

## CHAPTER DCLIII.

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

Whereas an act of 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,"<sup>1</sup> passed in the fifth 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 remedying whereof:

[Section I.] Be it enacted by the Honorable Richard Penn, Esquire, Lieutenant-Governor under the Honorable Thomas Penn and John Penn, Esquires, true and absolute Proprietaries of the Province of Pennsylvania, 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 three and six in the afternoon choose one or two discreet and reputable freeholders or inhabitants 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 townships into the office of the clerk of the court of

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<sup>1</sup> Passed May 18, 1765, Chapter 526.

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 or neglect 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 supervisors of the public roads and highways within the respective townships of this province lawfully chosen to make or lay a rate or rates in any one year not exceeding nine pence in the pound on the clear yearly value of all iron works, mills, houses, lands and other the real as well as personal estates within their respective townships (tracts of land unlocated, unseated or unimproved and proprietary quit-rents only excepted), 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 agreeable to the then last county assessment, in pursuance of the act, entitled "An act for raising county rates

and levies,<sup>1</sup> having due regard to every man's estate within the 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.

And whereas divers of the public roads within this province are laid out on the division line of two townships and frequent disputes have arisen between the supervisors of the said townships respecting the repairing of the said roads, whereby they often remain unrepaired:

For remedy whereof:

[Section IV.] Be it enacted by the authority aforesaid, That the said roads shall be repaired at the equal and joint expense of the said townships, and in case the supervisor or supervisors of one of the said townships shall neglect or refuse to join with the supervisor or supervisors of the other township, in opening, amending or repairing any such road or any public road which shall hereafter be laid out on such township line, such supervisor or supervisors so neglecting or refusing shall be liable to the same pains and penalties as if he or they had neglected or refused to open, amend or repair any public road within his or their respective township, and it shall and may be lawful for the supervisor or supervisors of the other township, and he or they are hereby required, to open, amend and repair the said roads and to charge the said supervisor or supervisors so refusing or neglecting with one moiety of the moneys expended on such roads, and to recover the same by action of debt, to be brought against such supervisor or supervisors so refusing or neglecting.

[Section V.] 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

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<sup>1</sup> Passed March 20, 1724-5, Chapter 284.

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 that all and every such supervisor and supervisors elected or appointed as aforesaid 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 directing the workmen upon the public roads and highways within their township.

[Section VI.] 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 virtue of any law heretofore made for repairing the highways, they and each of them shall be deemed and taken as supervisors of the highways for the townships in which they reside, respectively, until the twenty-fifth day of March in the year one thousand seven hundred and seventy-two, 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 in the same manner and under the same penalties as the supervisors of the highways to be chosen and appointed by virtue of this act are directed to account; and if any money shall have come to their or any of their hands and shall not have been expended before the said twenty-fifth day of March, the same shall be paid over 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 VII.] 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 VIII.] And be it further enacted by the authority aforesaid, That the tenant or tenants or other persons residing on or having the care of lands of persons not residing in the county, his, her or their goods and chattels, shall be liable to be distrained in manner aforesaid for the payment of the said tax.

[Section IX.] And be it further enacted by the authority aforesaid, That where any tenant shall before the passing this act have taken on a lease for one or more years any lands or tenements and shall pay the said rate hereby imposed on the said lands or tenements so leased, or shall have his or her goods and

chattels distrained for the same, in such case it shall and may be lawful for the said tenant or tenants or other persons aforesaid to deduct the tax so paid out of the rent due or to become due, or for the tenant or tenants or other persons aforesaid to recover the same from the owner or owners by action of debt, together with costs of suit.

Provided, That nothing herein contained shall make void or alter any contract heretofore made between any landlord and tenant respecting the payment of the road tax or any usage or custom in respect to the tenants paying the said tax now subsisting between landlord and tenant.

[Section X.] 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 required and enjoined as often as the said several roads and highways within their respective townships shall be out of repair, or as often as any new road 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 XI.] 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 roads, 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 XII.] 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 cut down any wood or trees growing in any piece or parcel of woodland 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, hindrance 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 townships where such public roads 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 XIII.] 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, way 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 person's asking and demanding any reward from any traveler as aforesaid, or shall himself extort or endeavor to extort any money or other thing from 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 XIV.] 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 refuse or neglect 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 three pounds for every such offense, to be recovered in a summary way before any justice of the peace of the county, and to be applied towards repairing the public roads and highways within their respective townships where such fines and penalties are incurred.

Provided always, That if any such supervisor or supervisors shall conceive himself or themselves aggrieved by the judgment of such justice, he may appeal to the next county court of quarter sessions, who shall on the petition of the party take such order therein as to them shall appear just and reasonable, and the same shall be conclusive on all parties.

[Section XV.] 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 are hereby enjoined yearly and every year to choose by tickets in writing four capable and discreet freeholders or inhabitants qualified to elect as aforesaid to settle and adjust the accounts of the supervisor or supervisors whose offices 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 inhabitants or any three 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 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 person 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 inhabitants so chosen to settle the accounts aforesaid, 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 inhabitants so chosen to settle the accounts aforesaid, or any three of them, to commit such delinquent or delinquents to the county gaol until he or they 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 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 or unless security first be given for the charges.

[Section XVI.] 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,"<sup>1</sup> as directs every overseer of the highways to summon all the inhabitants of his respective precinct as from time to time he shall 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 highway, shall be and are hereby repealed and made void.

[Section XVII.] 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,"<sup>2</sup> passed in the fourth year of the reign of Her late Majesty Queen Anne, and every article, clause and thing therein contained, shall be and are hereby repealed and made void.

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

Passed March 21, 1772. Referred for consideration by the King in Council, January 15, 1773, and allowed to become a law by lapse of time in accordance with the proprietary charter. See Appendix XXX. Because of the number of special road laws, and the space that a complete annotation would necessarily occupy, the Commission has deemed it best not to annotate this act.

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<sup>1</sup> Passed November 27, 1700, Chapter 57.

<sup>2</sup> Passed January 12, 1705-6, Chapter 156.