

1802. *met, and it is hereby enacted by the authority of the same, That, from and after the passing of this act, the township of West-Hanover, in the county of Dauphin, shall be a separate election district; and the electors thereof shall hold their general elections at the house now occupied by Thomas Smith, near Green's mill, in said township.*

West-Hanover township in Dauphin county erected into a separate election district.

Passed 5th April, 1802.—Recorded in Law Book No. VIII. page 120.

CHAPTER MMCCLXXXVII.

An ACT for laying out, making and keeping in repair, the public roads and highways within this commonwealth, and for laying out private roads.

WHEREAS, the existing road law, which was passed the twenty-first day of March, in the year one thousand seven hundred and seventy-two, directs that the road tax shall be levied on the clear yearly value of the property thereby made taxable, according to the estimate thereof made for the last county tax, assessed and levied in pursuance of an act for raising county rates and levies, passed the twentieth day of March, one thousand seven hundred and twenty-four and twenty-five: And whereas the act for raising county rates and levies, passed on the eleventh day of April, one thousand seven hundred and ninety-nine, establishes a mode of assessing county rates and levies different from that of the act last aforesaid, by which means it hath happened that Supervisors cannot lawfully assess and collect taxes adequate to laying out, improving and repairing the public roads or highways: Wherefore,

SECT. I. *Be it enacted by the Senate and House of Representatives of the commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same, That the Justices of the Court of Quarter Sessions of each county within this commonwealth, on being petitioned to grant a view for a public or private road, shall have power, and by virtue of this act are directed and required, as often as they find it needful, in open court, to order and appoint six discreet and reputable freeholders, of the inhabitants near where complaint is made for want of a private or public road or highway; and it shall be the duty of the freeholders so appointed, to view the ground proposed for the said road, and if they, or any five of them, view the said ground, and any four of the actual viewers agree that there is occasion for such road, they shall proceed to lay out the same, as agreeable to the desire of the petitioners as may be, having respect to the best ground for a road, and the shortest distance, in such a manner as to do the least injury to private property; and shall make report thereof, stating particularly whether they judge the same necessary for a public or private road, together with a plot or draft thereof, and the courses and distances, and references to the improvements through which it may pass, to the next Court of Quarter Sessions, and if then and there the Justices of the said court shall approve of the same, it shall, at the court next after that to which the report is made, be entered on re-*

Mode of proceeding to obtain the laying out of public or private roads.

cord, and thenceforth shall be taken, deemed and allowed, as the case may be, to be a lawful private or public road or highway; the court shall direct of what breadth the road shall be opened, which shall not in any case exceed fifty feet.

SECT. II. *And be it further enacted by the authority aforesaid,* That the citizens qualified to vote for members of the General Assembly, shall on the third Saturday of the month of March next, within their respective townships, and annually thereafter, elect by ballot, two freeholders or other inhabitants, qualified as aforesaid, who shall be supervisors of the public roads or highways for the ensuing year: and it shall be the duty of the supervisors then in office, in a summary way, before a Justice of the Peace, under the penalty of ten dollars, to be recovered for every neglect or refusal, ten days previous to the third Saturday in March, yearly and every year, to cause written or printed notices to be set up in at least five of the most public places within their respective townships, mentioning the time when and the place where the said election is to be held, which shall be opened between the hours of one and three o'clock in the afternoon, and kept open until six o'clock of the same day, except in the township of the Northern-Liberties, where the same shall be kept open until eight o'clock in the evening; and two reputable citizens of the township shall be chosen for Judges of the said election, who shall choose a clerk to assist them in recording and casting up the votes; the Judges shall declare the two highest in votes to be duly elected, and a certificate of the election, signed by the Judges, shall by them be forthwith delivered to the supervisors then in office, whose duty it shall be to deliver the said certificate into the office of the Clerk of the Court of Quarter Sessions, on or before the twenty-fifth day of March annually, and to inform the supervisors so chosen, of their having been elected and returned, who shall be the supervisors for the ensuing year; and if any supervisor or supervisors so elected, or who shall be appointed as herein after directed, being duly notified of his election or appointment as aforesaid, shall neglect or refuse to take upon him or themselves the said office, for every such neglect or refusal, he or they so neglecting or refusing, shall forfeit and pay any sum, at the discretion of the court, not exceeding fifty dollars, to be applied towards repairing the public roads or highways within the township in which such supervisor resides.

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No road to exceed 50 feet in breadth.

Supervisors of the highway to be annually elected within the several townships.

The existing supervisors to give notice of such election, and manner of conducting the same:

Penalty for refusing to serve.

How temporary vacancies are to be supplied.

SECT. III. *And be it further enacted by the authority aforesaid,* That if any supervisor or supervisors of the public roads and highways, so as aforesaid chosen, shall refuse, neglect, die or remove out of the township where any township shall have no supervisor, residing therein, it shall be the duty of the Justices of the Court of General Quarter Sessions, to appoint a successor or successors to supply the vacancy or vacancies; and such supervisor or supervisors so appointed, shall have and exercise the same powers and authorities, and be liable to the same penalties as the supervisors elected in pursuance of this act.

SECT. IV. *And be it further enacted by the authority aforesaid,* That at the election for choosing supervisors for each township respectively, the electors shall, and are hereby enjoined and required

How the accounts of supervisors going out of

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office are to
be settled

to elect by ballot, four capable and discreet freeholders or inhabitants, qualified to elect as aforesaid, whose duty it shall be to settle and adjust the accounts of the supervisor or supervisors whose time of holding the office is then about to expire, and the person or persons who have served the office of supervisor or supervisors the preceding year, shall on the twenty-fifth day of March yearly, or within ten days thereafter, produce fair and clear accounts of all such sums of money by him or them expended on the highways, and of all sums of money by him or them received by virtue of any assessment or otherwise, and of all fines and penalties due from themselves and others, which have come into his or their hands, which accounts shall be entered in a book provided for that purpose, and attested by him or them, on oath or affirmation, before a Justice of the Peace, if the freeholders, or any two of them, shall require the same; and the said freeholders or inhabitants, so chosen to settle the accounts aforesaid, or any three of them, shall have full power to adjust and settle such accounts so produced to them as aforesaid, and to allow such sums and charges as they think reasonable; and if there shall appear to be any money remaining in the hands of the person or persons who have served as supervisor or supervisors as aforesaid, they shall, by order in writing, signed by them, or any three of them, direct the same to be paid to the succeeding supervisor or supervisors; but in case such persons who shall have served as supervisor or supervisors, shall be found to be in advance for monies expended on the public roads, and shall have carefully collected the sums of money assessed and imposed by virtue of this act, then the said freeholders or inhabitants so chosen to settle the accounts as aforesaid, or any three of them, shall in like manner order the succeeding supervisor or supervisors to reimburse the same, as soon as a sufficient sum of money shall come into their hands; and if any person or persons who shall have served in the office of supervisor shall neglect or refuse to make up and produce fair and just accounts as aforesaid, or having made up and produced such accounts, shall neglect or refuse forthwith to pay the monies which he or they shall have been ordered to pay as aforesaid, or shall not give up the books wherein an account of such monies have been entered, to their successors, it shall be the duty of any Justice of the Peace, on complaint to him made by the said freeholders or inhabitants so chosen to settle the accounts aforesaid, or by any three of them, to commit such delinquent or delinquents to the county gaol until he or they shall comply as aforesaid, or be otherwise legally discharged.

Where they
are in arrear,
to whom the
monies in
their hands
are to be
paid over;

and where
in advance,
how to be
reimbursed;

mode of
compelling
obstinate or
negligent
supervisors
to settle
their ac-
counts.

Supervisors
of the re-
spective
townships to
assess and
levy a tax
not to ex-
ceed half a
cent in the
dollar on the
real value of
property,
&c.

SECT. v. *And be it further enacted by the authority aforesaid,* That it shall be the duty of the supervisors of public roads and highways of the respective townships in this commonwealth, to assess and levy a tax on all property, real and personal, and on all such professions, trades and occupations as are made taxable by the "Act for assessing county rates and levies," passed April the eleventh, one thousand seven hundred and ninety-nine, not exceeding half a cent in the dollar, on the real value of all such property, real and personal, and the estimation of the annual profits of all trades, professions and occupations made taxable by the aforesaid Act; and in assessing and levying the aforesaid tax, the supervisors

shall take to their assistance the township assessor for the time being, whose duty it shall be to furnish a correct copy of the last valuation of property in said township, and to give his assistance in making the said assessment; and the amount of taxable property, trades, professions and occupations, shall be taken from the last return of taxable property made in the township for the last county tax, and apportioned on the inhabitants in proportion to the last corrected apportionment of the county taxes, put into the hands of the township collectors; and if any land or other property which might have been overlooked by, or concealed from the township assessor, in taking the return of taxable property for the assessment of county taxes, come to the knowledge of the supervisors, it shall be their duty, with the assistance of the township assessor, to tax the said property, whether real or personal, agreeable to a reasonable valuation; and it shall be the duty of the supervisors, either by themselves or by a proper person duly authorized by them, to collect the said tax, and in so doing, to call for it at the usual residence or place of abode of the inhabitants, if it is not otherwise paid; and if a collector is appointed, the supervisors shall be accountable for the faithful collection of the tax: *Provided always*, That it shall be the duty of the said supervisors first to call upon the inhabitants of their respective townships, by advertisement or otherwise, who are taxed as aforesaid, to attend at such times and places as they may direct, so as to give the said taxable inhabitants a full opportunity to work out their respective taxes, but upon their neglect or refusal so to do, then the said supervisors to proceed to collect the taxes as is otherwise directed by this act.

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To take to their assistance the township assessor: His duty; how said tax is to be apportioned,

and collect; ed;

may be worked out.

SECT. VI. *And be it further enacted by the authority aforesaid*, That if any person so taxed, shall refuse or neglect to pay the same within twenty days after being called upon therefor, it shall be the duty of the supervisor or supervisors, to obtain a warrant from any Justice of the Peace of the county (who is hereby authorized and required to grant such warrant) and to levy upon the goods and chattels of the person or persons so refusing; and in case such person shall not within ten days after such levy is made, pay the sum or sums on him or her assessed, together with the charges of making such levy, that then the said supervisor or supervisors may proceed to sell the goods so levied on, and out of the monies arising from such sale, to pay the tax and all costs accruing, rendering to the owner the overplus, if any shall remain: *Provided nevertheless*, That if any person or persons shall find him, her or themselves aggrieved with such assessment, it shall be lawful for the Justices, at the Court of Quarter Sessions next after such levy being made, upon the petition of the party aggrieved, to take such order thereon, as to them shall be thought expedient, and the same shall conclude and bind all parties; and the supervisor or supervisors, in case of such appeal, shall forbear to make sale of the property so as aforesaid levied on, until the said appeal be determined in the Court of Quarter Sessions.

Mode of compelling the payment of the tax;

any person feeling himself aggrieved may appeal, &c.

SECT. VII. *And be it further enacted by the authority aforesaid*, That if the proportion of tax assessed on unseated lands in any township, or any part of it, is not paid to the supervisors, by or

Of proceedings where the tax on unseated

1802. for the owners of said lands, within six days after the supervisors have proceeded to collect the tax from the inhabitants, it shall be the duty of the supervisors to make out a fair transcript of the amount of the tax remaining unpaid and due on the several tracts of unseated lands within their respective townships, to which transcript the supervisors shall sign their names, and they shall deliver the same to the commissioners of the county, and on the receipt of the said transcript, the county commissioners shall give unto the supervisors an order on the county treasurer for the amount of the taxes remaining due on the unseated lands in their township, [which order shall be paid out of the county taxes forthwith;] and the county commissioners aforesaid are hereby directed and required, on the receipt of the transcript aforesaid, to proceed to recover the taxes due on unseated lands for public roads and highways, in the same manner, and with the same authority as the county taxes are or shall be by law directed to be recovered, and shall cause the proceeds of the same to be paid to the county treasurer, to reimburse the money paid to the supervisors of the roads and highways.

lands is not paid.

(Repealed, see note.)

The tenants of non-residents liable for the tax, but may deduct it out of their rent;

but contracts between landlord and tenant not to be impaired.

Of opening and repairing the highways, procuring materials, &c.

The supervisors may enter on lands adjoining the highways and cut or open drains for carrying off the water, &c.

SECT. VIII. *And be it further enacted by the authority aforesaid,* That the tenant or tenants, or other persons residing on lands owned by persons not residing in the township, his, her or their goods, shall be liable to be levied on in manner aforesaid, for the payment of said taxes; and where any tenant or tenants shall have taken, or hereafter may take a lease of lands or tenements for one or more years, and of which the tenant shall be in possession at the time of assessing or levying the tax for public roads and highways, and shall pay the rate hereby imposed on the said lands or tenements so leased, in such case it shall be lawful for the tenant or tenants to deduct the tax out of the rent due, or to become due, or to recover the same from the owner or owners, by action of debt, with costs of suit: *Provided however,* That nothing herein contained shall be so construed as to impair or make void any contract between landlord and tenant, respecting the payment of the road tax.

SECT. IX. *And be it further enacted by the authority aforesaid,* That the supervisors of the public roads or highways of the several townships within this commonwealth, shall have power, and they are hereby enjoined and required to hire and employ a sufficient number of hands to make, open and repair all the public roads within their respective townships, which by the Court of Quarter Sessions of the proper county, have been, or hereafter shall be declared public roads or highways, and to purchase wood and all other materials necessary for that purpose, to oversee and direct the labourers, and to take care that the said roads be forthwith effectually opened, cleared and amended.

SECT. X. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the supervisors aforesaid, or for any other person by order and direction of the supervisor or supervisors, to enter on any lands adjoining or lying near to the public road and highways within their respective townships, and to cut or open such drains or ditches through the same, as he or they shall judge necessary to carry off and drain the water from such roads, provided the same be done with as little injury as may be to the

owner of such lands ; which drains or ditches shall be kept open by the supervisors, if necessary for amending the said road, and shall not be stopped or injured by the owner of the land, or by any other person or persons, under the penalty of any sum not exceeding twenty nor less than four dollars, for every such offence, to be recovered on conviction thereof, before any Justice of the Peace of the proper county, with costs of suit.

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Penalty for stopping or injuring such dams.

SECT. XI. *And be it further enacted by the authority aforesaid,* That the supervisors shall have full power and authority to enter upon any grounds adjoining or lying near the said public road or highway so to be opened, made or repaired within their respective townships, and to dig or cause to be dug, any gravel, sand or stones, or to gather any loose stones lying on the said lands, as he or they shall think necessary for the purposes aforesaid, provided that the same be done with as little damage as may be to the owners of such lands, and the said materials to carry off without let, hindrance or controul of the owners, he or they the said supervisor or supervisors, paying or tendering to the owner or owners so much money as they shall agree upon, for the same ; and if the supervisor or supervisors and the owners cannot agree on the price of the materials so wanted for making or repairing the roads as aforesaid, then and in every such case, so much money shall be paid by the said supervisors respectively, as any three freeholders of the township where such public road or highway doth lie, to be chosen by the parties, shall, or any two of them, estimate and adjudge to be the value of the materials so wanted for repairing the said roads in the respective townships aforesaid.

They may also enter for the purpose of digging gravel, &c. for the use of the roads ; but with as little damage as may be to the owner, and to pay him for the same :

how the value thereof to be ascertained where the parties cannot agree.

SECT. XII. *And be it further enacted by the authority aforesaid,* That all and every supervisor or supervisors of the highways, who shall refuse or neglect to do and perform his or their duty, as directed by this act (and for which penalties are not otherwise herein provided) shall be fined in any sum not less than four dollars, nor exceeding fifty dollars, to be recovered in a summary way, before any justice of the peace of the county, to be applied towards repairing the public roads and highways within the respective townships where such fines and penalties are incurred : *Provided however,* That if any supervisor or supervisors shall conceive himself or themselves aggrieved by the judgment of a justice of the peace, he or they may appeal, by petition, to the next Court of Quarter Sessions, who shall take such order thereon, as to them shall appear just and reasonable, and the same shall be conclusive.

Penalty on supervisor for neglecting to perform his duty ;

appeal allowed.

SECT. XIII. *And be it further enacted by the authority aforesaid,* That if any person working on any road or highway, or being with him, shall ask money or reward, or shall by any means whatsoever, extort or endeavour to extort any money or other thing, of or from any person travelling upon any public road or highway, he shall for every such offence pay to the supervisor or supervisors of the said township, the sum of one dollar, to be recovered by the supervisors, or either of them, in a summary way, before any justice of the peace of the respective county, to be applied to the repair of the roads ; and in case any supervisor shall connive at any person so asking, demanding or contriving so to extort from travellers as aforesaid,

Penalty on persons working on the highway asking or extorting money, &c. from travellers.

18Q2. or shall himself extort or endeavour to extort money, drink, or other thing from travellers or any traveller as aforesaid, every such supervisor shall pay for every such offence, the sum of five dollars, to be recovered by any person who shall sue for the same, with costs of suit, the one half to the use of the prosecutor, and the other half to and for the repair of the roads within such township.

How individuals are to be compensated for damage sustained by reason of a public road passing through their land.

SECT. XIV. *And be it further enacted by the authority aforesaid,* That if a public road or highway shall be carried through any land whereby the owner shall receive damage, the person who sustains such damage, may within one year, but not afterwards, make a representation, by petition, of the damage he has sustained, to the Court of Quarter Sessions, and the said court shall appoint six disinterested men to view and adjudge the amount of the damage (if any) sustained, and the said amount shall be paid, after being approved of by the court, by the treasurers of the respective counties out of the county stock: *Provided always,* That it shall be the duty of the viewers, in assessing damages, to take into consideration the advantages derived from such said road passing through the land of the complainant.

Penalty for committing nuisances on the highways.

SECT. XV. *And be it further enacted by the authority aforesaid,* That if any person or persons shall stop or obstruct any of the public roads or highways laid out agreeably to law, or shall commit any nuisance thereon, by felling trees, making fences, or by turning the road, or by any other way whereby the road or highway may suffer damage, and do not, on notice given by the supervisor of the proper township, remove the nuisance or repair the damage forthwith, such person or persons shall for every such offence, be fined in a sum not exceeding forty dollars, nor less than ten dollars, as the case may require, to be recovered before one of the nearest Justices of the Peace of the proper county, and to be applied to the removing of the said nuisances, or repairing the injury or damage which the road or highway may have so sustained, and the surplus (if any) to be applied to the repair of the roads in the respective townships: *Provided always,* That the same appeal shall be allowed to any person or persons fined as aforesaid, as is provided by the twelfth section of this act.

Roads laid out on the division line of two townships to be kept in repair at the joint expense of both.

SECT. XVI. *And be it further enacted by the authority aforesaid,* That in cases where any road has been laid on the line which divides two townships, or may hereafter be so laid, the said road shall be made, amended or repaired, as the case may require, at the joint expense of both of the townships on whose division line the road is laid; and in case the supervisor or supervisors of one of the said townships shall neglect or refuse to join with and assist the supervisor or supervisors of the other township, in opening, amending or repairing any such road, such supervisor or supervisors so neglecting or refusing, shall be liable to the same penalties as if he or they had neglected or refused to open, amend or repair any public road or highway within his or their respective township, and the supervisor or supervisors of the other township, is hereby directed and required to open, amend and repair the said road, and to charge the aforesaid supervisor or supervisors so refusing and neglecting, with one half of the monies expended on such road, and

to recover the same by action of debt, to be brought against such 1802.
 supervisor or supervisors so neglecting.

SECT. XVII. *And be it further enacted by the authority aforesaid,* Of roads leading from the public highway to the habitations of individuals.
 That upon application, by petition, of any person or persons, to the Court of Quarter Sessions, for a road from the plantation or dwelling house of such person or persons, to or from the public highway, or to any place of necessary public resort, the aforesaid justices shall, in open court, and not otherwise, order and direct a view of the place where the road is requested to be laid out, and a return thereof to be made in the same manner as is before directed in this act; and if such road is found to be necessary, the said Justices of the Court of Quarter Sessions shall further order and direct of what breadth the said road shall be, so as the same shall not exceed twenty-five feet, and such road shall be recorded by the court: *Provided however,* That the said road shall be opened and kept in repair by and at the expense of the person or persons at whose request the same was granted and laid out, and of such as have occasion to travel to and from their dwelling houses on the said road; and if it shall happen that such road shall be carried through any man's ground, the damage sustained thereby by the owner or owners, shall be valued in the manner before directed in this act, and paid for by the person or persons at whose request the road was granted and laid out, and of those who use the same as a common road to and from their own dwellings.

SECT. XVIII. *And be it further enacted by the authority aforesaid,* Of hanging swinging gates on such roads as aforesaid.
 That if the owners of the improved land through which any such private road is laid out, or the owners of other land through which it is carried, are desirous to hang a swinging gate or gates upon such roads as are only granted for the use of one or more private families, it shall and may be lawful for the aforesaid court, on application, by petition to them made, to appoint six persons, in the manner herein before directed for laying out roads, to enquire and judge whether such gate or gates may without much inconveniency to the persons for whose use the road was granted, be hung on the same, and if the persons appointed to view the place, or any four of them, shall certify to the justices of the court aforesaid, that a gate or gates may be hung according to the prayer of the party, without much inconveniency to the person or persons using the road, the Justices shall order that a gate or gates may be hung thereon accordingly, and that the same shall be made and kept in repair by the owner of the said land, and made easy for the passage of persons using the said road.

SECT. XIX. *And be it further enacted by the authority aforesaid,* Of vacating private or public roads that may be deemed useless.
 That the several Courts of Quarter Sessions, in their respective counties, shall have authority, upon application, by petition to them made, to enquire of and to vacate any private or public road or highway, or any part of such road or highway which they shall judge to be useless, inconvenient and burthensome, and the said court shall proceed therein by views thereof, in like manner as they are authorized to do, and as is usually practised in laying out of public roads and highways; and the judgment of the Court of Quarter Sessions shall be effectual and conclusive in the premises,

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if the same be not appealed from within six months from and after the giving of such judgment; the application aforesaid shall be made in writing, signed by the persons applying, and shall set forth in a clear and intelligible manner, the length, breadth, situation, and other circumstances of such road or highway, or of the part thereof which those applying desire to have laid aside and vacated as aforesaid, and such application shall be audibly read twice in open sessions, on the different days of the sessions whereat it was made; and no other or further proceeding shall be had thereon, but the same shall be adjourned till the next Court of Quarter Sessions, when the same shall again be openly and audibly read twice, on several days, before the court proceed thereon: *Provided always*, That nothing in this act shall be understood to give authority to any of the said Courts of Quarter Sessions, or to the Supreme Court, to vacate any lane, street or highway within the city of Philadelphia, or within any borough, town plot, or any town or village in this state, which hath been laid out by the late proprietaries, or by any other person or persons, and dedicated to public use, nor to vacate any cart-way laid out by order of court, nor any road or passage claimed by any person as his or her private right, and which cart-way, road-way or passage, is not repairable at the charge of the township or district, nor to rivers or streams of water.

Exception as to lanes, streets, &c. within any corporate town or cart-ways that may be claimed as private rights.

Of causeways and bridges.

SECT. XX. *And be it further enacted by the authority aforesaid*, That it shall be the duty of the supervisors, and they are hereby enjoined and required, in making and repairing the public roads or highways, to make and maintain sufficient causeways, of stone, or timber, or marshy or swampy grounds, and also make and maintain sufficient bridges over all small creeks and rivulets and deep gullies, where the same shall be necessary for the ease and safety of travellers; and where a small creek, over which a bridge may be necessary, happens to be a boundary or division line of two townships, the bridge shall be built and maintained by the supervisors of both townships respectively, at the equal expense of the said townships, in the same manner as is directed by this act with respect to the making and repairing of public roads and highways which may be the division line of townships.

Bridges over creeks that are division lines, how to be repaired.

Bridges over rivers, &c. crossing a highway to be erected at the expense of the county.

[SECT. XXI. *And be it further enacted by the authority aforesaid*, That where a river, creek or rivulet, over which it is necessary to erect a bridge, crosses a public road or highway, and the erecting of such bridge requires more expense than it is reasonable that one township, or two adjoining townships should bear, it shall be the duty of the Justices of the Court of Quarter Sessions, and they are hereby enjoined and required, on the representation of the supervisor or supervisors, or on the petition and at the request of a number of the inhabitants of the respective townships, to order a view, in the same manner as in the case of laying out roads and highways; and if on the report of the said view, it appears to the court, grand jury, and commissioners, that such a bridge is necessary, and would be too expensive for the township or townships to erect, it shall be entered on record, and it shall be the duty of the commissioners of the county to procure an estimate, as nearly as may be, of the money which will be necessary to erect such bridge, and the

commissioners of the county shall provide the same out of the county taxes, and proceed forthwith to have such bridge erected, by contract or otherwise, as shall seem to them most expedient; and such bridge, when so erected, shall be inspected by six fit persons, appointed by the Justices of the Court of Quarter Sessions, agreeably to whose report it shall be approved or disapproved by the court, and if approved, the money shall be paid agreeably to contract, or damages in favour of the county awarded, according to the judgment of the court.

SECT. XXII. *And be it further enacted by the authority aforesaid,* That in all cases wherein the Court of Quarter Sessions is authorized to grant a view for the purpose of laying out or vacating roads, or respecting bridges, the Justices of the Court of Quarter Sessions are hereby authorized and directed, on application to them made for that purpose, to grant a re-view of the same, at the expense of the parties applying: *Provided,* That application is made therefor at the next Court of Quarter Sessions after report has been made on the first view.

Reviews of roads and bridges to be granted, but must be applied for within a limited time.

SECT. XXIII. *And be it further enacted by the authority aforesaid,* That the township assessor shall receive from the supervisors, any sum not exceeding one dollar, for every day he shall be necessarily employed in assessing the tax directed by this act, and that the supervisors shall be allowed in the settlement of their accounts, any sum not exceeding one dollar respectively, for every day they shall be necessarily employed in discharging the duties of their office, except for collecting the road tax, for which they shall be allowed the amount of five cents out of every dollar they shall so collect or cause to be collected, and no more; and the freeholders or other inhabitants who shall be directed to view public roads or highways, shall each of them, for every day they are necessarily employed in that service, receive from the county treasurer one dollar, on producing a certificate from the clerk of the Court of Quarter Sessions, that such service was performed by them; the surveyor shall be found and paid by the persons applying for the view; and the expense of views of private roads, and of reviews of private or public roads, shall be wholly paid by the parties applying for the same.

Compensation of township assessors, supervisors and road viewers.

SECT. XXIV. *And be it further enacted by the authority aforesaid,* That the supervisors within the respective townships, shall cause posts to be erected, where trees are not convenient, at the intersection of all public roads, with boards and an index-hand pointing to the direction of such road, on both sides whereof shall be inscribed, in legible characters, the name of the town, village or place to which such road leads, and the distance thereof in computed miles; and any person or persons who shall wilfully injure, deface or destroy any such posts or index-boards, the person or persons so offending shall, on conviction thereof, before any Justice of the Peace of the proper county, forfeit and pay any sum not exceeding ten dollars, one half thereof to be paid to the informer or informers, and the other half to the supervisors of the respective townships wherein the offence shall be committed, to be appropriated to the repairs of the roads in such townships.

Direction posts to be erected where cross-roads intersect the highway.

[See note.]

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SECT. XXV. *And be it further enacted by the authority aforesaid,* That all laws heretofore enacted for the laying out, opening, making, amending or repairing of public or private roads or highways, or for the making and repairing of bridges, other than turnpike roads and streets, roads, lanes, alleys and bridges, in the city of Philadelphia and other corporate towns, are hereby repealed and made void: *Provided always,* That nothing herein contained, shall be so construed as to interfere with any special provision heretofore made by law, respecting the county of Philadelphia. (x)

Passed 6th April, 1802.—Recorded in Law Book No. VIII. page 166.

All former road laws other than those respecting turnpike roads, &c. &c. repealed.

(x) Supervisors of Chester and Lancaster counties to recover fines heretofore appropriated to the poor, and appropriate them to the repair of the highways. Act of 4th April, 1803, (chap. 2387, sect. 7.) So, of York county, by act of 6th Feb'y, 1804, (chap. 2413, sect. 18,) of Delaware, by act of 13th Feb'y, 1804, (chap. 2419, sect. 16,) of Dauphin, by act of 28th March, 1806, (chap. 2701, sect. 18,) of Franklin county, by act of 11th March, 1807, (chap. 2766, sect. 13,) of Bucks county, by act of 10th April, 1807, (chap. 2845, sect. 14,) of Oxford and Lower Dublin townships in the county of Philadelphia, by act of 11th April, 1807, (chap. 2852, sect. 17.)

And, by an act passed 20th Feb'y, 1804, (chap. 2422,) all fines, penalties and forfeitures, paid into the hands of the overseers of the poor, where there is no poor supported at the expense of the township, or where a surplus remains in their hands, after paying the expenses that may arise in the execution of their office, it shall be their duty, under the same penalty as is provided in other cases, to pay over such sums as remain unexpended in their hands at the settlement of their accounts to the supervisors of the highways, to be applied to the public roads in the respective townships, unless the township auditors shall judge it necessary, that the whole or part thereof be retained as a fund for the use of the poor.

By an act passed 3d April, 1804, (chap. 2503,) a mode of proceeding is directed to determine the expediency of opening public roads, streets, &c. within the Northern Liberties, and district of Southwark; and allowing compensation to the owners of the ground through which such road may pass; and prescribes the mode of determining such compensation, and by whom it shall be paid.

See also the act for the better regulation of the city of Philadelphia and the districts adjoining, &c. passed 25th March, 1805, (chap. 2569,) by which

the Quarter Sessions of Philadelphia county, are empowered to grant views of and for opening streets, &c. within the city; and the mode of compensation is prescribed, &c.

By an act passed 3d April, 1809, the several Courts of Quarter Sessions in their respective counties, shall, upon application to them being made, for the purpose of opening a new road, or of vacating or changing the route of an old road, proceed therein by views and reviews, in like manner as has been practised in laying out public roads or highways now in force; that in addition to the powers heretofore given to viewers, they shall be authorized when they lay out a new road, or change the route of an old road, to vacate the whole of the old road, or any part thereof, as circumstances may render the one or the other necessary; and make report of their proceedings in the same manner as is now done in cases of views and reviews: *Provided always,* That it shall not be lawful for any road, or part of a road vacated in pursuance of the provisions of this act, to be shut up or stopped, until the road or part of road so laid out to supply the place thereof, shall be actually opened.

SECT. 2. The viewers appointed in pursuance of the 14th section of the act in the text, to ascertain the damages sustained by individuals from public roads laid out through their lands, shall each of them, before they proceed to assess the said damages, take an oath or affirmation before some Judge, Alderman or Justice, justly and truly to value the same, and also to consider the advantage as well as disadvantage of the said road.

By an act passed 30th March, 1811, it shall be the duty of the commissioners of the respective counties, on receiving the transcripts of road taxes due on unseated lands, which the supervisors of the different townships are, by the existing laws required to furnish, to issue their order to the county treasurer for the amount thereof, and also immediately to transmit copies thereof

to the said Treasurer, who is hereby required to enter them in a book to be kept for that purpose; and it shall be the duty of the said Treasurer on receiving the said taxes, or any part thereof, and not before, to pay over the amount thereof to the supervisors, who shall respectively be entitled to the same: *Provided*, That no land shall be sold for road taxes until twelve months after the said transcripts have been delivered to the Treasurers aforesaid, and notice given in the manner prescribed by the second section of an act directing the mode of selling unseated lands for taxes, passed 3d April, 1804, (chap. 2508,) provided also that so much of the existing road laws as requires the Treasurers to pay the amount of road taxes due on unseated lands to the supervisors immediately on the orders of the commissioners being presented to them, be, and the same is hereby repealed. (See sect. 7, of the act in the text.)

Sect. 2. On petition of the inhabitants of any two adjoining counties to lay out a road on the lines which divide the said counties, the sessions of each county are empowered and required to appoint, respectively, three reputable freeholders from the neighbourhood where the road is requested; and the said six freeholders or any five of them shall proceed to view the said ground, and make report to the court of each county, respectively, in the manner prescribed by the first section of the act in the text; and if the said Justices, respectively, shall approve thereof, the same shall be confirmed and recorded agreeably to the provisions of the said act.

Sect. 3. On petition by the inhabitants of any two adjoining counties to erect a bridge over any creek or rivulet, being the line of the said counties, the sessions respectively, are empowered and required to appoint a view in the same manner as for laying out a road on county lines; and if on report of said viewers, it appears to the courts, grand jury and commissioners of the respective counties that such a bridge is necessary, and agreeably to the provision of the 21st section of the act in the text, the same shall be erected and kept in repair by the joint expense of both counties.

Sect. 4. In all cases where separate views and reports of roads, supposed to be on the dividing lines of counties, have been made under the authority of the respective sessions of the adjoining counties, and the said reports do not agree as to the line, then and in such cases, on petition of the supervisors of

the highways, or inhabitants of the said counties to the sessions of each county, it shall be the duty of the Justices, and they are hereby empowered and required to appoint viewers, and proceed in the same manner as is directed by the second section of this act, and when so confirmed shall be considered as on the county line, and be kept in repair at the joint expense of the adjoining townships: *Provided always*, That the viewers in such cases shall have power to vacate any part of the old road for which the new road is to be a substitute.

Sect. 5. If any supervisor or supervisors of any township shall after ten days notice, neglect or refuse to put up and keep in complete repair the index boards directed to be set up by the 24th section of the act in the text, every supervisor so offending and being thereof legally convicted by the oath or affirmation of one or more credible witness or witnesses, before any Justice of the Peace, or before the Court of Quarter Sessions of the said county, shall, respectively, pay a sum not exceeding ten dollars, in the discretion of the court before whom such conviction shall be had, to be applied and expended in keeping in repair the public highways in the townships respectively.

It was held in the year 1764, in the Supreme Court, that a review of a road, though not taken notice of in the act of Assembly, had always been granted, and was now become a matter of right. 1 *Dallas*, 11.

So, it was held in the Supreme Court, March, 1796, in the case of the road from *Strasburg*, in *Franklin* county, to *Black's Gap*, that a review of a road is a matter of right, but a re-review is merely in the discretion of the sessions. (MSS. Reports.)

And, in the case of the *Berlin* road; on a certiorari to remove all the proceedings respecting a road, from the town of *Berlin* to *Leidig's* mill; it appeared, that on a petition for the road to September sessions, 1800, viewers had been appointed, who returned to the December sessions following, a certain road, by courses and distances, for, and as a public road; that the court continued the return under advisement until February sessions, 1801, when a petition was presented for a review, which the court rejected, and confirmed the return. It was now said, that the review had been prayed for by persons who were not interested therein; but on examination of the duplicates of assessments, the assertion appeared to be unfounded.

The court now reversed the proceed-

1802. ings, because the petition for the review by several of the inhabitants of *Southampton* and *Brother's Valley* townships had been duly filed, previous to the road's being confirmed. It has been long settled, that the review of a road is a matter of right.—*Somerset*, October, 1801, before *Yeates* and *Smith*, Justices, (MSS. Reports.)

(Reviewers are now expressly authorized by the 22d section of the act in the text.)

In *Chambers v. Furry, Dauphin*, May, 1792, before *McKean*, C. J. and *Yeates*, J. it was held, that the public is intitled to a right of passage in a highway; but the title to the soil, the stones, the wood and the grass growing thereon, still continue in the owner of the lands. The use of the ground is dedicated to the public for particular purposes only.

Return of the viewers of improved lands taken up by a public road, that the damages resulting to the owner are valued at $\text{£} 45$, is radically bad. The soil of improved lands converted into a public road, is not to be valued and paid out of the county stock, *Verree v. Commissioners of Lancaster county*, Supreme Court, March, 1801, (MSS. Reports.)

The court will judge of a road from the record; the sessions should confirm the road most conducive to the public good. It would seem that the clause in the act of 6th April, 1802, that the improvements shall be noted, is only directory. Viewers returning the width of the road, is only surplusage. Road in *Aston* township, Delaware county. Supreme Court, March, 1807, (MSS. Reports.) *vide infra*.

No proceedings can be pursued under a repealed statute, though begun before the repeal, unless by a special clause in the repealing act. Therefore under the act in the text, proceedings under former laws thereby repealed, cannot be continued. Hatfield township road, Montgomery county, Supreme Court, March, 1807, (MSS. Reports.)

A *certiorari* to remove a road, must set out its beginning and ending, otherwise it will be quashed. Road in *East* and *Westmanmill* townships, Chester county. Supreme Court, December, 1807, (MSS. Reports.)

To make a bridge a county charge, it must appear by the report of the viewers, that five of them had viewed the place, and that such bridge was necessary. Bridge over *Wallenpaupac*, Wayne county. Supreme Court, December, 1807, (MSS. Reports.)

Confirmation of a road reversed, because the reviewers had not actually reviewed the road; and because one of the petitioners for the road had been

appointed a reviewer. Road in *Donegal* township, Lancaster county, Supreme Court, March, 1808. (MSS. Reports.)

No general rule can be laid down as to the definite points where a road shall begin and end, being stated in the petition, *id certum est, quod certum reddi potest*. A road leading from a certain house into a public road, may be confirmed as a private road, though the viewers have not reported that it was necessary as a private road; and the order of confirmation need not specify how it must be opened and kept in repair. Private road from *Kyle's* house, in *Mifflin* county, Supreme Court, July, 1808, (MSS. Reports.)

It is not necessary that an appointment of viewers to lay out a road, should state that they are "freeholders and inhabitants near where complaint is made for want of a road" although the act of Assembly requires that they should be so. The Supreme Court will presume that the Quarter Sessions have made the appointment according to law.

A reference to the improvements through which a projected road is to pass, need not be made in the report of viewers, &c. They may be shewn in the plot or draft. Where different courses and distances have been returned by different sets of men, the sessions are enabled on a view of the drafts and improvements laid down therein, to contrast them, and determine on the shortness of the distance, and injury to private property, which seems to be the object the Legislature had in view by this provision. The compensation to the individual comes before other viewers for their decision.

The sessions have power to order a re-review of a road, although the act of Assembly does not expressly authorize it. It is a second review directed for the information of the minds of the court.

If it appears by the report of the viewers, that a county commissioner attended the view, it is sufficient to shew that notice was given to the commissioners, agreeably to the standing order of the sessions. *Schuylkill* falls road, 2 Binney, 250.

The act of 3d April, 1804, respecting streets, lanes and alleys in the Northern Liberties and Southwark alters and supplies the act in the text, that the same shall not be deemed highways before compensation is made to the owner of the ground.

Street in Southwark between the end of *New Market-street* and *Budd-street*. Supreme Court, Decem. 1804. (MSS. Reports.)