

are excused from providing themselves with a Carbine and Cartridges for the same, any thing in the said Militia Law to the contrary notwithstanding.

providing themselves with a carbine and cartridges.

And be it further enacted by the authority aforesaid, that the proviso in the twentieth enacting paragraph in the militia act, passed in the year of our Lord, one thousand seven hundred and eighty five, giving an appeal from a judgment given by a Justice of the Peace, to the Court of Common Pleas in certain cases; and also, the twenty first enacting paragraph in the same Act, be, and hereby are repealed, so far as may relate to any suit where such appeal shall not be made before the first day of *June* next, and the judgment of a Justice of the Peace in cases therein described, shall be final and conclusive.

Proviso and an enacting clause in a former act repealed.

March 2, 1787.

1786. — Chapter 81.

[January Session, ch. 32.]

AN ACT MAKING PROVISION FOR THE REPAIR AND AMENDMENT OF HIGHWAYS.

Chap. 81

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That all highways, town-ways, causeways, and bridges, lying and being within the bounds of any town, shall be kept in repair and amended, from time to time, that the same may be safe and convenient for travellers, with their horses, teams, carts, and carriages, at all seasons of the year, at the proper charge and expence of the inhabitants of such town (where other sufficient provision is not made therefor) and there shall be chosen two or more suitable persons in each town, at the annual meeting in *March* or *April*, who shall be denominated surveyors of highways, to be notified and sworn in like manner as other Officers of the same town, and, (in case of refusal to serve,) shall forfeit and pay the sum of *three pounds*, to the use of such Town, District or Plantation; provided, no person shall be held and obliged to serve more than one year in three years; And the Surveyors thus chosen and sworn, shall have full power and authority to cut down, lop off, dig up and remove all sorts of trees, bushes, stones, fences, rails, gates, bars, inclosures or other matter or thing, that shall any way straiten, hurt, hinder, or incommode the highway or town way, and also

Surveyors of highways shall be chosen annually.

Their power.

to dig for stone, gravel, clay, marle, sand or earth, in any land not planted or inclosed, and the materials thus dug up, to remove to such place or places in the highways, for the repair and amendment thereof, as they shall determine necessary.

Proviso.

Provided always, that no surveyor of highways shall cause any water course, occasioned by the wash of any highway or townway, to be so conveyed by the side of such highway, as to incommode any person's house, store, shop or other building, or to obstruct any person or persons in the prosecution of his or her business or occupation, without the approbation and consent of the Selectmen of such town or other place, signified in writing to such surveyor; and any person or persons who may consider him or herself to be aggrieved by such water course, may complain to the selectmen of such town or other place; and the selectmen, on receiving such complaint, shall proceed to view such water course so complained of, and after attending to the circumstances of the same, shall, if they think it reasonable, direct such surveyor to alter the said water course, in such way and manner as they shall think just and proper; And when the highways are blocked up, or incumbered with snow, the surveyors shall forthwith cause so much thereof to be removed, or trod down, as will render the roads passable.

Selectmen or assessors, to assign limits to the surveyors.

And be it further enacted by the authority aforesaid, that the selectmen or Assessors of each town are authorized, impowered and directed, to assign and appoint in writing, annually, to the surveyors, their several limits and divisions of the highways and town ways, for repair and amendment, unto which assignments the said Surveyors are directed to observe and conform themselves.

Each town shall raise such sum as may be necessary for the repair of highways.

And be it further enacted by the authority aforesaid, That each town, at some public meeting of the inhabitants thereof regularly notified and warned, shall vote and raise such sum of money, to be expended in labour and materials on the highways and townways, as they shall determine necessary for the purpose: And the Assessors shall assess the same on the polls and rateable estates, personal and real, of the inhabitants, residents and non-residents, of their town, as other town charges are by law assessed, and deliver to each surveyor a list of the persons and the sums at which they are severally assessed, for his limits. And the surveyor shall give reasonable notice

Manner of assessing the same.

(in writing if desired) to each person in his list, of the sum he is assessed to the highways and town-ways, and also to the inhabitants within his district, assessed as aforesaid, six days notice (extraordinary casualty excepted) of the times and places he shall appoint for providing materials and labouring; to the end, each person may have opportunity to work on the highways and town-ways, in person or by his substitute, or with his oxen, horses, cart and plough, at the rates and prices the town shall affix to such labour, to the full amount of the sum at which he is assessed; or he may pay the surveyor in money the sum he is assessed, in which case, the surveyor shall carefully expend the sums thus paid, in labour and materials, for repairing the highways and town ways in his limits, according to his best discretion. And the surveyor, at the expiration of his term, shall render to the Assessors, for the time being, a list of such persons as shall have been deficient, (if any such there be) in working out their highway rate; or otherways paying him the sum assessed therefor; which deficient sums, shall by the Assessors be put in a distinct column, in the next assessment for the town tax, and collected by the Constable or Collector thereof, as other town taxes are collected and paid into the town treasury, for the use of the town.

And be it further enacted by the authority aforesaid, that when the sum appropriated and assessed for the repair of the highways and town ways, in the limits of any particular surveyor, shall not fully answer, or be insufficient for that purpose, it shall be lawful for the surveyor with the consent of the Selectmen, or the major part of them, where such deficiency happens, to employ such of the inhabitants of the town, upon the repair of the ways in his limits, as shall make up that deficiency; and the persons thus employed shall be equitably paid out of the town treasury therefor.

And be it further enacted by the authority aforesaid, that it shall be lawful for any person to pull down and remove any gates, rails, bars or fence, upon or across any highway or county road, unless such gate, bars or fence have been erected or continued by the leave and licence of the Court of General Sessions of the Peace, for the same County; and if any such incumbrance be in or across any private way, the same may be removed by the order of some Justice of the Peace, of the same County,

When the sum assessed, shall be insufficient, Surveyors power in such cases.

Incumbrances in or across any roads, &c. may be pulled down or removed by any person.

unless the gate or bars were erected or continued by the leave of the town, or the person or persons for whose particular use and benefit the private way was laid out: And any person aggrieved by the removal of such gate, bars or fence, shall be relieved at the Court of General Sessions of the Peace, for the same County, if upon examination it shall appear, that the same were erected or continued by licence or leave as aforesaid.

When any incumbrance shall be adjudged a nuisance, costs of prosecution how levied.

And be it further enacted by the authority aforesaid, That when any building, fence, or other incumbrance erected, or continued on any town, or private way, or on any public highway, a common training-field, burying-place, landing-place, or other piece of land, appropriated for the general use, ease, or convenience of the community at large, or the inhabitants of any county, town, district, parish or precinct, shall, by any Court having cognizance thereof, be adjudged and determined a nuisance, and ordered to be abated, in case the materials of such building, fences or other incumbrance, upon a public sale thereof at auction, shall be insufficient to pay the costs and charges of prosecution and removal, the Court from whence the process for removal shall issue, shall and may order the deficient sum to be raised and levied from the goods and chattels of the person or persons who shall be convicted of erecting or continuing the same.

Damage hap- pening through defects in ways or bridges, shall be made good by the county or town.

And be it further enacted by the authority aforesaid, that if any person shall lose a limb, break a bone, or receive any other injury in his person, or in his horse, team, or other property, through any defect, or want of necessary repair and amendment of any highway, causeway, or bridge; the person or persons injured thereby, shall and may recover of the county, town, the person, or persons, who are by law obliged to keep the same highway, causeway, or bridge in repair, in case they had reasonable notice of the defect, double the damages thereby sustained, by a special action of the case, before any Court proper to hear and determine the same. And if the life of any person shall be lost through the deficiency of the way, causeway, or bridge, or for want of rails on any bridge, the county, town, or persons who are by law obliged to repair and amend the same, shall be liable to be amerced in *one hundred pounds*, to be paid to the executor or administrator of the deceased, for the use of the heirs, devisees or creditors, upon a conviction before the Court of

General Sessions of the Peace, or Supreme Judicial Court, on a presentment or indictment of the Grand Jury. *Proviso.* *Provided*, The County, Town or other person or persons, who of right ought to maintain and keep the same in repair, had been previously notified of such want of repair, and amendment, in writing, under the hands of two or more credible witnesses, or by the presentment of the Grand Jury, or by information of the Attorney-General, or the person acting for the Government in his absence, filed in the Court of General Sessions of the Peace, or the Supreme Judicial Court.

And be it further enacted by the authority aforesaid, that if any town shall neglect to vote or agree upon a sum, to be assessed for the express purpose of repairing and amending the highways and town-ways, or shall not otherwise provide for effectually amending and repairing such ways, each surveyor shall assign to the several persons in his limits, their rateable proportion of days work, and of cart, team and plough, according to his real and personal property, as near as he can, and shall assign certain days for amending and repairing the ways, having regard to the season of the year, and give notice thereof to the persons in his limits, upwards of sixteen years of age and liable by law to be taxed, six days at least before the time assigned (except in extraordinary cases) to attend the service with suitable tools, and with carts and teams (if any they have) the notice to be in writing and delivered the person, or left at his usual place of abode; and if any person being thus notified, shall make default of attending and working, by himself or other sufficient person in his stead, or with his cart and team, as he shall be appointed and assigned, he shall forfeit and pay *five shillings* for each day's neglect, and for default of his cart and team with a driver, *ten shillings* a day, and in that proportion for a longer or shorter space of time, one moiety to the use of the town, to be expended on the highways and town-ways as the selectmen shall order, and the other moiety to the use of the Surveyor, to be recovered by complaint, before any Justice in the same county. *Proviso.* *Provided* the same be made in one year, after the forfeitures are incurred, and not afterwards, according to the form hereafter prescribed; in which prosecution, the Surveyor may be admitted as an evidence, as to the time and manner of notice, and the quantum of labour assigned to the

Proviso.

If towns neglect to agree upon & assess a sum for the repair of the highways, &c. Surveyors to assign each person his rateable proportion.

To assign certain days for working.

Penalty for default of attending & working.

Proviso.

adverse party. And the penalties incurred by servants or minors, shall be recovered of the parents, masters, or guardians, under whose immediate care and controul they may then be.

And be it further enacted by the authority aforesaid, that the following shall be the form of the surveyor's complaint to a Justice upon such occasion, *viz.*

Form of the surveyor's complaint to a Justice.

To *A. B.* one of the Justices of the Peace for the county of *S.* complains *C. D.* of *R.* in the same County [*addition*] and one of the surveyors of highways in the said town of *R.* for the year duly appointed and sworn, that *P. D.* of *R.* aforesaid [*addition*] a person by law liable to work on the highways, (or *S. D.* a son or servant, or ward, as the case may be) within the limits assigned the complainant, in the same town, was assessed days (or with his cart, team, &c. as the case may be) and was duly notified to attend, and work out the same on the day or days of , yet the said *P. D.* did not appear and work in person, nor did he send a sufficient substitute in his stead, but made default therein, whereby he hath forfeited, and ought to pay to the complainant, the sum of , one moiety to the use of the said town of *R.* to be expended on the highways and town ways therein, as the selectmen thereof shall direct, and the other moiety to the use of the complainant; wherefore he prays that the said *P. D.* may be cited to appear, at a short day, to shew cause (if any he has) wherefore a warrant of distress ought not to issue, to levy the said forfeitures, upon the goods and estate of the said *P. D.* and in want thereof on his body, with reasonable costs, &c.

C. D.

Justice may issue a warrant to notify the respondent, &c.

Upon which complaint, the Justice may issue a warrant to some sworn Officer, to notify the respondent, at a time and place therein mentioned, to appear and shew cause (if any he has) wherefore a warrant of distress should not issue. Which warrant may be served by reading the same with the complaint annexed, to the respondent, seven days at least before the day assigned for a hearing, or leaving an attested copy thereof, at the respondent's usual place of abode, seven days or more before the day of trial. And if the respondent being notified as aforesaid, shall

not appear, or appearing, shall not in the opinion of the Justice (from whose determination herein no appeal shall be made) shew sufficient cause, he shall enter up Judgment thereon that a warrant of distress issue for such, or so much of the sums prosecuted for, as shall appear forfeited, and costs. But in case the respondent shall make it appear, that he was unreasonably assessed, or that he was not duly notified thereof, or shall make any other legal or sufficient excuse to exempt him fully from the forfeitures, the Justice shall enter up judgment that the respondent be acquitted and discharged from the forfeitures, for which he is now prosecuted, and that he recover against the complainant his costs. And the warrant of distress for levying the forfeitures, when the same shall appear to be incurred, shall run in the form following, *Viz.*

If the respondent shall not appear, &c. a warrant of distress shall issue.

[Seal.] S—ss.

To the Sheriff of the County of *S.* or his Deputy,
or Constable of the Town of *R.* in said County,

Form of the
warrant.

Greeting.

Whereas *P. D.* of *R.* aforesaid (addition) on the day of did not appear before me *A. B.* Esqr. one of the Justices of the Peace for the County of *S.* to answer the complaint of *C. D.* of said *R.* (addition) and one of the surveyors of highways for said town, for the year for not working on the highways and town ways, in said town as he was assigned by the said *C. D.* who requested a warrant of distress to issue, for the sum of *shillings*, incurred by his neglect in that behalf, and for his costs, agreeably to the statute in that case made and provided, although duly summoned for that purpose [or appearing before me, *A. B.* Esqr. one of the Justices of the Peace for the County of *S.* to answer to the complaint of *C. D.* of said *R.* (addition) and one of the surveyors of highways in said town for the year for not working (in person, or with his team and cart, &c.) on the highways and town ways in said town, as he was assigned by the said *C. D.* did not shew sufficient cause, wherefore a warrant of distress should not issue for the sum of *shillings*, incurred by his neglect in that behalf, and for costs, agreeably to the statute in that case made and provided] and judgment was thereupon rendered that a warrant of distress should issue for *shillings*, being the

forfeiture thus incurred, one moiety thereof to the use of the town of *R.* to be expended on the highways and town ways therein, as the selectmen thereof shall order, and the other moiety for the use of the said *C. D.* and cost taxed at which judgment is now in full force. You are therefore, in the name of the Commonwealth of *Massachusetts*, hereby commanded, that you cause to be paid and satisfied in money, to the said *C. D.* by distress and sale of the goods and chattels of the said *P. D.* the aforesaid sums, amounting in the whole to and *one shilling* and *six pence* more for this precept, together with your own legal fees (returning the overplus to the said *P. D.* if any there be) and for want of goods and chattels of the said *P. D.* to be by him shewn unto you, or found in your precinct, sufficient to levy the sums aforesaid, you are to take the body of the said *P. D.* and him commit to the common goal of the said County of *S.* and the Keeper thereof is directed to detain him there until he pay the sums aforesaid, with your legal fees, or he be therefrom discharged by order of Law: Hereof fail not, and make due return of this precept with your doings thereon, unto myself, within forty days next coming. Given under my hand and seal at *R.* aforesaid, this day of *Anno Domini*, 17

A. B. Justice of Peace.

And be it further enacted by the authority aforesaid, that each Surveyor of highways, who shall accept the said trust, and shall neglect his duty therein, shall forfeit and pay for each neglect, the sum of *three pounds*, one moiety to him that will prosecute therefor, and the other moiety to the use of the town whereof the delinquent is a surveyor, to be recovered by action of debt, before any Justice of the Peace for the same County.

And be it further enacted by the authority aforesaid, That in case the inhabitants of any town, shall be fined upon the presentment of the Grand Jury, or upon the information of the Attorney General, or the person acting for the Government in his absence, for a deficiency in the highways, the Surveyor, within whose limits the deficient ways are, shall be liable to refund the same, with all costs to the said inhabitants, upon an action of the case to be brought therefor. Or the Surveyor of highways may be

If surveyors neglect their duty.

Forfeiture.

In case inhabitants are fined for deficiency in highways, the surveyors shall be liable to refund the same.

prosecuted on presentment or information as aforesaid, and fined for any deficiency that may arise in his limits. And the inhabitants of any town merely as such, shall not be excluded from being Witnesses, upon any prosecutions upon this Statute, upon a supposition of being interested as members of the corporation.

Provided nevertheless, that nothing in this Act shall be so construed, as to give power to any Surveyor or other persons, to remove or pull down any fence which may be lawfully set up, or erected upon, or across any way, for the purpose of preventing the spreading of infectious disorders. Proviso.

This Act to be in force from and after the first day of *September*, one thousand seven hundred and eighty seven.

March 5, 1787.

1786. — Chapter 82.

[January Session, ch. 30.]

AN ACT FOR INCORPORATING THE PLANTATION CALLED *LIMERICK*, IN THE COUNTY OF *YORK*, INTO A TOWN BY THE NAME OF *LIMERICK*. Chap. 82

Whereas the inhabitants of the said Plantation, have represented, and it appears to this Court, that they labour under many and great inconveniences, by reason of their unincorporated state. Preamble.

Be it therefore Enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the Plantation aforesaid, bounded as follows, viz. beginning at a place called the Riplings, on Little Ossipee River; thence running north northwest, five miles, one hundred and seventy seven poles; thence west southwest, three miles and one hundred poles to Parsonfield line; thence on said line, one mile, one hundred and twenty poles, to a tree marked on four sides, which is the east corner of said Parsonfield; thence south by west, two miles and forty poles, on the line between said Limerick and a Plantation called Washington, to said Little Ossipee River; thence running down the middle of said River, to the first mentioned bounds, containing about thirteen thousand acres, be and hereby is erected into a Town by the name of Limerick; and that the inhabitants thereof be and they hereby are vested with all the powers, priviledges and immunities Boundaries.

Invested with powers, &c.