuries to road.

“Sec. 9. That, if any person shall purposely fill, choke, or otherwise obstruct any of the side drains, valleys, gutters, or culverts of said road, now made or hereafter to be made, or shall connect any private road or cartway with the said national road, without making at the point of connection a stone culvert, or paved valley, or other good and sufficient fixture, so as to secure a free passage for the water along such side drain, where such private road or cartway connects with the said national road, or if any person shall purposely and wilfully travel upon such parts of said national road as are or may be in an unfinished state, against the consent of the superintendent appointed by the United States, or by this state, or shall remove any of the beacons placed upon the said road so in an unfinished state as aforesaid, for the diverting of the travel on and from said road, every person so offending shall, upon conviction thereof, be, for every such offence, fined in a sum not less than one nor more than ten dollars.

Obstruction
of drains, &c.

“Sec. 10. That if any person shall stand his wagon and team, or either of them, over night, upon the pavement of said road, now made, or which may hereafter be made, or shall at any other time stand a wagon and team, or either of them, upon the said pavement, for the purpose of feeding, or if he shall in any other manner purposely and wilfully obstruct the travel upon said road, every person so offending shall, upon conviction thereof, for every such offence, be fined in a sum not less than one nor more than five dollars.

Stopping on
road.

“Sec. 11. That if any person shall fast lock or rough lock either of the wheels of any wagon, coach, chaise, gig, sulky, carriage, or other two or four-wheeled vehicle, while travelling upon the pavement of said road, as now made, or which may hereafter be made, (excepting however, such parts of said road as may be, at the time of such locking, covered with ice,) every person so offending shall, upon conviction thereof, be fined in any sum not less than one nor more than five dollars.

Locking of
wheels.

“Sec. 12. The supervisors of roads and highways through whose districts the said national road does now or may hereafter pass, are hereby severally

Culverts, &c.
at cross roads.

authorized and required at the connection with, or intersection of, any state, county or township road, which now is or hereafter may be established under the laws of this state within their respective districts, to build and keep in repair a good and sufficient stone culvert or paved valley, or other good and sufficient fixture, in such manner as to admit of a free passage for the water along the side drain or drains of said national road, at the connection or intersection aforesaid, and according to the grade thereof, as established by the United States' superintendent of said national road.

Appropriation.

"SEC. 13. That, for the purpose of carrying into effect the provisions of this act, the governor is hereby authorized to draw on the state treasury for any sum of money not exceeding two thousand dollars, to be paid out of any money in the treasury not otherwise appropriated: *Provided*, said sum shall be refunded to the state treasury out of the proceeds of the road fund created by the provisions of this act, so soon as the same shall be collected.

Fines, &c. how to be recovered.

"SEC. 14. That all fines, penalties and forfeitures incurred under the provisions of this act, shall be recovered by indictment in the court of common pleas of the county where the offence was committed, or by action of debt, in the name of the state of Ohio, for the use of the road fund established by this act, which action of debt may be brought before any justice of the peace or other court having jurisdiction thereof in the county where the offence was committed, or such fine, penalty or forfeiture was incurred; and it shall be the duty of the superintendent, toll-gatherers, and of any other person who will complain of the same, to prosecute all offences against the provisions of this act.

Alteration of this law.

Proviso.

"SEC. 15. That it shall be lawful for the General Assembly, at any future session thereof, without the consent of Congress, to change, alter, or amend this act: *Provided*, That the same shall not be so changed, altered or amended, as to reduce or increase the rates of toll hereby established, below or above a sum necessary to defray the expenses incident to the preservation and repair of said road, to the erection of gates and toll-houses thereon, and for the payment of the fees or salaries of the superintendent, the collectors of tolls, and of such other agents as may be necessarily employed in the preservation and repair of the same, according to the true intent and meaning of this act.

Mode of paying tolls.

"SEC. 16. That any person or persons shall have the privilege of paying at either of the said gates, at the rates specified in this act, the amount of toll for any distance which such person or persons may desire to travel on said road, and receive a certificate thereof from the collector of tolls at such gate, which certificate shall be a sufficient voucher to procure the passage of such person or persons through any other gate or gates named in said certificate: *Provided*, That printed forms of such certificates shall be furnished by the superintendent to be appointed under the provisions of this act to each collector of tolls, and shall be countersigned by such superintendent, and otherwise so devised as to prevent fraud or imposition; and no certificate shall be considered as valid under this section unless such certificate shall be authenticated as aforesaid.

Proviso.

"SEC. 17. That the act, entitled 'An act for the prevention of injuries to the national road in Ohio,' passed February eleventh, eighteen hundred and twenty-eight, be, and the same is hereby, repealed: *Provided however*, That all actions and prosecutions which may now be pending shall be prosecuted to final judgment and execution, and all offences committed before the taking effect of this act shall be prosecuted and punished in the same manner as if the above-mentioned act was not repealed."

APPROVED, March 2, 1831.