

CHAPTER DXXVI.

AN ACT FOR OPENING AND BETTER AMENDING AND KEEPING IN REPAIR THE PUBLIC ROADS AND HIGHWAYS WITHIN THIS PROVINCE.

Whereas an act of the general assembly of this province, entitled "An act for opening and better amending and keeping in repair the public roads and highways within this province,"¹ passed in the second year of His present Majesty's reign, is nearly expired. And whereas the laws for keeping in repair the roads and highways that would thereupon come in force again have been found burdensome and unequal upon many of the inhabitants of this province and insufficient to answer the good purposes thereby intended, inasmuch as no provision is made for supplying the overseers and inhabitants working thereon with timber and other materials necessary for making effectual repairs on the said roads.

For remedy whereof:

[Section I.] Be it enacted by the Honorable John Penn, 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 the freeholders and others qualified to choose members of assembly of every township shall meet together on the third Saturday in the month of March yearly and every year during the continuance of this act, and then and there by tickets in writing, between the hours of two and five in the afternoon, choose one or two discreet and reputable freeholders within their respective townships to be supervisors of the highways, which said supervisors when chosen and returned in writing under the hands of the supervisors of the public roads of the respective

¹ Passed February 17, 1762, Chapter 479.

townships into the office of the clerk of the court of quarter sessions of the respective counties, which they are hereby enjoined to do on or before the twenty-fifth day of March yearly, shall be the supervisors of the public roads and highways for the ensuing year; and if any supervisor or supervisors so elected or otherwise appointed by virtue of this act shall refuse or neglect to take upon him or themselves the said office, for every such refusal he or they shall forfeit and pay any sum not exceeding ten pounds to be applied towards amending and repairing the said roads.

[Section II.] And be it further enacted by the authority aforesaid, That the supervisors of the public roads and highways of the respective townships within the several counties of this province shall, at least five days before the third Saturday in March, yearly and every year during the continuance of this act, give public notice in writing by affixing the same in the most public places in their respective townships of the place where the inhabitants and freeholders of the several townships shall meet to elect supervisors for each and every of the said townships according to the directions of this act, which place so appointed for the said election shall be as near the centre of the respective townships as conveniently may be.

[Section III.] And be it further enacted by the authority aforesaid, That it shall and may be lawful for the said supervisors of the public roads and highways within the respective townships of this province, in conjunction with the assessor of each township lawfully chosen, who is hereby required and enjoined to be assistant therein, under the penalty of forty shillings, to make or lay a rate or rates in any one year not exceeding six pence in the pound on the clear yearly value of the real and personal estates within their respective townships, to be employed for the opening, clearing, amending and repairing the several public roads and highways within their respective townships in such manner as by this act is directed and appointed.

Provided nevertheless, That the said rate or assessment shall be laid according to the best of their skill and judgment and as near as may be to the county assessment for other purposes laid in pursuance of the act, entitled "An act for laying county rates

and levies,"¹ having due regard to every man's estate within the respective township in which he is assessed without favor or affection to any person whomsoever.

Provided also, That single men shall not be chargeable by the head in such assessment, as in the case of county rates and levies.

[Section IV.] 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 or neglect to take upon him or themselves the said office or shall die or remove out of the township for which he or they shall be chosen, or if the freeholders and inhabitants of any township shall neglect or refuse to elect or choose supervisors as is hereinbefore directed and appointed, or where any township shall have no supervisor residing in it, then and in every such case it shall and may be lawful to and for three or more justices of the peace of the respective counties, and they are hereby enjoined and required to appoint another supervisor or supervisors in the room and stead of every such supervisor or supervisors so refusing, dying or removing as aforesaid, and likewise to appoint supervisors for such townships as have neglected or refused to choose supervisors for their respective townships in the manner herein directed and appointed, which said supervisor or supervisors so appointed shall have the same powers and authorities and shall be liable to the same penalties as the supervisors so elected and chosen by each respective township in pursuance of the directions of this act, and shall have and receive for his or their trouble in collecting the several sums of money to be raised as aforesaid twelve pence in every pound by him or them collected and four shillings per diem for each day he or they shall attend in overseeing, employing and attending the workmen upon the public roads and highways within their townships.

[Section V.] And be it further enacted by the authority aforesaid, and it is hereby declared, That where any supervisor or supervisors have been legally chosen or appointed by any law heretofore made for repairing the highways, they and each of

¹ Passed March 20, 1724-25, Chapter 284.

them shall be deemed and taken as supervisors of the highways for the townships in which they reside respectively as fully and amply to all intents and purposes as if they and each of them had been chosen or appointed by virtue of this act and shall account accordingly; and if any money shall have come to their or any of their hands and shall not have been expended before the passing of this act, the same shall be paid into the hands of the supervisor of the township where it was assessed and raised, to be applied towards maintaining the highways in the said township.

[Section VI.] And be it further enacted by the authority aforesaid, That the said supervisors, before they proceed to the collecting of the said rate, shall procure the same to be allowed by at least two justices of the peace of the county wherein the said tax is laid; and if any person or persons so rated or assessed shall refuse to pay the sum or sums on him or them charged and shall not enter his or their appeal at the next general court of quarter sessions, that then it shall and may be lawful to and for the said supervisor or supervisors (having first obtained a warrant under the hand and seal of one justice of the peace of the county, who is hereby empowered and required to grant such warrant) to levy the same on the goods and chattels of the person or persons so refusing. And in case such person shall not, within three days next after such distress made, pay the sum or sums on him or her assessed, together with the charges of such distress, that then the said supervisor or supervisors may proceed to the sale of the goods distrained, rendering to the owner the overplus, if any, that shall remain on such sale, reasonable charges being first deducted.

Provided nevertheless, That if any person or persons shall find him, her or themselves aggrieved with such rate or assessment, it shall be lawful for the justices of the peace, at their next general quarter sessions, upon the petition of the party, to take such order therein 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 making distress until the same be determined in the quarter sessions in the manner hereinbefore directed and appointed.

[Section VII.] And be it further enacted by the authority aforesaid, That the said supervisors of the public roads and highways of the several townships shall and they are hereby enjoined and required, as often as the said several roads and highways within their respective townships shall be out of repair or as often as any new roads shall be laid out and directed to be opened by lawful authority, to hire and employ a sufficient number of laborers to work upon, open, amend, clear and repair the same in the most effectual manner, and to purchase wood and all other materials necessary for that purpose and to oversee the said laborers and take care that the said roads and highways be effectually opened, cleared, amended and repaired, according to the true intent and meaning of this act.

And in order to enable the said supervisors the more effectually to discharge their duty:

[Section VIII.] Be it enacted by the authority aforesaid, That it shall and may be lawful for the supervisors aforesaid, or any other person or persons by his or their order and direction, to enter upon any lands adjoining to or lying near the public roads 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 completely to carry off and drain the water from such road, provided the same be done with as little injury and damage as may be to the owner of such lands, which drains and ditches so cut and opened shall be kept open by the said supervisors, if necessary for amending the said road, and shall not be stopped or filled up by the owner or owners thereof or any other person or persons whatsoever under the penalty of five pounds for every such offense.

[Section IX.] And be it further enacted by the authority aforesaid, That the said supervisors shall have full power and authority in any ground or lands adjoining the said public roads and highways within their respective townships to dig, or cause to be dug, any gravel, sand or stones, or to gather any loose stones lying on the said lands, or to cut down any wood or trees growing in any piece or parcel of wood-land adjoining the said roads as he or they shall think necessary for the purposes aforesaid, provided the same be done with as little damage as may

be to the owner or owners of such land, and the same sand, gravel, stones or wood so dug, gathered and cut to carry off without the let, hinderance or control of the owner, he, the said supervisor, paying or tendering to the said owner so much purchase money as they shall agree the same to be worth; and if the said supervisor and owner cannot agree upon the price of the materials so wanted for repairing the roads as aforesaid, then, and in every such case, so much money shall be paid by the said supervisors respectively as any two indifferent freeholders of the township where such public [*sic*] and highways do lie, to be chosen by the parties, shall estimate and adjudge to be the value of the materials so wanted for repairing the said roads in their respective townships as aforesaid.

[Section X.] And be it further enacted by the authority aforesaid, That if any person working on the highways or being with them, shall ask any money, drink or any other reward whatsoever or shall by any contrivance, ways or means whatsoever extort or endeavor to extort any money or other thing of or from any person passing or traveling upon the said public roads or highways, he shall, for every such offense, pay to the supervisor or supervisors of the said township the sum of three shillings, to be recovered by the said supervisors respectively in a summary way before any justice of the peace and applied for and towards repairing the said roads. And in case any supervisor shall connive at any persons asking and demanding any reward from any traveler as aforesaid, or shall himself extort or endeavor to extort any money or other thing of any traveler as aforesaid every such supervisor shall forfeit and pay for each offense the sum of twenty shillings, to be recovered by any person whatsoever in manner aforesaid, one-half to the use of the prosecutor and the other half to and for the service of the said roads.

[Section XI.] And be it further enacted by the authority aforesaid, That all and every supervisor or supervisors of the public roads and highways within this province who shall be convicted of having refused or neglected to do and perform his or their duty as directed by this act (not otherwise [particularly] provided for) shall be fined and shall pay the sum of five pounds

for every such offense, to be applied towards repairing the public roads and highways within the respective townships where such fines and penalties are incurred.

[Section XII.] And be it further enacted by the authority aforesaid, That at the time and place for choosing a supervisor or supervisors for each township respectively as aforesaid the electors shall and they are hereby enjoined yearly and every year to choose by tickets in writing four capable and discreet freeholders to settle and adjust the accounts of the supervisor or supervisors whose office shall [be] then about to expire; and the person or persons who shall have served the office of supervisor or supervisors for the preceding year shall, on the twenty-fifth day of March yearly, or within six days after, make up and 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 to their hands, which accounts shall be entered in a book to be provided for that purpose and shall be attested on oath or affirmation by such person or persons before any justice of the peace if the said freeholders or any three of them shall require the same, and the said freeholders, or any three of them, shall have full power to adjust and settle such accounts so produced to them as aforesaid, and to allow of such charges and sums only as they shall think to be just and reasonable, and if there shall appear to be any money remaining in the hands of the person or persons who shall 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 shall be found to be in advance for moneys expended and shall have carefully collected the sums of money assessed and imposed by virtue of this act, then the said freeholders, or any three of them, shall in like manner order the succeeding supervisor or supervisors to repay and reimburse the same as soon as a sufficient sum of money shall have come to their hands; and if any person or persons who shall have served 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 moneys which he or they shall be ordered as aforesaid, or shall not deliver up the book wherein such accounts shall be entered to their successors, it shall and may be lawful for any justice of the peace, on complaint to him made by the said freeholders, or any three of them, to commit such delinquent or delinquents to the county gaol until he or they shall comply as aforesaid.

Provided always, That if any person shall think himself aggrieved by the settlement of his accounts as aforesaid he may (having first paid over to his successor or successors the balance found to be in his hands) appeal to the next court of quarter sessions, who shall, on the petition of the party, take such order therein and give such relief as to them shall seem just and reasonable, and the same shall conclude and bind all parties.

Provided also, That if any person or persons shall be sued or prosecuted for anything done in pursuance of this act, he or they may plead the general issue and give this act and the special matter in evidence for their justification, and if the plaintiff or prosecutor become nonsuit or forbear prosecution or suffer a discontinuance, or if a verdict pass against him in such action or suit, the defendant shall have treble costs, to be recovered as in cases where costs by law are given to defendants, and no such suit or prosecution shall be maintained unless it be commenced within six months after cause given, nor unless security be first given for the charges.

[Section XIII.] And be it further enacted by the authority aforesaid, That so much of the act of general assembly of this province made in the twelfth year of the reign of His Majesty King William the Third, entitled "An act for erecting bridges and maintaining highways,"¹ as directs every overseer of the highways to summon all the inhabitants of his respective precinct as from time to time he should see occasion to come to such place or places as he should appoint, and so much of the said act as directs the inhabitants so summoned to attend and work upon the said highways shall be and such parts of the said act are hereby repealed and made void.

[Section XIV.] And be it further enacted by the authority

aforesaid, That one other act of general assembly of this province, entitled "An additional act for the better preserving the highways,"¹ passed in the fourth year of the reign of Her late Majesty, Queen Anne, and every part thereof, shall be and is hereby repealed and made void.

[Section XV.] And be it further enacted by the authority aforesaid, That this act shall continue in force for the term of five years and from thence to the end of the next sitting of assembly and no longer.

Passed May 18, 1765. Referred for consideration by the King in Council, February 10, 1766, and allowed to become a law by lapse of time in accordance with the proprietary charter. See Appendix XXIV, Section VIII, and the note to the Act of Assembly passed February 17, 1762, Chapter 479; and the Acts of Assembly passed September 29, 1770, Chapter 614; March 9, 1771, Chapter 624; March 21, 1772, Chapter 653. Expired.

CHAPTER DXXVII.

A SUPPLEMENT TO THE ACT, ENTITLED "AN ACT FOR THE PROHIBITING THE IMPORTATION OF GERMANS OR OTHER PASSENGERS IN TOO GREAT NUMBERS IN ANY ONE VESSEL."¹

Whereas the transportation of German passengers from Europe hither on freight is found by experience to require some further provision and regulation than is already made by the said act.

Therefore, and to the end that the salutary purposes for which the said act was made may be the better obtained and that the freight moneys that shall justly become due to the merchants and owners of ships that may be employed therein may be secured to them with as much ease as may be to the passengers:

[Section I.] Be it enacted by the Honorable John Penn, Esquire, Lieutenant-Governor under the Honorable Thomas Penn and Richard Penn, Esquires, true and absolute Proprietaries of

¹ Passed November 27, 1700, Chapter 57.

² Passed January 12, 1705-6, Chapter 156.

³ Passed January 27, 1749-50, Chapter 381.