

**Landesbibliothek Oldenburg**

**Digitalisierung von Drucken**

**Sketches Of The History Of Man**

In Two Volumes

**Home, Henry**

**Edinburgh, 1774**

Sketch III. Plan for improving and preserving in order the Highways in  
Scotland. Preface.

**urn:nbn:de:gbv:45:1-697**

## S K E T C H III.

Plan for improving and preserving in order the  
HIGHWAYS in Scotland.

## P R E F A C E.

*H*ighways have in Scotland become a capital object of police, by the increase of inland commerce, upon which bad roads are a heavy tax. Happily for our country, no person is ignorant of this truth; and we see with pleasure the fruits of their conviction in various attempts, public and private, to establish this valuable branch of police upon the best footing. As this will be found no easy task, it may reasonably be hoped, that men of genius will seriously apply themselves to it, and in general that every person will freely produce such hints as occur to them. In the latter view the following plan is offered to the public: and if, from the various proposals that have been or shall be published, an effective plan can be framed, such as completely to answer its purpose, it may safely be pronounced, that it will produce more benefit to this country, than has been produced by any other single improvement since the union of the two kingdoms.



1. **T**HE justices of peace, commissioners of supply, the sheriff or steward depute, and the first magistrate of royal boroughs, shall be commissioners for making and repairing highways, bridges, and ferries, in the several shires and stewardries. All the powers given by law to the justices of peace, and commissioners of supply, with respect to highways, bridges, and ferries, shall be transferred to them; and any two shall be a quorum, except where a greater number is required by this act.

2. The sheriff or steward depute shall appoint the first day of meeting of the said commissioners, as soon as may conveniently be after the date of the act, by an intimation at each parish-church upon a Sunday at the close of the forenoon-service. And the last Tuesday of March shall yearly thereafter be a day of meeting at the head borough of the shire or stewardry, in place of the first or third Tuesday of May appointed by former acts. The commissioners shall appoint a preses, convener, and clerk: and they shall be empowered to adjourn themselves from time to time.

3. The commissioners, at their first meeting, shall set about a division of the shire or stewardry into two or more districts, as they see convenient. And if they cannot overtake this work at that meeting, they shall appoint proper persons to form a plan of the intended divisions, which plan shall be reported to the commissioners at their next meeting, in order to be approved or altered by them. This being settled, the commissioners shall appoint the heritors in these several districts, or any three of them, to meet on a certain day and place, to make lists of the whole public roads within their respective districts, and to settle the order of reparation, beginning with those that are the most frequented. The proceedings of these district-meetings must be reported to the commissioners, at their next meeting; who are empowered to settle the order of reparation, in case of variance among the heritors;



tors; and also to add any road that may have been omitted. And they shall record a scheme or plan of the whole roads in the shire, thus enlisted, with their resolutions thereupon, to be seen in the clerk's hands *gratis*. But upon any just cause appearing in the course of administration, the commissioners shall be empowered to alter or vary this plan, provided it be at a meeting previously appointed for that purpose, and where three fifths at least of the commissioners are present.

4. If the sheriff or steward neglect to appoint the first meeting of the commissioners, he shall incur a penalty of L. 100, upon a summary complaint to the court of session by any one heritor of the shire; with costs of suit, the one half to the plaintiff, and the other half to be applied by the commissioners for the purposes of this act. If the commissioners fail to meet at the day appointed by the sheriff or steward, or fail to divide the shire or stewardry into districts, within six months of their first meeting, the sheriff or steward depute, under the foresaid penalty, shall be bound to do that work himself; and also to appoint the heritors in the several districts, or any three of them, to make lists of the public roads as above mentioned, and to report their resolutions to him; and he is empowered to settle the order of reparation, in case of variance among the heritors. If the heritors fail to meet, and to make a list of the roads as aforesaid, this work shall be performed by the sheriff or steward depute himself. And he shall be indemnified of whatever expences he is at in prosecuting the said work, out of the sums that are to be levied by authority of this act, in manner after mentioned, with an additional sum for his own trouble, to be named by the circuit-judges.

5. No person shall act as a commissioner upon this statute, but who has an estate within the county of L. 200 Scots valuation, or is heir-presumptive to such an estate, or is named a commissioner *virtute officii*, under the penalty of L. 20 Sterling *toties quoties*, to



be prosecuted before any competent court, by a popular action, with costs of suit; the one half to the plaintiff, the other half to the purposes of this act.

6. Whereas the sum of 10 d. directed by the act 1669 to be imposed upon each L. 100 of valued rent, is insufficient for the purposes therein expressed; and whereas the six days statute-work for repairing the highways is in many respects inconvenient; therefore instead of the 10 d. and instead of the statute-work, the commissioners, together with the heritors possessed of L. 200 Scots of valued rent, five, whether commissioners or heritors, making a quorum, shall annually, upon the said last Tuesday of March, assess each heritor in a sum not exceeding                    upon each L. 100 valued rent; the assessment imposed on the heritors to be levied by the collector of supply, along with the cess, and by the same legal remedies. The heritors are entitled to relieve themselves of the one half of the said assessment, by laying the same upon their tenants, in proportion to their rents; an heritor being always considered as a tenant of the land he has in his natural possession.

7. With respect to boroughs of royalty, regality, and barony, and large trading villages, the commissioners are empowered to levy from each householder, a sum not exceeding 2 s. yearly, more or less in proportion to the assessment of the shire, to be paid within forty days after notice given, under the penalty of double, besides expence of process. Provided, that any of these householders who have country-farms, by which they contribute to relieve their landlords as above mentioned, shall be exempted from this part of the assessment.

8. If the commissioners and heritors neglect to assess their shire, or name so small a sum as to be an elusory assessment, insufficient to answer the purposes of this act, the court of justiciary, or the circuit-judges, are in that case empowered and required to lay on the  
the



the highest assessment that is made lawful by this act. In case of a total omission, the commissioners and heritors who, by neglecting to convene without a good cause of absence, have occasioned the said omission, shall be subjected each of them to a penalty of L. 20 Sterling. And to make these penalties effectual, the trustees for fisheries and manufactures are appointed to sue for the same before the court of session, and to apply the same, when recovered, to any useful purpose within the shire, especially to the purposes of this act. And to preserve the said fines entire for the public service, the trustees shall be entitled to costs of suit.

9. The sums levied as aforesaid shall be laid out annually upon the highways, bridges, and ferries, for making, repairing, or improving the same; proceeding regularly with the reparation according to the scheme or plan ordered as above to be settled in each shire and stewartry.

10. With respect to roads that are not the first in order, and for which there is no interim provision by this act during reparation of the more frequented roads, the commissioners are empowered to exact from cottars and day-labourers their statute-work according to the acts presently in force, to be applied to those secondary roads. The statute-work is not to be demanded unless for this purpose; and is to cease totally after the highways have, by means of the present act, been once totally repaired.

11. The commissioners and heritors, at all their meetings, shall bear their own charges.

12. The clause in the act 1661, empowering heritors, at the sight of the sheriff, to cast about highways for their convenience, shall be repealed; and it shall be declared unlawful, in time coming, to turn about or change any highway, unless for the benefit of the public, as by shortening it, carrying it through firmer ground, or making it more level; and to that purpose the commissioners



missioners shall be impowered to turn about highways, as also to widen the same, not exceeding thirty feet, free of ditches. But the commissioners shall have no power to carry a road through any house, garden, orchard, or pleasure-ground.

13. The commissioners shall have power to take from the adjacent lands, stones, sand, gravel, or other materials for making the highways, paying always for the damage done.

14. With respect to high-roads which bound the properties of neighbouring heritors, and which it may be found necessary to alter or widen, the commissioners shall be empowered to adjudge to one heritor any small bits of ground cut off from the other by the road so altered; and if land cannot be given for land, to make a compensation in money, valuing the land at the current price of the country.

15. In order to prevent water stagnating on the highways, the commissioners shall be impowered to make ditches or drains through neighbouring grounds; and such ditches or drains shall be preserved entire by the proprietors of the land, or at their charges.

16. As the foresaid assessment, after repairing the highways, may not be sufficient for building bridges, or making ferries, where rivers are large; any five of the commissioners may, for building bridges, or making ferries, establish a pontage or toll; so much for horses, so much for horned cattle, and so much for sheep, and the double for each beast in a wheel-carriage. Upon the credit of the toll, the said commissioners may borrow money, to be employed wholly upon the bridge or ferry where the toll is gathered. But before borrowing the money, an estimate must be made of the expence of the work. After the work is finished, the sum bestowed on it must be ascertained: an accurate account must be kept of the gradual payment of this sum by the toll; and when  
it

it is completely paid, the commissioners must declare the bridge or ferry to be free.

17. The determinations of the commissioners shall be final, unless complained of in manner following.

18. If any heritor apprehend that undue preference is given to a certain highway, or conceive himself aggrieved by any order or sentence of the commissioners, it shall be lawful for him, within forty days of the act complained of, to enter a complaint in the court of session; and the judgement upon such complaint shall be final. But such complaint shall only be effectual for damages, and shall not stay execution of the work. At the same time, no complaint shall be admitted till security be given to pay full costs, in case the plaintiff be found in the wrong.

19. Former laws concerning highways, bridges, or ferries, to continue in force, unless as far as altered by this act.

20. An annual state of what is done by virtue of this act, made up by the commissioners, or their clerk, shall, before the last Tuesday of March, be laid before the trustees for fisheries and manufactures, in order to be made a part of their annual report to the King; and these trustees shall direct proper persons to inspect what work is done upon the high-roads, and in what manner. Upon any misapplication or embezzlement of the money levied, any neglect in levying, or any wrong done to the public, contrary to the intention of this act, the trustees are required to set on foot and prosecute what redress is competent in law or equity, provided the prosecution be commenced within a year after the offence.

*Query,* Ought not broad wheels to be required?

CON-





## CONSIDERATIONS on the preceding PLAN.

THE laws in Scotland relating to this branch of public police, are numerous; some enacted while Scotland was a separate kingdom, some after its union with England. It is not the purpose of this paper to enter into a detail of the various regulations established by these laws: they are generally known; and in the late abridgement of our statute-law, they are all recapitulated with brevity and precision. It shall suffice cursorily to observe, that the acts made during the reign of Charles II. form the groundwork of our regulations concerning highways: the later acts are little more than explanatory of the former.

It seems to have been the plan of the legislature, that highways should be repaired by those who are employed in husbandry; and accordingly, the six days annual labour is, in the statutes of Charles II. imposed upon them only.

This was a measure not ill suited to the state of Scotland at that period. During the last century, we had little inland commerce to require good roads, except that of corn carried to market; and for that reason, it was natural to impose upon husbandmen the burden of repairing highways. These persons, at the same time, passing the whole summer in idleness, unless when called to perform personal services to capricious and unfeeling landlords, could not think it a hardship to have some part of their time employed in serving themselves instead of their landlords.

That annual labour upon highways, limited to a few days, should be required from men in that condition, appears not unjust. And why may we not suppose the legislature at that time capable

capable of such enlarged views, as to prefer this method for repairing highways, in order to bring on gradually a habit of labour and industry? But the condition of Scotland at present differs widely from what it was in the reign of Charles II.; and the regulations for repairing highways which were then proper, have, by alteration of circumstances, become both unjust and inexpedient.

Unjust they have become in a high degree. Inland commerce, which begins to flourish in Scotland, is greatly promoted by good roads; and every dealer, and indeed every traveller, profits by them. But no men are less interested in good roads than day-labourers, or those who are commonly called *cottars*; and yet these chiefly are burdened with the reparation. Such men, at the same time having commonly many children, find it difficult to support their families, even with their utmost industry. Nothing can be more unjust, than to impose upon such men an annual tax of six days labour for repairing roads, the goodness of which contributes little or nothing to their convenience.

Our present laws are inexpedient, as well as unjust. In the first place, a tax of this nature discourages the propagation of children, in which the strength of a state consists: the poor labourer ought to be encouraged with a reward, instead of being discouraged with a tax. In the next place, *cottars* called out to perform the statute-work, obey with reluctance, and trifle away time without doing any thing effectual. To enforce the law, and to compel such men to labour, is grievous to the gentlemen who are empowered to execute the law: they cannot punish with rigour or firmness, men who have so good reason to decline the service: they are soon disgusted with being taskmasters, and the generality desist altogether.

Laws concerning private property are always kept in observance, and they execute themselves, as is commonly expressed,



because there are always a multitude of individuals strongly interested to have them executed. But in making public laws, the great difficulty has ever been, to lay down effectual measures for putting them in execution; and by what means to make such laws execute themselves, is one of the most intricate problems in politics. Our laws concerning highways, are eminently defective in that respect: and accordingly, tho' most of them have existed near a century, they never have at any period been executed to any extent. Take the following specimen, among many that may be urged, of this defect. Overseers are forc'd into the service under a penalty, in order to compel the peasants to perform faithfully their six-days labour. To hope any good from a reluctant overseer set over a set of reluctant labourers, is a fond conceit: it is much if his resentment tempt him not to encourage their idleness. In vain would we expect, that any overseer, without a suitable reward, will exert himself in promoting the work.

To remedy the hardship of laying the burden of reparation upon those who are least able and least benefited, and at the same time to make this remedy effectual, is the purpose of the foregoing plan. And upon considering the matter in its different views, the only method that promises success, appears to be a county-tax laid upon land according to the valuation, and a capitation-tax on the inhabitants of boroughs. These taxes relieve the labouring poor, and lay the burden where it ought to be laid: and the law will execute itself, if that effect can be hoped from any public law. Effectual measures are laid down for levying the tax: and, if once levied, there is no danger of its being allowed to lie unemploy'd in the hands of the collector; for every heritor will be anxious to have some part employ'd for his benefit. The danger will rather be of factious disputes about the distribution. This danger also is attempted to be prevented; and, it is hoped, with success.

Some



Some narrow-minded persons may possibly grudge a tax, that loads the present generation for the advantage of those who come after: but is it rational to grudge, that others should benefit by measures evidently calculated for advancing our own interest? Let us suppose, that the heritors of a shire were to concert measures in common, for improving their lands: to make good roads would be one effectual measure; for supposing the reparation to cost L. 5000, their estates would be bettered double that sum.

To conclude: It is not to be expected that any regulations concerning highways, or concerning any branch of police, can be so framed as to please every individual. Wise men are practicable men, to use an expression of Lord Bacon, and will make concessions in order to promote a general good, if without such concessions it cannot be obtained. Better far to have a good law, tho' in our opinion defective in some articles, than to have no law at all, or, which is worse, a law eminently defective, unjust, and inexpedient.

F I N I S.

