

1771.

then removed by *certiorari* into the Supreme Court: and the fact on which *Upper Dublin* relied, was, that the two Justices, at the time the order was made, were inhabitants of, and rateable, and contributory to the poor tax of *Germanstown*.

Upon argument, *The Court* unanimously quashed the order of Sessions, and the order of the two Justices. 2 Dallas, 213.

Order of removal of a pauper must state that the complaint was made by the Overseers of the poor of the township removing; and an adjudication, or assertion, that the pauper was likely to

become chargeable; otherwise the order will be bad. MSS. Reports, Sup. Court. Overseers of *Dromore v. Overseers of West Hanover*, April, 1794.

A pauper gains a settlement by contracting for a town lot, under a yearly rent charge, building thereon, and residence, though he obtains no deed for it. MSS. Reports, Sup. Court. *Republica v. The Overseers of Caernarvon township*, March, 1796.

No appeal lies to the Sessions on an order of maintenance of a pauper. MSS. Rep. Sup. Court, *Overseers of Lampeter v. Overseers of Lancaster Borough*, December, 1796.

CHAPTER DCXXXVI.

An ACT for regulating and continuing the nightly watch, enlightening the streets, lanes and alleys of the city of Philadelphia, and for other purposes therein mentioned.

WHEREAS the well ordering and regulating the watch, and enlightening the streets, lanes and alleys in the night time, within the city of Philadelphia, have been found, on experience, very necessary to prevent fires, murders, burglaries, robberies, breaches of the peace, and other outrages and disorders: *Therefore be it enacted,* That it shall and may be lawful for Samuel Morton, Thomas Mifflin, Edward Duffield, Jacob Winey, Moore Furman, and Joshua Humphreys, gentlemen, who are hereby styled Wardens, or the greater number of them, as soon as conveniently they can, after the publication of this act, and having qualified themselves as is herein after directed, to meet together at the court-house of the said city, and for those who, in pursuance of this act, shall succeed them in the said trust, in like manner to meet together annually, on the sixth day of October, unless it shall be on a Sunday, and in such case on the day following, and then and there, or at such other times and places as they, the said Wardens shall appoint, to maintain, preserve and take care of the lamps already erected, put up and fixed, and to erect, put up and fix, any additional number of lamps, in such parts and places of the said city as to them shall seem meet and expedient; and to contract with any person or persons for the lighting, trimming, snuffing, supplying, maintaining and repairing them; and shall likewise order, appoint, hire and employ what number of watchmen they shall judge necessary and proper, from the time of their first meeting together as aforesaid, after the publication of this act, until the tenth day of October next, and from and after that day annually for one whole year; and shall then and there direct and order what wages shall be given them: And if any of the said watchmen, so by them hired and appointed, shall happen to die within the time for which they were appointed, or shall be negligent in his or their duty, or be guilty of any misbehaviour, it shall and may be lawful for the Wardens aforesaid, or a majority of them, at any intermediate time of the year, to remove any of the said watchmen so appointed, and to employ, hire and appoint, one or more person

Wardens appointed.

Who are to be qualified, and meet, &c.

And to put up a sufficient number of lamps, &c.

And to hire watchmen, &c.

And remove them for misbehaviour, &c.

or persons, fitly qualified, in the room and stead of him or them so dying, neglecting his duty, or misbehaving as aforesaid. 1771.

II. *And be it further enacted,* That the Mayor, Recorder, and four Aldermen of the said city, together with the wardens now or hereafter to be appointed or elected by virtue of this act, or a majority of the whole, shall, as soon as conveniently they can, direct, and set down in writing, at what stands it is fit for the said watchmen to be placed, how often they shall go their rounds, and also appoint the rounds each watchman is to go, and order what number of the constables of the said city shall watch each night; and shall, from time to time, make such further and other orders and regulations, for the better government of the said constables and watchmen, as the nature of each particular service shall seem to them to require.

III. *And be it further enacted,* That a true copy or transcript of all orders, regulations, nominations and appointments, which shall from time to time be so made as aforesaid, for the better direction and government of the constables and watchmen, shall be fairly written or printed, and signed by the Mayor or Recorder, or any two Aldermen of the said city, and any four of the Wardens aforesaid, or of those who, in pursuance of this act, shall succeed them in the trust aforesaid, and shall be delivered to all and every of the Constables of the said city; and also a true copy of such parts thereof, as shall relate to the conduct and government of the watchmen so to be hired, shall be delivered to each of them.

IV. *And be it further enacted,* That one or more of the said Constables, as by the orders and regulations to be made as aforesaid shall be judged necessary, shall attend at the Court-house of the said city, or at such other convenient place, as the Mayor, Recorder, and four of the Aldermen aforesaid, and the Wardens aforesaid or a majority of the whole, shall appoint, and shall keep watch and ward in manner following; that is to say, from the tenth day of March to the tenth day of September, in every year, from the hours of ten in the evening until four the next morning; and from the tenth day of September to the tenth day of March, in every year, from nine in the evening until six in the morning: And the constables shall, in their several turns and courses of watching, use their best endeavours to prevent fires, murders, burglaries, robberies, and other outrages and disorders, within the said city; and to that end shall, and they are hereby empowered and required to arrest and apprehend all night-walkers, malefactors and suspected persons, who shall be found wandering, and misbehaving themselves, and shall take the person or persons who shall be so apprehended, as soon as conveniently they may, before one or more of the Justices of the peace of and for the said city, to be examined and dealt with according to law. And shall once or oftener, at convenient times in every night, go about the several wards of the said city, and take notice whether the watchmen perform their duties in their several stations, according to such orders and regulations as shall have been made for that purpose as aforesaid. And in case any such watchman shall misbehave himself, or neglect his duty, the said constables, or one of them, shall, as soon as conveniently

Orders and regulations for Constables and Watchmen.

Copy of orders to be given to the constables and watchmen.

Hours of keeping watch,

Constables duty.

1771. may be, give notice thereof to some of the Wardens aforesaid, appointed by or hereafter to be appointed or elected according to this act, to the end the said watchman, so neglecting or misbehaving, may be admonished, or discharged from the service, as aforesaid. And the said constable shall also observe, execute and perform all such orders and regulations, as shall, from time to time, be made upon and concerning the matters aforesaid, by virtue of this act, so far as to the constable pertaineth. And the said constable, for every night's watching as aforesaid, shall be paid by the treasurer, to be appointed as herein after mentioned, at the rate of three shillings per night.

Constable's
pay.

Penalty on
Constable
neglecting
his duty.

V. *And be it further enacted*, That if any of the said constables shall wilfully neglect to attend any night in his or their turns, to keep watch and ward as aforesaid, at the respective hours appointed by this act for his attendance thereon, or shall depart from or leave keeping watch and ward, during the respective hours appointed by this act for keeping the same; or shall neglect to go about the several wards of the said city once at least in every night of his or their watching, for the purposes mentioned in this act; or shall otherwise misbehave him or themselves, or be negligent in the duty prescribed them by this act, or which shall be prescribed to them by any rules, orders or regulations, to be made by the Mayor, Recorder, Aldermen and Wardens as aforesaid, by virtue of this act; in each and every of the said cases the person or persons, so offending, shall respectively forfeit the sum of twenty shillings for every such offence.

Duty of the
watchmen.

VI. *And be it further enacted*, That it shall and may be lawful to and for the said watchmen, or any of them, in the absence of the constables, and they are also hereby empowered and required in their several stations, during the time of their keeping watch and ward as aforesaid, to apprehend all night-walkers, malefactors, rogues, vagabonds and disorderly persons, whom they shall find disturbing the public peace, or shall have cause to suspect of any evil design, and to carry the person or persons so apprehended, as soon as conveniently may be, before one or more Justices of the Peace of the said city, to be examined and dealt with according to law. And the watchmen, so to be appointed as aforesaid, shall be at their respective stands, to be appointed as aforesaid, and keep watch and ward at the hours and during the time herein before mentioned, and shall observe, perform and execute all such matters and things, as by the rules, orders, and regulations of the Mayor, Recorder, Aldermen and Wardens aforesaid, shall be from time to time enjoined them, upon and concerning the matters aforesaid, according to the directions of this act. And in case of any fire breaking out, or other great necessity, shall immediately alarm each other, and the inhabitants in their respective rounds; which when done, they shall repair to their respective stands, the better to discover any other fire that may happen, as well as to prevent any burglaries, robberies, felonies, breaches of the peace, outrages and disorders, and to apprehend any suspected persons, who, in such times of confusion, may be feloniously carrying off the goods and effects of others.

VII. And whereas the having a sufficient number of pumps in the said city, and keeping them in good repair, may be of great use and

service in extinguishing fires, which may happen within the city; **1771.**
Be it further enacted, That the wardens herein before appointed, or hereafter to be chosen by virtue of this act, are hereby authorized and empowered with the consent of the Mayor, Recorder, and any two of the Magistrates of the city, to dig such an additional number of wells, and therein fix pumps, in such convenient places as to them shall appear necessary, within the streets, lanes or alleys of the city. And the said Wardens, or any four of them, are hereby further authorized and empowered to agree with the owner or owners for such pump or pumps, as are already fixed in the streets, lanes or alleys, within the said city, and after such agreement made with the respective owner or owners thereof, such pump or pumps shall for ever after become the property of, and belong to the public, to be maintained and kept in repair at the public charge.

Wardens empowered to dig wells and fix pumps in proper places.

And to purchase pumps already fixed, for the public.

VIII. And whereas many of the pumps within the streets of the said city have been greatly neglected, and suffered to lie long out of repair by their respective owners, *Be it further enacted,* That the said wardens shall, and they are hereby authorized and enjoined to enquire into the condition, and take care of the repair of the said several pumps within the streets, lanes or alleys of the said city; and if, after due enquiry, any of the said pumps shall be found, on the evidence of two or more witnesses, to have been out of repair by the space of three months, next after notice thereof given by one or more of the said Wardens to the owner or owners of the said pumps, then, and in such case, every such pump or pumps shall for ever after become and be the property of the public, to be maintained at the public charge. And every such owner or owners of such pump or pumps, within the streets, lanes and alleys of the said city, as shall duly maintain and keep them in good order and repair, to the satisfaction of the Wardens, or a majority of them, shall be allowed the sum of thirty shillings yearly, to be paid to them, the said owners, out of the monies arising by virtue of this act. [And that every owner or owners of any pump, in his, her or their yard, within the said city, who shall duly maintain and keep it in good order and repair, to the satisfaction of the Wardens as aforesaid, shall be allowed the sum of seven shillings and sixpence yearly, to be paid in manner aforesaid.]*

To keep the pumps in repair, &c

Thirty shillings a year allowed to owners, who keep their pumps in order, &c.

*[That part of this section between crotchets is repealed, post, chap. 717. sect. 2.

IX. *Provided always, and be it further enacted,* That no person or persons whatsoever, who shall take or receive of and from the said Wardens the said sum of thirty shillings yearly, for any pump by him, her or them, so maintained and kept in good order and repair, shall take or receive from any of the inhabitants of the said city any recompence, sum or sums of money, for any water which such inhabitants shall draw, take or make use of, out of the said pumps; but that any person or persons whatsoever shall and may draw, take and make use of the water of the said pumps, as fully and freely as they may the water of the pumps maintained and supported by the said Wardens.

Such owners not to take any recompence from the inhabitants, who make use of their pumps, &c.

X. *And be it further enacted,* That if any person or persons shall and do, after the publication of this act, wilfully or maliciously break and carry away the handles of any of the pumps within the said city, or otherwise injure or damage the same, every person so

Penalty on damaging pumps.

1771. offending, and being thereof convicted by the lawful testimony of one or more witnesses, before one or more Justice or Justices of the Peace for the said city, shall, for the first offence, forfeit and pay the sum of five pounds for each pump so broken or damaged, and for the second, and every other offence, the sum of ten pounds.

Wardens how
to be chosen.

XI. And forasmuch as it is intended that six Wardens shall be continued to assist in the execution of this act, and that the two eldest or first named shall be successively changed, by yearly elections within the said city, *Be it therefore further enacted*, That the freeholders and inhabitants of the said city, qualified to elect and be elected members of Assembly, at the time and place of their electing Burgesses or Representatives of the freemen of the said city, to serve in the Assembly aforesaid, shall then and there yearly, during the continuance of this act, in a peaceable and quiet manner, make choice of two persons for Wardens, to join with four of the Wardens herein before appointed, to execute and perform the services enjoined them by this act; which election shall be carried on in manner following; that is to say, all persons, who, by virtue of the laws of this province, have right to vote in such elections, at the same time they deliver in their tickets for the choice of Burgesses, shall also deliver in writing, in one other piece of paper, to the Judges of those elections, the names of two persons for whom they vote as Wardens. And when all the electors appearing shall have delivered in their papers or tickets, the Sheriff and Judges of those elections shall proceed in taking an account thereof, and publishing the persons duly elected to the service aforesaid, in like manner as by law is directed in the cases of election of Representatives to serve in the General Assembly aforesaid; which Wardens, so from time to time to be chosen, shall be the Wardens, to join with others herein before named to execute this act; so always, that the Wardens herein before appointed shall be successively changed, as is herein directed; that is to say, the two Wardens in this act first named to go out at the end of the year, namely, on the first day of October next; and the two Wardens next after named to go out at the end of the second year; and the other two Wardens last named to go out at the end of the third year. And when the said Wardens shall from time to time be chosen, the Sheriff of the city and county of Philadelphia, or other Judges of the said elections, then and so often shall take their names in writing, under the hands and seals of at least six or more of the said freeholders, and certify the same to the Mayor, Recorder and Aldermen of the said city for the time being, at their General Sessions of the Peace held for the said city next after any such election, there to be entered by the Clerk in the minute-book of the said Court.

XII. And in regard it is intended that the Wardens, together with the City Assessors, shall execute the powers and authorities herein after given and required of them by this act: And forasmuch as the act, passed in the tenth year of Queen Anne, entitled *An act for raising money on the inhabitants of the city of Philadelphia, for the public use and benefit thereof*,* by which the City Assessors are directed to be chosen, has made no provision for the qualification of the said Assessors to the faithful discharge of their several services and duties, as ought to have been done, and as the Assessors for the

* Chap. 185.
repealed.

1771.

respective counties are enjoined to do: *It is therefore enacted, That before any of the Wardens herein nominated, or hereafter to be chosen by virtue of this act, shall take upon themselves the services and duties by this act required, they, and each of them, shall take a legal qualification, of the tenor following; that is to say, That they will well and truly cause the debts arising by virtue of this act to be speedily adjusted, and the several sums of money hereby imposed to be duly collected, and applied to the purposes by this act intended, and to no other purpose whatsoever; and that they will diligently attend, and faithfully discharge the duties and services enjoined them by this act, during the term of their continuance therein, according to the best of their skill and abilities.*

Wardens qualification,

XIII. And before any of the said Assessors, hereafter to be chosen by virtue of the aforesaid act of the tenth of Queen Anne, shall take upon themselves their several duties enjoined by virtue of this or the aforesaid act, entitled *An act for raising money on the inhabitants of the city of Philadelphia, &c.:** they, and each of them, shall take a legal qualification, of the following effect; that is to say, *That they will well and truly cause the rates and sums of money by this act, and by the aforesaid city act imposed, to be duly and equally assessed and laid, to the best of their skill and knowledge; and therein will spare no person for favour or affection, nor grieve any for hatred or ill-will; and that they, and each of them, the said Assessors, will diligently attend, and faithfully execute the said office, during the term of their continuance therein, according to the best of their abilities and judgment.* Which qualifications the Mayor or Recorder, or any two of the Aldermen of the said city, have power, and are hereby enjoined to administer, when required. And the said qualifications shall be put in writing, and signed by those who take them, and certified by the Mayor or Recorder, or Aldermen aforesaid, and filed by the Clerk of the Sessions aforesaid.

* Chap. 185. repealed.

Assessors qualification;

XIV. And for the better raising and levying of money, for paying the wages of the watchmen, keeping a good and regular watch, enlightening the streets, lanes and alleys, supporting the lamps in good order, and maintaining the public pumps in repair, *Be it enacted, That it shall and may be lawful to and for the Wardens in this act named, together with the city Assessors for the time being, or a majority of them, to meet as soon as they conveniently can, after publication of this act, and for those who shall succeed them in the said trust, as by this act is directed, or any four of them, together with the city Assessors for the time being, or a majority of them, to meet on the sixth day of October, yearly and every year, unless the same shall happen on a Sunday, and then on the day following, at the court-house of the said city, or some other convenient place, and then and there to estimate, determine and judge what sum and sums of money shall be necessary to be raised and levied on the inhabitants of the said city, for paying the debts already contracted by the late Wardens, and for answering the purposes intended by this act.*

Wardens and Assessors to meet and estimate what money is necessary, &c.

XV. *And be it further enacted, That the said Wardens, and those who shall succeed them in the said trust, or any four of them, shall, within six days after such estimate is made, issue forth their*

And issue their precepts to the Constables

1771. precepts, directed to the constables of the said city, requiring them to bring to the said Wardens and Assessors, within five days next after the date of such precept, fair and true certificates, in writing, upon their legal qualifications, of the names and surnames of all and every of the persons dwelling or residing within the limits of their wards, and the names of all freemen, inmates, hired servants, and all other persons residing or sojourning in every of the said wards, together with an account of what houses, lands, tenements, rent-charges, bound servants and negroes, with their ages, they respectively hold or possess in such ward, without concealment, fear, malice, favour or affection, upon pain of forfeiture of any sum not exceeding five pounds, to be levied as by this act is appointed. And every of the said constables shall have and receive, from the treasurer hereafter to be appointed, three half-pence per pound, out of the sums to be collected from the inhabitants by them returned, for their care and trouble in executing and returning the said precepts in manner aforesaid. And that the said Wardens and Assessors, or a majority of them, shall meet at the day and place where the said precepts shall be made returnable, and then and there receive the constables returns. And that the said Assessors shall thereupon, by the legal qualifications of the said constables, or other credible persons (which qualifications any of the said Wardens are hereby empowered and required to administer) or by any other lawful ways or means, inform themselves what persons and estates in the said city are rateable by virtue of this act, and shall forthwith equally and impartially assess themselves, and all others, rateable as aforesaid, having a due regard to such as are poor, and have a charge of children, and exempting out of such assessments all single men, who, at the time of assessment, are under twenty-one years of age, or have not been out of their servitude or apprenticeship six months. And all transient persons and strangers, who shall have large quantities of goods and merchandize for sale in the said city, shall, for such goods and merchandize, be rated in proportion to the said inhabitants. And the said Assessors, for their time and labour in the premises, shall be allowed three half-pence per pound for the whole sums assessed, after the assessment is rectified and adjusted by the Wardens according to the directions of this act, to be paid by the treasurer herein after appointed, and to be equally divided amongst them; which said poundage shall be to the Assessors, for the time being, in full satisfaction for all services and attendances required of them by this act: *Provided always*, That no such assessment or assessments, to be made by virtue of this act in any one year, shall exceed the value of five pence in the pound: and that no person shall be chargeable, within the intent and meaning of this act, unless he be assessed at eight pounds, or upwards. (s)

(s) The duty assigned by this section to the constables is transferred to freeholders, elected for the purpose, by chap. 717, post. The time for making and returning the certificates of the

taxables is extended to ten days, *ibid.* And the Assessors were authorized to enlarge the rate specified in the proviso to six pence, *ibid.* Sect. 2, 3. (*Note to former edition.*)

to make
turns.

Penalty on
Constables.

Constables
allowance.

Assessors to
assess them-
selves, and
all others.

Exemption.

Assessors al-
lowance

Limitation
of assess-
ments.

Exemption

XVI. And whereas several evil-disposed persons have broken, ^{1771.} and may wilfully and maliciously break and destroy the lamps hung out in the streets, lanes and alleys of the said city: To prevent the like malicious practices for the future, *Be it enacted*, That if any person or persons shall and do, from and after the publication of this act, wilfully or maliciously break, throw down, or extinguish any lamp, that is or shall be hung out or set up to light the said streets, lanes or alleys, or shall wilfully and maliciously damage the post, iron, or other furniture thereof, every person so offending therein, and being thereof convicted by the lawful testimony of one or more witness or witnesses, in any Court of Quarter Sessions in and for the said city, shall forfeit and pay the sum of twenty-five pounds for each lamp so broken, thrown down, extinguished, or otherwise damaged, and for each post, iron, or other furniture thereof, so broken or damaged. And if any person or persons shall accidentally or undesignedly break, throw down, or extinguish any of the lamps aforesaid, or damage any of the said posts, irons, or centry-boxes, and, having so done, shall fail of giving notice thereof to some one or more of the said Wardens, within twenty-four hours from the time of the said damage being done, every person, so failing to give notice, shall forfeit double the sum of money necessary, in the judgment of the Wardens aforesaid, to repair the same; but if notice be by him given as aforesaid, he shall only pay so much as, in the judgment of the Wardens aforesaid, will fully repair the damage done, any thing herein contained to the contrary notwithstanding.

Penalty on
damaging
lamps, &c.

XVII. *And be it further enacted*, That the said Wardens and Assessors, the better to enable them to discharge the duties enjoined them by this act, shall choose and employ a fit and able person for their Clerk, who shall, in books to be provided for that purpose by the Wardens, make such entries, and keep such accounts, as he shall be directed to do by the Wardens and Assessors, or a majority of them, from time to time; and shall also make such entries, and keep such accounts, as he shall be required to do by the Wardens, or a majority of them, of all matters and things enjoined them by this act; and also to do and perform all other duties by him to be done in pursuance of this act; for which he shall be allowed such a reasonable reward, as the said Wardens, or any four of them, shall appoint, which shall by an order from the said Wardens, or any four of them, be paid him by the Treasurer.

Wardens and
Assessors to
appoint a
Clerk.

His duty.

and reward

XVIII. *And be it further enacted*, That the said Assessors shall, after the assessments made as aforesaid, appoint one or more fit person or persons to be Collector or Collectors of the said assessments from time to time, and shall cause fair duplicates of the assessments to be drawn, one part thereof shall be by the Clerk delivered to the Wardens, and the other part to the Collector or Collectors, with directions, under the hands of four or more of the Wardens, to every such Collector, indorsed on his duplicate, or annexed thereunto, requiring him or them to demand of the parties the respective sums of money wherewith they are chargeable, and acquaint them of the day of appeal, which shall be appointed by the said Wardens within twenty days after the assessments are made; but where any of the said Collectors cannot meet the party of whom demand is to be made as aforesaid, he or they shall leave notice in writing with some of

Assessors to
appoint a
Collector.

Collectors
duty.

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the family, or at the place of the party's last abode, signifying also the day of appeal; at which day the said Collector or Collectors shall return their duplicates, with the names of such persons, and value of such estates as shall be concealed, undervalued, or omitted in the Constables returns; and if any person or persons shall find him, her or themselves, aggrieved with any of the said assessments, supposing the same to be unequal, he, she or they may appeal to the Wardens aforesaid; and the said Wardens are hereby required to meet on the said day of appeal, where the Assessors shall attend, and lay before the Wardens all the written certificates of the names of the taxables, and the account of their estates, returned by the Constables as this act requires, together with the particular valuation set by the said Assessors upon the persons and estates so returned; whereupon the Wardens shall take due notice thereof, and strictly examine the persons appealing, upon their legal qualification, concerning the cause of their appeal, and upon such examination, or other proof, they are hereby empowered to diminish or add to such person's rate or assessment, as to them shall seem just and reasonable, with power also to call before them such persons, and take notice of such estates, as they find are omitted in the said assessments, in order to rectify it; and if the persons so omitted refuse or neglect to appear and give an account of the value of their estates, they shall be rated and assessed according to their estates by the judgment of the said Wardens, or a majority of them. And the said Wardens, upon hearing of the said appeals, shall rectify and adjust the said assessments, by abating or adding to the sums contained in the duplicates, and shall cause their Collector to give the parties concerned, where omissions are supplied, or additions made to their assessments, five days notice to appear before the Wardens, and make their objections thereunto; and the Clerk shall, within five days next after the day of appeal, deliver to the Treasurer, herein after directed to be appointed, a true account of the sums total which the Collector or Collectors aforesaid shall be charged with, pursuant to this act. And the said Wardens shall cause their Clerk to draw fair duplicates of the assessments so rectified as aforesaid, and deliver them to the Collector or Collectors to be appointed as aforesaid, within five days after the said day of appeal, with a warrant annexed thereunto, under the hands and seals of four or more of the said Wardens, requiring him or them forthwith to collect and receive from the persons assessed the several sums in the duplicates mentioned. And in case any person or persons, so rated or assessed by virtue of this act, shall neglect or refuse to pay the sum or sums so assessed by the space of thirty days after demand made as aforesaid, it shall be lawful for the said Collector or Collectors, by virtue of a special warrant for that purpose, signed and sealed by any four or more of the said Wardens, who shall forthwith grant the same, and shall thereby empower the said Collector or Collectors to call to their assistance, if occasion be, any Constable or other person, and, in case of resistance, to break open, in the day-time, any house, trunk, box, chest, closet, cupboard, or other things, where any such offender's goods, chattels or effects, are supposed to be, and make distress and sale thereof, rendering the overplus, if any be, to the

Duty of
Wardens on
appeals.

Collector to
give notice,
&c.

Clerks to
draw dupli-
cates, &c.

Collectors
may distrain,
&c.

owners, after reasonable charges deducted; but if no distress can be found by the Collector or Collectors, and the party refuses or neglects to shew them goods or chattels of his own forthwith to satisfy the money then due, with reasonable charges, then the said assessments to be levied by imprisonment of the person so refusing or neglecting to pay as aforesaid, until the same shall be paid; or on the goods and chattels of any of his tenants, if such there be, and the delinquent shall be obliged to discount it out of the first rent that shall afterwards accrue from the premises. *Provided always,* That where effects cannot be found sufficient to answer the whole sum in arrear, with charges as aforesaid, then distress shall be made for so much as the effects extend to, and the party be imprisoned, as aforesaid, only for the residue thereof, with incident charges; all which charges of distress, assistance, and bringing to prison, shall be adjusted and settled by any four or more of the said Wardens, when such occasion shall happen.

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Wardens to adjust the charges.

XIX. *And be it further enacted,* That the said Collector or Collectors shall, once in six weeks at least, render a just and true account of, and bring in and pay unto the Treasurer, herein after directed to be appointed, all such sums of money as he or they shall have received, and shall pay the whole and every of the sums of money assessed in his or their respective duplicates, within three months next after the day of appeal, (such deficiencies as the said Wardens, or any four of them, shall allow, being first deducted) and the Treasurer shall give receipts to the Collectors for what they shall so bring in and pay from time to time, which receipts shall be the Collectors discharge for so much. And the said Treasurer shall, from time to time, signify in writing to the said Wardens how much every Collector brings in and pays as aforesaid. And when the said Collectors, or any of them, are negligent, or refuse to do their duty in the premises, the Treasurer is hereby required forthwith to signify the same, by way of complaint, to the Wardens aforesaid.

Collectors to render account, &c.

Treasurer to give receipts.

XX. *And be it further enacted,* That if, upon complaint of the Treasurer to the Wardens, it shall appear that the said Collector or Collectors, having taken upon him or themselves the duties enjoined him or them by this act, shall refuse or neglect to pay the said sums of money, which he or they shall be respectively charged to collect, within the times limited by this act, every such Collector, so refusing or neglecting, shall forfeit and pay to the Treasurer the sum of five pounds, and shall also pay all the arrearages of such assessment which he was appointed to collect, to be levied by a warrant, under the hands and seals of the said Wardens, or any four of them, directed to the Sheriff of the city and county of Philadelphia, who is hereby authorised and empowered to execute such warrant upon the goods and chattels of such Collector or Collectors, and, in case goods and chattels sufficient cannot be found, then to imprison such Collector or Collectors until payment made. And every Collector so distrained on, and having made full satisfaction as aforesaid, is hereby empowered, without any further warrant, to distrain, for his own use, upon all such as shall neglect or refuse to pay him the arrearages due. And the said Collector or Collectors shall, for his or their trouble and service by this act required and enjoined, retain

Penalty on Collectors neglecting, &c.

Collector being distrained may distrain, &c.

Collectors allowance.

1771. in his or their hands six pence *per* pound, for all sums of money by him or them respectively collected: And if the said Collector or Collectors shall refuse or neglect to take upon him or themselves the trust and duty required of him or them, he or they shall forfeit and pay to the Treasurer herein after appointed the sum of five pounds; and the said Assessors shall appoint some other fit person or persons, in place or stead of the Collector or Collectors so refusing or neglecting as aforesaid.

XXI. *And be it further enacted,* That if any of the said Wardens appointed by this act, or those who shall be chosen to succeed them in the said trust, shall refuse or neglect to take upon him or themselves the services and duties hereby required of him or them, he or they, so refusing or neglecting, shall pay to the Treasurer aforesaid ten pounds; or if any of the said Wardens shall happen to die during the time for which they are chosen, the other Wardens and Assessors for the time being, or a majority of them, shall, in every such case, appoint one or more fit person or persons, in place and stead of the Warden or Wardens so refusing or dying. And the said Wardens, for the services required and enjoined them by this act, shall be paid by the Treasurer five shillings each, for every day's attendance on that particular service, which shall be to the Wardens, for the time being, in full satisfaction for all the attendance and services required of them by this act.

XXII. *And be it further enacted,* That the said Wardens and Assessors for the time being, or the major part of them, are hereby empowered and required, as often as there may be occasion during the continuance of this act, to choose a Treasurer; which Treasurer, when so chosen, is hereby empowered and required to receive all the money arising, as well from the said assessments, as also the fines and forfeitures imposed by virtue of this act. And the said Treasurer shall keep a distinct and fair account, in a book to be provided by him for that purpose, of all the rates and assessments made or to be made as aforesaid, and also of all monies by him so received; and also of all disbursements and payments he shall make, by orders from the Wardens, or any four of them, whose orders to the said Treasurer, from time to time, shall be sufficient for the payment of such monies as shall come into his hands.

XXIII. *And be it further enacted,* That the said Treasurer for the time being, before he enters upon the execution of his office, is hereby required to give a bond, with one or more sufficient sureties, to the Wardens aforesaid, in the penalty of one thousand pounds, lawful money of this province, with condition for the payment of all such monies, which shall come to his hands by virtue of this act, according to the orders to him to be given as aforesaid, from time to time, and not otherwise, and for the due performance of his duty in the trust hereby committed to him. And the said Treasurer shall yearly bring in his accounts, and settle the same with the Wardens and Assessors aforesaid, or a majority of them; which said accounts, so settled and adjusted, shall be laid before the Mayor, Recorder, Aldermen and Grand Jury of the said city, at the General Quarter Sessions of the Peace to be held for the said city in the month of October, yearly, together with the books, receipts and vouchers,

Penalty on Collectors refusing to serve.

Penalty on Wardens refusing to serve.

New appointment how to be made.

Wardens to be paid five shillings *per diem*.

Wardens and Assessors to choose a Treasurer.

His duty.

Treasurer to give bond, &c.

And settle yearly.

Accounts to be laid before the Mayor, &c.

if required; which said accounts, books, receipts and vouchers, being examined by the Mayor, Recorder, Aldermen and Grand Jury aforesaid, shall be delivered back safely, without alteration, to the said Treasurer; and a true copy of the said accounts, to be made out by the Treasurer and delivered to the Court, shall be filed and kept among the records of the said Court. And the said Treasurer shall be allowed, for his trouble in keeping such accounts, and receiving and paying all such money as shall come into his hands by virtue of this act, so much as the Wardens shall think reasonable, not exceeding six pence in the pound.

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Treasurer's allowance.

XXIV. *And be it further enacted*, That if the said Treasurer shall refuse or neglect to do his duty, as by this act is required, he shall be removed from his said office by any four or more of the said Wardens; and in case of such removal, or if the said Treasurer shall happen to die, the Wardens and Assessors, or the major part of them, shall appoint another in his place, who shall give security, as herein before directed. And the Treasurer so removed, or the executors or administrators of the said Treasurer so dying, shall deliver to the succeeding Treasurer, all books, public accounts and papers, belonging to the said office, whole and entire, and undefaced; and shall likewise pay to the succeeding Treasurer all such sum and sums of money, as he may have received, or have been paid to him, in pursuance of this act, under the penalty of one hundred pounds, to be recovered in the manner, and to the uses herein after mentioned.

In case of neglect or death, a new one to be appointed, &c.

Penalty on Treasurer, &c.

XXV. *And be it further enacted*, That all the penalties, fines and forfeitures, to become due and payable by this act, the manner of levying and recovering of which is not before directed, if they do not exceed the sum of five pounds, shall be recovered before one of the Justices of the Peace of and for the said city, and shall be levied by warrant, under the hand and seal of such Justice, or of any other Justice of the Peace of and for the same city, to any Constable of the said city directed, who is hereby empowered and required to execute the same, by distress and sale of the goods and chattels of the offender; and where goods and chattels sufficient cannot be found, then the party or parties offending shall be committed to the common gaol of the said city, there to remain until payment made. And all such penalties, fines and forfeitures, which do exceed the sum of five pounds, the manner of recovering and levying of which is not herein before directed, shall be recovered by action of debt, bill or plaint, in any county court within this province, wherein no essoin, protection, or wager of law, to be allowed. All which recoveries shall be had in the name of and by the Treasurer aforesaid, for the time being, to whom the sums recovered shall be paid, to be by him applied towards defraying the charges of the said nightly watch, and other charges incident thereto, to be recovered with costs of suit.

Manner of levying fines and penalties.

Fines, &c. how to be applied.

XXVI. *Provided always*, That if any person or persons be sued or prosecuted for any thing done in pursuance of this act, he or they may plead the general issue, and give this act and special matter in evidence, for their justification; and if the plaintiff or prosecutor become nonsuit, or forbear prosecution, or suffer discontinuance, or if a verdict pass against him or them in such action or suit, the de-

Persons sued may give this act in evidence.

1771. fendant shall have treble costs, to be recovered as in cases where costs by law are given to defendants.

Punishment on negroes, &c. transgressing this act.

* [Repealed, post chap. 870, § 7, and negroes to be tried and punished, as in other cases.]

Limitation of prosecution.

[XXVII. *And be it likewise further enacted,* That if any bound servant, Negro or Mulatto slave, be convicted of wilfully and maliciously incurring any of the fines and penalties mentioned in this act, he, she or they shall be whipped on the bare back with twenty-one lashes, at the public whipping-post, and kept on bread and water, at hard labour, in the public work-house, three days, unless the master or mistress of such bound servant or slave, or some other person, shall pay the fine or penalty so incurred.]*

XXVIII. *Provided always,* That no person or persons shall be sued or prosecuted for neglect in the execution of this act, unless he or they be sued or prosecuted within twelve months after such offence committed.

Deficiency in one year's rate to be supplied by the next.

XXIX. *And be it further enacted,* That in case there shall be any deficiency in any one year's rate or assessment, so that the expenses, costs and charges, arising from the execution and performance of the regulations, acts, matters and things, by this act directed and enjoined, cannot be fully paid and satisfied in that year, then, and in such case, the deficiency so happening, shall be paid out of the next succeeding year's rate and assessment; and if there shall happen to be any surplus money collected by such rates and assessments in any one year, such surplus shall be carried on to the credit of the account of the next year's rate and assessment, to be applied to such use, and in such manner, as the rates and assessments to be collected as aforesaid, are directed by this act to be laid out and applied.

Surplus to be carried forward.

Freeholders not choosing wardens and assessors, Mayor and Commonalty may appoint.

XXX. *And be it further enacted,* That if the freeholders and inhabitants of the said city, at the next or any future general election to be held for the said city as aforesaid, shall neglect to choose the Wardens and Assessors aforesaid, or if the said Wardens and Assessors, when so chosen, shall neglect or refuse to lay the rates and assessments aforesaid, or to do and execute the other services to be by them done and performed by virtue of this act, that then, and in every such case, the Mayor and Commonalty of the said city for the time being, may and shall, until a succeeding election, appoint Wardens or Assessors, or either of them, as the occasion may require, to perform the several and respective offices and duties of the said Wardens and Assessors, as amply and largely as the said Wardens and Assessors, if chosen by the freemen of the said city, might or ought to do, by virtue of this act.

[XXXI. *And whereas* the act of General Assembly, passed in the thirtieth year of his late Majesty's reign, entitled *An Act for regulating and continuing the nightly watch, enlightening the streets, lanes and alleys of the city of Philadelphia, and for other purposes therein mentioned,*† has been for some time expired, and the Wardens elected have, for the security of the persons and estates of the inhabitants of the said city, proceeded to act under the said law, in the same manner as if it had not been expired, and it is necessary that the acts of the said Wardens should be confirmed: *Be it therefore*

† Chap. 411. 418.

Acts of the Wardens, &c. since the expiration

enacted, That all and every act, matter and thing, done and performed by the said Wardens, or by others employed by them, in

regulating the nightly watch, enlightening the streets, lanes and alleys of the said city, raising of money on the inhabitants, and in executing other the purposes in the said law mentioned, shall be, and are hereby declared to be, ratified and confirmed, and of the same force, validity and effect, as if the said law had been in full force and virtue.] 1772.
of the former law hereby confirmed. [This section is obsolete.]

XXXII. *And be it further enacted,* That this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such by all Judges and Justices, and other persons whatsoever, without specially pleading the same. This act to be deemed a public act.

XXXIII. *And be it further enacted,* That this act shall continue in force for the space of five years, and from thence to the end of the next sitting of Assembly, and no longer. Limitation.

Passed 9th March, 1771 — Recorded A. vol. V. page 381. (t)

(t) This act, with some amendments, is made perpetual, by an act passed April 6th, 1776, (chap. 717.) duties enjoined on the Clerk of the Market, &c.

By another supplement, passed May 30th, 1780, (chap. 899,) further powers are given to the Wardens, and certain See the act for incorporating the city, (post. chap. 1383,) and the General Index, title *Philadelphia*.

CHAPTER DCXXXVIII.

An ACT to repeal a part of the act, entitled An Act for the preservation of fish in the rivers Delaware, Susquehanna, and the Lehigh, commonly called The Western Branch of Delaware.

WHEREAS in and by the act of General Assembly, passed in the first year of his present Majesty's reign, entitled *An act for the preservation of fish in the rivers Delaware, Susquehanna, and Lehigh, commonly called The Western Branch of Delaware,** it is declared and enacted, that so much of the same act as relates to the wears, racks, baskets, fishing-dams, pounds and other devices, erected or to be erected in the river Delaware, should be held and taken to be of no force, until a bill remedying the same mischiefs and inconveniences, by that act intended to be remedied, should be passed into a law by the Legislature of the province of New-Jersey, and be in full force: And whereas, since the passing of the said recited act, the Legislature of the said province of New-Jersey did pass into a law a certain bill, remedying the same mischiefs and inconveniences, which has been for some time expired by its own limitation, whereby it is rendered expedient that so much of the first mentioned act, as relates to the said rivers Delaware and Lehigh, be also rendered invalid: *Be it therefore enacted,* That all and every the provisions, regulations, penalties, acts, matters and things, in the same act contained, which relate to the wears, racks, baskets, fishing-dams, pounds and other devices, erected or to be erected in the said rivers Delaware and Lehigh, shall be, and are hereby declared to be, repealed, null and void, to all intents and purposes. * Antc. chap. 463. pa. 231.
Regulations, &c. in a former law repealed.

Passed 9th March, 1771.—Recorded A. vol. V. page 427.