

## Road Order Cases

### LAWS OF VIRGINIA, MARCH, 1661-2 --- 14th CHARLES II.

ACT LXXIX.

*Surveyors for highways.*

WHEREAS through the frequent alterations of the highways by falling of trees over them, and the many times taking them into fenced plantations to the great hindrance of travellers and traders: *Be it therefore enacted* that the justices doe yearly n October court appoint surveyors of the highways who shall first lay out the most convenient wayes to the church, to the court, to James Towne, and from county to county, and make the said wayes forty foote broad, and make bridges where there is occasion, and the wayes being once thus layed out, and the bridges made they shall cause the said wayes to be kept cleere from loggs, and the bridges in good repaire that all his majesties subjects may have free and safe passage about their occasions; and to effect the same, the vestryes of every parish are upon the desires of the surveyors hereby enjoined and impowered to order the parishoners every one according to the number of tithables he hath in his family, to send men upon the dayes by the surveighors appointed to helpe them in cleering the wayes, and making or repairing the bridges according to the intent and purpose of this act, and if any court shall omitt the appointing surveyors, or they neglect the executing their office, or the vestry to order the worke, or any person to send helpe according to the said vestryes order, the said court, surveighor, vestry or person, shalbe amerced five hundred pounds of tobacco to the use of the county. And if any person shall contrary to this act fall trees upon the highways and not cleere the same, or inclose any parte of the said highways within any fence, the grand jury shall present the same as a comon nuisance, and the inclosure shalbe thrown open, and the offender be fined one thousand pounds of tobacco to the use of the county; and if any countyes have creeke or swampe, lymitting the bounds betweene the said counties, It is enacted that both county's bounding upon such passage shall contribute to the makeing of the bridge or the way over itt.<sup>1</sup>

By 1658, when the assembly passed a law defining "What Persons are Tithable," a "tithable" was a member of the potentially productive labor force: free Caucasian males age sixteen or older plus "all negroes imported whether male or female, and Indian servants male or female however procured, being sixteen years of age" (Hening, *Statutes at Large*, 1:454-455). Subsequent laws made the immigrants' descendants tithable, too. Slaves and servants did not pay their own taxes; their owners or masters were therefore "tithable" for themselves and for the taxes on their servants and slaves.<sup>2</sup>

The courts were responsible for contracting and developing the public road system including legal authority and allocated public expenditures towards travel and transportation. With a growing colony and threat of Indian attack, residents needed a safe passage from city to town, courthouse, church, bridge, ferry, gap, ford, market and mill.

Under the Virginia Colony, if anyone wanted a road built in their county, they must first petition the court and state the reason or reasons to have the road built. The courts would then appoint a surveyor or in some cases, several surveyors to survey the land. Road overseers were established to maintain road sections and the male laboring tithables the area served under the overseer.

County residents who lived by the road were responsible for road maintenance. Many times road overseers were indicted by grand juries for failing to perform duties. Citizens were fined for not maintaining area roads.

<sup>1</sup> Hening, William Walter, *The Statutes at Large; Being a Collection of all the Laws of Virginia, Vol. 2, pg. 103*(<http://vagenweb.org/hening.vol02-06.htm>)

<sup>2</sup> Tithables, Library of Virginia website ([http://www.lva.lib.va.us/whatwehave/notes/tithables\\_vanote.htm](http://www.lva.lib.va.us/whatwehave/notes/tithables_vanote.htm))

The road case files can be found in the court order books and loose papers in each county. The files contain orders to view and report, viewers, reports, petitions, reviews and a relinquishment. Each file was written on a sheet or scrap paper in pen and ink and sign usually on both sides. The files are housed at the circuit court. Many times the road case files will contain an actual plat showing the proposed road and other roads in the area.

Many county road orders can also be located in the Historic Roads of Virginia Series through the Virginia Transportation Research Council. The road orders can be downloaded from the department website: (<http://vtrc.virginia.gov/Pubs.aspx>).

They are also available in print from the Virginia Genealogical Society (<http://www.vgs.org/>).

Roberto Costantino has written one book about road cases: *Miscellaneous Road Cases, Loudoun County, Virginia (1758-1782), Files No. 38-48, Willow Bend Books, Westminster, Maryland, 2003.*

The following excerpt is in example an abstract from File No. 44, page 122 of Costantino's book on road cases:

"Pursuant to an order of the Court to us directed We the Subscribers have Viewed the way for a Road from Israel Thompson's Mill to the Road leading from Leesburgh to Snickers Gap, and find there may be a good Road had, Beginning at said Thompson's Mill and from the end of his Land a direct way with or near the Line between Isaac Thompson and George Tingle, and passing through the Lot late of Thomas Townsend keeping nearly the same course to a Lot now in the possession of Craven Peyton and their crossing the Kittocton Creek at the old Ford, at the lower end of his Meadow, and then going between the Lands of John Davis and John Bishop only crossing at Corner of said Bishop's Land, by a Spring Head, on the right hand, then nearly with the Lines of Elisha Marks & Amos Goodwin then through a Corner of Mercer Brown's Land, to Isaac Nichols Junior on the left hand, and from their passing between the Land of Mahlon Kirkbride and William Nichols, then between the Lands of Samuel Iden and John Pickett passing the House where Joseph Hart now liveth, and from thence to the lower Corner to Benjamin Potts Meadow, and from there a direct way into the Road from Leesburgh to Snicker's near to Nathan Spencer's Goose Pond, and do not find that it will be attended with any considerable inconveniency to any but are of opinion it may be very useful to a number of inhabitants."

Robert Jamison  
Thomas Pursley  
Joshua Gore  
Samuel Potts

Wm Wildman  
Jonathan Myers  
Andrew Orison  
John Skooley

(Over)

Report of a Road from  
Thompson's Mill & c.

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Aug. 26<sup>th</sup> 1772 Ordered to be  
Reviewed by Robt Jamieson,  
Josha Gore, Saml Potts, Thos Pursley  
Or any three & report on Oath & c.

Road Case File # 44 1772  
Loudoun County Circuit Court  
Leesburg, Virginia