

anything herein contained to the contrary thereof notwithstanding.

Passed February 17, 1762. Referred for consideration by the King in Council, February 14, 1763, and allowed to become a law by lapse of time in accordance with the proprietary charter. See Appendix XXIV, Section II, and the Acts of Assembly passed March 4, 1763, Chapter 491; (the two acts of) February 15, 1765, Chapters 523, 525; February 18, 1769, Chapter 591; December 15, 1784, Chapter 1120; March 10, 1788, Chapter 1337; March 31, 1795, Chapter 1820; April 15, 1834, P. L. 466; April 22, 1841, P. L. 269; March 31, 1843, P. L. 122; April 3, 1851, P. L. 338; March 17, 1862, P. L. 129.

CHAPTER CCCCLXXV.

AN ACT TO ENABLE THE OWNERS AND POSSESSORS OF THE SOUTHERN DISTRICT OF DARBY MARSH OR MEADOW GROUND, IN THE COUNTY OF CHESTER, TO EMBANK AND DRAIN THE SAME, TO MAKE AND KEEP THE OUTSIDE BANKS AND DAMS IN GOOD REPAIR FOREVER, AND TO RAISE A FUND TO DEFRAY THE YEARLY EXPENSES ACCRUING THEREON.

Whereas the improvement of meadow ground is not only useful to the owners and possessors thereof, but great advantage and benefit accrue thereby to the public. And whereas there are two certain islands of marsh and cripple land, one called Hay Island [and] the other known by the name of The Little Island, situate on the west side of Darby Creek, at Calcoon Hook, in the township of Darby, and county of Chester, and also one other piece of meadow ground for the most part drained, lying between Hay Island aforesaid and the shore or fast land, all which premises intended to be embanked and drained are comprehended within the bounds following: That is to say, beginning at the fast land belonging to the heirs of Andrew Boon, junior, deceased, on the west side of a certain run of water called Hem-Sprota; thence along the side thereof to the great thoroughfare dividing Hay Island from the last-mentioned piece of meadow ground then across the said thoroughfare to Hay Island aforesaid; thence up the said thoroughfare by the courses thereof to Darby Creek, thence down the said creek by the several courses thereof to the small thoroughfare dividing

the two islands aforesaid; thence along the side of The Little Island by Darby Creek aforesaid, at or near the lower end of the said small thoroughfare, thence crossing the same, the lower part of Hay Island by Darby Creek and the great thoroughfare to a certain bank on the meadow ground late of Adam Archer, deceased, then along the said bank to the meadow of Charles Grantum, thence along the said Grantum's bank to the shore or fast land at the western point of his said meadow, and from thence northeasterly by the shore or fast land to the place of beginning, named and henceforth to be called The Southern District of Darby Meadows; which two islands aforesaid are for the most part undrained and subject to the overflowing of the tide, the several owners of which propose by banks, dams, sluices and flood-gates near the outside thereof the whole completely to embank and drain, and also [to] include within the said banks the other piece of meadow land lying between the said island and fast land as aforesaid. But forasmuch as such improvements are from their own nature and situation subject to many casualties, and without constant care and expense not only liable to decay, but the defect of one part [is] often destructive and ruinous to many, and amongst a number of owners such frequent disputes [arise] concerning repairs and the means of defraying the necessary expense thereof that oftentimes from little neglects great damages ensue and the heavy charges of many owners may be rendered ineffectual through the default of a few, to prevent which damages and inconveniences and for the security and encouragement of the said owners and undertakers of this improvement they pray that it may be enacted:

[Section I.] And be it enacted by the Honorable James Hamilton, Esquire, Lieutenant-Governor under the Honorable Thomas Penn and Richard Penn, Esquires, true and absolute Proprietaries of the Province of Pennsylvania and counties of Newcastle, Kent and Sussex upon Delaware, by and with the advice and consent of the representatives of the freemen of the said Province in General Assembly met, and by the authority of the same, That all and every the owner or owners, possessor or possessors of the marsh or cripple land lying on the two islands aforesaid, or so many of them as shall think fit, may

meet and assemble on the first Monday in March next, at the house of John Wilkinson, in Darby aforesaid, and then and there, by a majority of those met, shall choose by ticket in writing three fit persons, owners or possessors of land on the said islands or on any one of them, to be managers and one fit person to be treasurer for the year then next ensuing.

And in order speedily and the more effectually to raise money necessary for making the banks, dams, sluices and flood-gates to inclose and drain the two islands aforesaid:

[Section II.] Be it enacted by the authority aforesaid, That the said managers, or any two of them, shall lay a rate or assessment not exceeding one pound ten shillings per acre at one time and so from time to time as they shall see occasion on all and every the owners and possessors of the said marsh or cripple land for what they shall respectively hold and possess on the islands aforesaid or for so much as appears likely to be inclosed within the banks hereafter to be made, which rate or rates from time to time the said owners shall, within ten days after demand made, pay to or deposit in the hands of the said treasurer, there to remain subject to the drafts and orders of the said managers, or any two of them, for the purposes aforesaid. And that the said managers, or any two of them, as soon as may be after a sufficient sum of money shall be paid as aforesaid into the treasury, shall employ a proper number of workmen and laborers to embank all the meadow lands in the said district by erecting, making and laying a sufficient number of banks, dams, sluices and flood-gates [wherever the same] may be necessary for the effectual stopping out the waters from the same.

[Section III.] And be it further enacted by the authority aforesaid, That George Gray, David Gibson, Philip Price, John Smith (of Kingsess) and John Lewis, gentlemen, or any three of them, are hereby nominated, authorized and appointed, within two months after the banks and dams are made as aforesaid to divide the banks which surround and include all that the said tract or piece of marsh and meadow land composed of the two islands and other piece of marsh aforesaid, and allot and appoint how many perches of the said bank each owner or possessor of the said tract shall make, repair, maintain and sup-

port in proportion to the number of acres of meadow he holds therein, having an equitable regard to the quality, situation and circumstances of the ground or part so to be allotted and shall also ascertain and declare the share, part and proportion of money which the owners and possessors of the meadow ground lying between the great thoroughfare aforesaid and the shore or fast land, shall pay towards making the [two] several dams to be made on the great thoroughfare aforesaid, excepting the meadow grounds of Charles Grantum and of the heirs of Adam Archer and Jacob Archer, both deceased, which said meadow is hereby exempted from any charge or expense in the first making the said dams across the said thoroughfare, all which said allotments and divisions so made and signified by an instrument in writing under the hands and seals of any three of them shall be the proper shares, parts, proportions and quantities of bank and dams aforesaid for the said owners or possessors of the said meadow to make, repair and support at their own proper expense and charge.

[Section IV.] And be it further enacted by the authority aforesaid, That the owners, occupiers and possessors of the said tract of meadow land respectively whose allotments, shares or parts of the bank are in any wise defective shall, within three months from the making the said banks and dams, cause them to be put in good and substantial repair; and make up or cause their respective parts of the banks so as aforesaid allotted to be made up level on the top and sufficiently strong and secure to defend the said meadows from all inundations, for which end the said banks shall always be kept at least six inches above all tides by each and all of the said owners, possessors or occupiers on their and each of their parts so as aforesaid to them respectively allotted, under the penalty of ten shillings for every perch out of repair, to be paid to the said company's treasurer by the person so neglecting or refusing, to be levied by the managers of the said district hereafter to be chosen, if they see cause, and added to the common stock.

[Section V.] And be it further enacted by the authority aforesaid, That the costs and charges of making, maintaining and amending the dams, sluices or flood-gates made or hereafter to

be made shall be paid by all the owners, occupiers or possessors of the land in the said district according to the number of acres that they and each of them shall hold, possess and occupy, the same to be made, supported and amended in such manner as the managers for the said district, or any two of them, hereafter to be chosen shall direct.

[Section VI.] And be it enacted by the authority aforesaid, That it shall and may be lawful for the owners of the said southern district of Darby meadow, or as many of them as shall think fit, to meet together on the first Monday in March yearly and every year at the school-house in Darby, or such other convenient place as shall hereafter be appointed by the managers to be chosen by virtue of this act, and then and there, by a majority of those met [shall] choose by ticket in writing three fit persons, owners or possessors of land in the said district, to be managers and one fit person to be treasurer for the said Southern District Company for the year then next ensuing.

[Section VII.] And be it enacted by the authority aforesaid, That if any of the owners or possessors elected managers as aforesaid on due notice given in writing of his election by some of the company present at the said election, shall refuse or afterwards neglect to do the duty required of him or them by this act, he or they so refusing or neglecting his duty shall forfeit and pay to the treasurer for the time being the sum of forty shillings, to be added to the common stock of the district, unless he shall have served two years successively in the said office, which fine shall be recovered in the manner hereinafter directed for the recovery of other money payable to the treasurer of the said district, and the other manager or managers shall proceed in the execution of his or their office without him or them, or, if he or they think fit, may choose other or others of the said owners or possessors to be manager or managers in the place of him or them so refusing or neglecting. And if the person so elected treasurer shall refuse or neglect to take upon him the duties or to give the securities required by this act, or shall misbehave himself or by death or otherwise be rendered incapable to execute the said office, in any of these cases the managers for the time being shall choose another fit person (not a manager) to be the treasurer for that year.

[Section VIII.] And be it enacted by the authority aforesaid, That every treasurer hereafter to be chosen shall, before he takes upon him the execution of his office, enter into an obligation, with at least one sufficient surety, in double the value of the money that doth or may probably come into his hands during the continuance of his office, as near as can be estimated by the managers, conditioned that he will, once in every three months or oftener if required, render his accounts to the said managers, and well and truly account, adjust and settle with them when required for and concerning all moneys that are or shall come to his hands by virtue of this act or that belong to the owners of the land in the said district, and shall well and truly pay the balance that shall appear on such settlement to be in his hands to such persons and to such services as any two of the managers for the time being shall order and appoint, and not otherwise; and that he will at the expiration of his office well and truly pay or cause to be paid and delivered all the money then remaining in his hands, together with the books of accounts concerning the same and all other papers and writings in his keeping belonging to the owners of the lands of the said southern district of Darby Meadow unto his successor in the said office, and that he will do and execute all other matters and things as treasurer to the said owners according to the true sense and meaning of this act.

[Section IX.] And be it further enacted by the authority aforesaid, That it shall and may be lawful for the said managers as often as they shall see occasion, to meet together and lay such assessments and taxes on every acre of land in the said district as they shall judge to be necessary for the benefit and security of the same.

And the said managers, or any two of them, for the time being in every year are hereby empowered, authorized and required to enter upon and inspect, at least four times in each year, the condition of all the said banks, dams, sluices, flood-gates and other conveniences necessary for stopping out the tides or draining the water from the said meadows, and if any part shall appear unfinished, damaged, decayed or destroyed, or more liable by its situation, nature of the soil or other circumstances to

be washed away or destroyed than other parts or shall be in any manner insufficient for the purposes aforesaid, they, the said managers shall consider and determine by what methods such part or parts may be made good and secure by stone or other firm and durable materials, and on such inspection and determination the said managers shall give notice to and require the said owners or possessors or their guardians (if minors) and within the county of Chester forthwith to amend their and each of their parts or allotments in such manner as they shall direct, all of which banks shall be of sufficient breadth and at least six inches above any tide that hath been known; and if such extraordinary work shall be directed by the managers to be done for the mending and supporting of any such parts of the banks as are or have been allotted as aforesaid so to be made, mended or supported by any of the particular owners or possessors, then the expense and costs of such extraordinary work shall not be put on the person to whom that allotment was made, but shall be allowed to him and paid out of the common stock, he contributing his proportionable share and part thereto.

[Section X.] And be it enacted by the authority aforesaid, That if by any general overflowing of the water hereafter the banks, dams or sluices belonging to owners of any one allotment shall be damaged or destroyed by the force of the water from within which had been admitted by defects in the banks or dams belonging to the owners of other allotments, in all such cases the delinquent owners shall pay all the costs of repairs, unless the managers for the time being shall from any circumstances consider it as an act of Providence, in which case they may repair it at the general expense of all the owners of the said southern district and order the treasurer to pay the charge thereof.

[Section XI.] And be it enacted by the authority aforesaid, That if any of the said owners or occupiers of the land in the said district or any guardian of a minor owner thereof so warned by the said managers shall refuse or neglect after such warning to amend and repair their respective parts agreeable to the direction of the said managers, or if any of the said owners or guardians are not known or readily to be found within the said county at the time aforesaid, that then and as often as it shall so

happen it shall and may be lawful to and for the said managers, or any two of them, together with such workmen, horses, carts, barrows and tools as they shall think necessary, to enter into and upon the lands of him, her or them where such breach or defect shall happen to be, and then and there to dig and carry earth or purchase suitable materials to make, amend and repair the said banks, dams, sluices, flood-gates and all other conveniences necessary [for] stopping out the tide or for draining the waters off the meadows in such manner and by such ways and means as they shall think fit and reasonable, any law of this province, usage or custom to the contrary in any wise notwithstanding. And [they] the said managers, or any two of them, shall adjust and settle the expense thereof with those to whom such parts or shares of the banks so amended or repaired were before allotted as they shall think just and reasonable, except, as is before mentioned, in case of any extraordinary expense arising from its situation, nature of the soil or other circumstances, in all which cases the extraordinary charge beyond what other allotments are subject to shall be paid out of the common stock, and shall also deliver to the said owners, guardians or possessors of the said meadow land on whose allotments such repairs shall be made or to as many of them as shall be found their respective bills of the charge of repairing the said part of the bank to them before allotted and shall order payment accordingly; and in case of their or any of their refusal or delay of payment they shall order the treasurer for the time being to advance and pay so much out of the public stock, as shall be sufficient to satisfy the said charge until it can be obtained of those who ought to pay the same.

And in order to establish a fund to defray sundry contingent and yearly expenses, and to prevent any delay hereafter for want of money in case of inundations or extraordinary accidents:

[Section XII.] Be it enacted by the authority aforesaid, That every owner or possessor of land in the aforesaid meadow tract shall, on or before the second Monday in June next after the banks, dams and sluices are made as aforesaid, pay or cause to be paid or deposited in the hands of the treasurer aforesaid

the sum of two shillings, current money of Pennsylvania, for each and every acre they respectively have, hold, occupy or possess in the said district, exclusive of flats, creeks or waste lands. And all and every person or persons, whether owners or renters, who shall, on the second Monday in June in every year hereafter be owner, occupier or possessor of meadow land in the said tract shall in like manner pay or deposit, or cause to be paid or deposited into the hands of the treasurer for the time being such sum or sums of money as the managers for the time being, or any two of them, shall find necessary to assess and order; which sum, if paid by the aforesaid renter, he, the said renter, shall and is hereby empowered to deduct out of his rent.

So always and provided, That the sum of twenty-five pounds shall in the beginning of every year be in the treasurer's hands ready to be applied in the premises as occasion may require; of all which sums of money and all other money coming to his hands by virtue of this act and of all disbursements and payments thereof from time to time made the said treasurer shall, in books to be provided for that purpose, keep a just and true account, and shall pay and deliver the same according to the directions and orders of the managers for the time being, or any two of them, and not otherwise.

[Section XIII.] And be it further enacted by the authority aforesaid, That the managers for the time being or any two of them shall, before the day hereinbefore appointed for the payment of the yearly quotas, deposit money or assessment, cause a true list of the names of all and every of the said owners or possessors, with a true account of all and every acre of meadow in the aforesaid tract which they respectively [have], hold, occupy and possess, exclusive of flats and creeks, according to the best information [they] can obtain, noting from time to time the several changes, alterations, transfers, and alienations of right in the several parts and parcels thereof as they shall come to their knowledge, and shall furnish the treasurer with a true copy thereof, together with the sum per acre of the general assessment for the current year when any alteration shall be of the aforesaid deposit of two shillings, according to which list or account the treasurer for the time being shall receive and

take the several sums of their and each of their deposit money and assessment respectively in every year raised or assessed by this act, and shall cause public notice of the said rate or assessment per acre to be given at least ten days before the day of payment in every year hereafter. And in case any of the said owners, occupiers or possessors aforesaid shall refuse or neglect to pay or cause to be paid to the treasurer aforesaid on the days and times aforesaid the several sums of money which they respectively ought to pay or deposit according to the true intent and meaning of this act, they and each of them so neglecting and refusing shall forfeit and pay to the said treasurer the additional sum of two pence for every shilling unpaid which they respectively ought to have paid by the direction of this act, and afterwards shall for every three months' neglect or refusal in like manner forfeit and pay to the treasurer for the time being the [like] sum of two pence for every shilling which he, she or they failed of paying on the day or time appointed when they respectively ought to pay by the direction of this act.

[Section XIV.] And be it further enacted by the authority aforesaid, That if any of the said owners, possessors or occupiers shall neglect or refuse as aforesaid to pay the several sums of money hereinbefore directed to be raised and paid, together with the forfeitures arising and hereby imposed, which they respectively ought to pay at any time or times hereafter for the space of three months after any of the days or times in which it ought to be paid, or shall have neglected or refused to make, amend or repair his, her or their part or share of the bank so as aforesaid to them allotted, or shall have neglected or refused to reimburse the treasurer for the time being the necessary expense thereof, agreeable to the direction of this act, that then and so often it shall and may be lawful to and for the said treasurer by direction of the said managers or any two of them in his own name to sue all and every such person or persons so refusing or neglecting, for the respective sum or sums of money which he, she or they ought to have paid by virtue hereof by action of debt, if five pounds or under, before any justice of the peace of the county, or if above five pounds in any court of record where the same may be cognizable, and give this act and the said

assessment or the said account, as the case may require, in evidence; and the said justice of the peace and the said court are hereby empowered and directed to give judgment and grant execution for the same, with costs of suit accordingly, to be levied on the tract or piece of marsh, meadow or cripple belonging as aforesaid to such owner or owners so neglecting or refusing, and delivered unto the managers for the time being, who, or any two of them, are hereby empowered and authorized to let out on rent any part of the said meadow belonging to any of the said owners who shall so neglect or refuse or who shall not be found in the county as aforesaid from year to year for so long time as until the rent or rents arising therefrom shall, as nearly as may be computed, pay all such sum or sums of money so assessed or so charged, together with all costs and forfeitures arising thereon for his or their neglect or refusal to pay the same as aforesaid, and no longer.

Provided always, That in letting out the said meadow the said managers do publicly notify the leasing thereof and let the same to the highest bidder at private sale or bargain.

[Section XV.] And be it enacted by the authority aforesaid, That no process, suit or proceedings whatsoever which at any time hereafter shall be commenced, sued or brought before any of the justices of the peace or judges or justices of the common pleas or Supreme Court or before any magistrate of this province in the name of any treasurer of the said company of the Southern District of Darby Meadow by direction of the said managers, or any two of them, shall be discontinued or put without day by reason of the death, disability or removal of such treasurer, but shall stand good and effectual in law to all intents and purposes notwithstanding such death, disability or removal.

[Section XVI.] And it is hereby enacted by the authority aforesaid, That the managers for the time being, or any two of them, shall have the power of disposing of all moneys paid to the treasurer by virtue of this act, and of hiring and appointing at the expense of the said company any person or persons from time to time to inspect the condition of all the banks, dams, sluices or flood-gates belonging to the owners of the said meadow

land and to inform the respective owners or the said managers when any repairs are wanting and may displace such person or persons and appoint others as often as they shall think fit; and the said managers shall have power to offer and pay such rewards as they think necessary out of the common stock for the destruction of such vermin as usually damage the said banks and dams, as well as for other general services of the said district.

[Section XVII.] And be it further enacted by the authority aforesaid, That the said managers for the time being, or any two of them, are hereby authorized and empowered, in behalf of the said owners to settle accounts with the treasurer from time to time and shall do and execute all other matters and things pertaining to the general good and benefit of the said owners.

Provided, nevertheless, That if any owner or owners shall think him, her or themselves aggrieved by any order, account or proceeding of the said managers, such owner or owners shall, if he or they think proper, choose two fit and disinterested persons, and the said managers, or two of them, shall choose two other fit and disinterested persons, who (or any three of them) shall finally settle the same and all other matters and things in dispute that shall be referred to them by the said parties.

[Section XVIII.] And be it further enacted by the authority aforesaid, That the orders of any two of the managers on the treasurer for the time being shall be complied with by the said treasurer and shall be good vouchers to indemnify him for the payment and delivery of the money and effects committed to his care by virtue of this act, and that all bonds, mortgages, deeds and conveyances in trust for the use of the said owners shall be taken in the name of the treasurer of the Southern District of Darby Meadow and be payable to him and his successors and shall be mentioned to be for the use of the owners thereof, and with or without assignment shall be good and available in law to his successor or successors in the said trust for the use of the owners as aforesaid, and shall be recoverable in any court of record in this province where the same may be cognizable as fully and effectually to all intents and purposes as if the

same were private property and duly assigned in all the forms of law, and the receipts and discharges of such succeeding treasurer or treasurers for any such sum or sums of money paid to him or them shall be effectual in law.

And wherea's the well draining, preserving and keeping open the drains of the said meadow land is of great importance to the said owners:

[Section XIX.] Be it enacted by the authority aforesaid, That all and every of the said owners shall be allowed, permitted and suffered to discharge all or any of the waters off their respective lands through their natural channels or by a direct course across the land of any other of the said owners as shall by the managers for the time being, or the major part of them, be judged convenient into the main channel, creek or sluice best suiting to discharge the same into the main creek, and shall be allowed to open, scour and cleanse the same when and as often as they or the said managers shall think convenient or necessary, any law, usage or custom to the contrary in any wise notwithstanding.

Provided always, That such owner so requiring a passage for water shall first pay all the damages sustained or that shall be sustained by such neighbor through whose land the water is to be discharged, and also all such damages as shall be done to the banks within his said neighbor's allotment in such manner and proportion as shall be settled by a majority of said managers.

[Section XX.] And be it enacted by the authority aforesaid, That the owner and owners of the said meadow ground late of Jacob Archer, deceased, and their heirs and assigns shall at all convenient times hereafter have the free liberty of a road or passage from the said meadow by the side of the great thoroughfare aforesaid to the lower dam hereafter to be made thereon for the conveniency of taking and carrying their hay to the said dam in order to be transported from thence by water, the same to be done with as little injury as may be, anything in this act to the contrary notwithstanding.

[Section XXI.] And be it enacted by the authority aforesaid, That if any person or persons shall wickedly and maliciously cut

through and break down or endamage any of the said banks, dams, sluices or flood-gates either their own or others', or shall let in any creek or water to annoy, injure or overflow any of their neighbors' lands, and shall thereof be convicted before the justices of the court of quarter sessions of the said county of Chester, in all such cases the persons so offending shall be fined treble the value of all the damages, to be assessed by two or more indifferent persons to be appointed by the said court to value the same, which fine shall be added to the common stock for the general use and benefit of the said district.

Passed February 17, 1762. Referred for consideration by the King in Council, February 14, 1763, and allowed to become a law by lapse of time in accordance with the proprietary charter. See Appendix XXIV, Section II, and the Acts of Assembly passed March 4, 1763, Chapter 492; February 15, 1765, Chapter 523; March 4, 1797, Chapter 1922; February 26, 1800, Chapter 2108.

CHAPTER CCCCLXXVI.

AN ACT FOR THE RECOVERY OF THE DUTIES OF TONNAGE UPON SHIPS AND VESSELS AND CERTAIN OTHER DUTIES UPON WINE, RUM, BRANDY AND OTHER SPIRITS AND UPON SUGAR WHICH BECAME DUE BY VIRTUE OF A LAW OF THIS PROVINCE LATELY EXPIRED, AND WHICH WERE NOT RECEIVED OR SECURED DURING THE CONTINUANCE THEREOF, AND FOR APPROPRIATING THE SURPLUS OF THE SAID DUTIES.

Whereas by an act of General Assembly of this province passed in the thirty-first year of his late Majesty, George the Second, entitled "An act for granting to His Majesty a duty of tonnage upon ships and vessels and also certain duties upon wine, rum, brandy and other spirits and a duty upon sugar for supporting and maintaining the provincial ship-of-war for protecting the trade of this province and other purposes for His Majesty's service,"¹ certain duties of tonnage upon ships and vessels and upon rum, wine, brandy and other spirits and upon sugar were thereby granted to His Majesty for the purposes and uses therein mentioned; but inasmuch as Richard Pearne, now

¹ Passed April 29, 1758, Chapter 432.