

Statutes of Upper-Canada, Passed in the second session of the fifth provincial parliament (1810). From The Provincial Statutes of Upper-Canada: Revised, Corrected, and Republished (York, R. C. Horne, 1818.)

50 George III – Chapter 1

An Act to provide for the laying out, amending, and keeping in repair the Public Highways and Roads in this Province, and to repeal the Laws now in force for that purpose. (Passed 12th March, 1810.)

Whereas, the present mode of laying out, amending, and keeping in repair the Public Highways and Roads within this Province, and the method of performing Statute Labour thereon, is found inconvenient; Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper-Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, intituled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, That an Act passed in the thirty-third year of His present Majesty's Reign, intituled, "An Act to regulate the laying out, amending and keeping in repair the Public Highways and Roads within this Province;" and also an Act passed in the thirty-eighth year of His present Majesty's Reign, intituled, "An Act to alter the method of performing Statute Duty on the Highways and Roads within this Province," shall be and the same are hereby repealed.

II. And be it further enacted by the authority aforesaid, That it shall and may be lawful for His Majesty's Justices of the Peace in General Quarter Sessions assembled in the month of April in each and every year, in the several Districts of this Province, except in the Districts of London and Johnstown, and in the District of London for His Majesty's Justices of the Peace so assembled; in the month of June, and in the District of Johnstown, for His Majesty's Justices of the Peace so assembled, in the month of May, in each and every year, or the majority of them, to appoint as occasion may require, one or more Surveyor, or Surveyors of Highways, in each and every County and Riding, throughout this Province within their respective Districts, to lay out and regulate the Highways and Roads within such County or Riding, in manner herein after mentioned, and such Surveyor or Surveyors, before he or they shall enter upon their office, shall before any Justice of the Peace take and subscribe the following Oath, which Oath the said Justice is hereby authorised to administer: "I A. B. do swear, that I will faithfully and diligently discharge the duty of a Surveyor of Highways, agreeably to the provisions of an Act passed in the fiftieth year of His Majesty's Reign, intituled, 'An Act to provide for the laying out, amending and keeping in repair the Public Highways and Roads in this Province, and to repeal the Laws now in force for that purpose.'" And if on complaint made, or otherwise it shall appear to the Justices of the Peace in Quarter Sessions assembled, that any such Surveyor or Surveyors, is or are incompetent to the discharge of his or their duty, or negligent in the performance thereof, it shall and may be lawful for the said Justices so assembled, to remove the said Surveyor or Surveyors.

50 George III – Chapter 1

III. And be it further enacted by the authority, aforesaid, That upon application in writing being made to any such Surveyor by Twelve Freeholders of any such County or Riding, stating that any Public Highway or Road in the neighborhood of the said Freeholders now in use, is inconvenient and may be altered so as better to accommodate His Majesty's Subjects and others travelling thereon, or that it is necessary to open a new Highway or Road, it shall and may be lawful for such Surveyor, and he is hereby required to examine the same and report thereon in writing to the Justices at their next ensuing Quarter Sessions, describing particularly the alteration intended to be made, or new Highway or Road to be opened, giving at the same time public notice thereof by affixing or causing to be affixed, a copy of the said report in two or more of the most public places next adjacent to the place where the said alteration is intended to be made, or new Highway or Road to be opened, and if no opposition, as hereinafter mentioned, shall be made to such report, it shall and may be lawful for the said Justices or the major part of them, and they are hereby required to confirm the said report, and to direct such alteration to be made or such new Highway or Road to be opened accordingly. And when and so often as any application shall be made, to the said Justices in Quarter Sessions assembled as aforesaid, in opposition to the said report, it shall and may be lawful for the said Justices on its being made to appear to their satisfaction, that due notice hath been given to the Surveyor by whom such report as aforesaid was made, to direct a Jury of Twelve disinterested men to be empaneled out of the persons returned to serve as Jurors at the said Sessions, who after hearing evidence upon Oath, touching and concerning the said intended alteration, or new Highway or Road, shall upon their Oath, either confirm or annul the said report, or so alter and modify the same as the exigency of the case may appear to require, and their Verdict shall be final, and the said Justices shall direct such Highway or Road to be altered or opened accordingly. And such Highway or Road so altered or opened, shall be and is hereby declared to be a Common and Public Highway. And the said report so confirmed or altered, shall remain as a record and description of the said Highway or Road, in the Office of the Clerk of the Peace, and a copy thereof shall be entered in a book to be by him kept for that purpose, and for every such entry, he shall be allowed the sum of five shillings and no more, to be paid out of the Treasury of the District. Provided always, That it shall not be lawful to lay out or alter any Public Highway or Road so as to lead the same through any Orchard or Garden, or to remove any Building, without the consent of the owner first had and obtained, any thing in this Act contained to the contrary in any wise notwithstanding.

IV. And be it further enacted by the authority aforesaid, That when and so often as it shall appear to the Justices of the Peace in Quarter Sessions assembled, that it will be necessary or useful to employ a Surveyor of Lands, in laying out or altering any Highway or Road as aforesaid, it shall and may be lawful for them to order and direct any Surveyor of Highways of the County or Riding in which such Highway or Road is intended to be laid out or altered, to employ such Surveyor of Lands, who shall be paid but of the District Treasury, by an order of the said justices, for the number of days in which he shall have been so employed, at the rate of ten shillings for each day.

V. And be it further enacted by the authority aforesaid, That the width of the Roads hereafter to be laid out, shall be left to the direction of the Surveyor or Surveyors for the time being, of the County or Riding through which such Roads may pass, so that the same shall not be less than thirty

feet, nor more than sixty feet. Provided always, That the Roads in front and between every Concession, shall in no case be less than sixty feet, except in such Township, reputed Township, or place where the allowance for Road by Government, shall be less than sixty feet.

VI. And be it further enacted by the authority aforesaid, That all Bridges and Causeways hereafter to be built upon any Public Highway or Road, shall not be less than fifteen feet in width, and in order to provide materials for the same, it shall and may be lawful for the Overseers to direct the labourers performing such duty as hereinafter mentioned, to cut down and make use of any trees standing upon any uninclosed and unimproved Lands that may be most convenient and best adapted, to building or repairing such Bridges or Causeways as aforesaid.

VII. And be it further enacted by the authority aforesaid, That when any Public Highway or Road does pass by any deep water or dangerous precipice, the Overseers shall cause good and sufficient Fences to be erected at the sides of the said Highway or Road, for the security of His Majesty's subjects and others who may travel thereon.

VIII. And be it further enacted by the authority aforesaid, That every such Surveyor of Highways as aforesaid, for the time being, shall be allowed seven shillings and sixpence per day, for every day in which he shall be necessarily employed in carrying into effect the provisions of this Act, an account of which, such Surveyor shall present to the Justices of the Peace in Quarter Sessions assembled, for their inspection, who being satisfied that such account is proper and correct, shall order and direct the Treasurer of the District forthwith to pay the same.

IX. And be it further enacted by the authority aforesaid, That in all cases when it shall be found necessary to alter the direction of any such Highway or Road already laid out, so that the Land through which it formerly passed, shall become unnecessary for a Public Highway, that in such case it shall and may be lawful for any Surveyor or Surveyors to be appointed under and by virtue of this Act, and he or they are hereby fully authorised and required to sell such Land, and to grant the same under his hand and seal, or their hands and seals, to any purchaser, which sale and grant as aforesaid, shall convey a legal Title to such purchaser. Provided nevertheless, That if the owner or owners of the Land through which such new Road may pass, shall be willing to accept the old Road as a compensation, such owner or owners shall and may take the same by a conveyance under the hand and seal of the Surveyor or Surveyors as aforesaid, which he or they are hereby fully authorized to give.

X. And be it further enacted by the authority aforesaid, That when any sale shall take place as aforesaid, the money arising therefrom, shall be given to the owner or owners of the Land through which the new Road may pass, as an indemnification for the same, and if such owner or owners shall not be satisfied therewith, it shall and may be lawful for him, her or them to signify the same to the said Surveyor or Surveyors, who are hereby required to report the further claim for compensation of such owner or owners, to the Justices of the Peace at the next ensuing Quarter Sessions assembled, and to give notice to the said owner or owners to appear at the said Sessions, and the Justices so assembled, shall direct a Jury of twelve disinterested men to be empaneled out of the persons returned to serve as Jurors, at such Quarter Sessions, and the said Jury shall

upon their oaths determine whether any, and what further sum shall be allowed to such owner or owners as aforesaid, and their verdict shall be final; and in case such Jury shall award any further sum to such owner or owners, the said Justices so assembled as aforesaid, are hereby authorised and required to order and direct the Treasurer of the District forthwith to pay the same.

XI. And be it further enacted by the authority aforesaid, That the Justices of the Peace acting within their respective Counties or Ridings for the time being, shall and may (at a Special Sessions in the month of March, to be holden for that purpose) divide their respective Parishes, Townships or Ridings, into divisions, which they shall allot to the Overseers of the Highways and Roads, and the said Overseers shall superintend, repair and keep in order the Highways and Roads, Streets and Bridges in their several divisions, and the said Justices or the majority of them, may from time to time, order any Overseer to work upon any Highway or Road within his division, as they shall think necessary, and the said Overseer shall within ten days after having received such order, summon such persons within his division, as are obliged to perform Statute Duty or Labour, and order them to work on such part of the Road or Highway, as they shall be directed to amend or repair, and shall direct all persons performing such labour, to destroy as much as may be in their power, all weeds that are hurtful to Husbandry, and every person neglecting or refusing to obey such order, shall be subject to the like penalties, as if he had been a wilful defaulter for that day, or for such time as he shall have so neglected or refused, and if any Overseer shall refuse or neglect to summon such persons as aforesaid, and set them to work on such Road or Highway as he shall be directed to amend or repair, he shall for every such neglect or refusal, forfeit the sum of forty shillings, to be recovered in manner hereinafter set forth.

XII. And be it further enacted by the authority aforesaid, That all allowances for Roads, made by the King's Surveyors in any Town, Township or place already laid out, or which shall be made in any Town, Township or place within this Province, and also all Roads laid out by virtue of any Act of the Parliament of this Province, or any Roads whereon the Public Money hath been expended for opening said Roads throughout this Province, or whereon the Statute Labour hath been usually performed, or any Roads passing through the Indian Lands, shall be deemed Common and Public Highways, unless any such Road have been already altered according to Law, or until such Road or Roads shall be altered according to the provisions of this Act.

XIII. And be it further enacted by the authority aforesaid, That if any person or persons, shall wilfully stop up or incumber any such Road or Roads as aforesaid, or shall pull down or destroy any Fences along canals or precipices, or raising of Bridges, that have been or shall be put up according to Law, for the security of travellers; he, she or they shall forfeit and pay for every such, offence, the sum of two pounds, to be recovered in manner hereinafter mentioned.

XIV. And be it further enacted by the authority aforesaid, That the person to be employed as Overseers of the Highways and Roads in every Parish Township or Place within this Province, shall be nominated and appointed according to the provisions for that purpose made, in a certain Act of the Legislature of this Province, intituled, "An Act to provide for the nomination and appointment of Parish and Town Officers within this Province," and also by an Act intituled, "An Act to alter and amend an Act passed in the thirty-third year of His Majesty's Reign, intituled, 'An Act to provide for

the nomination and appointment of Parish and Town Officers, and also to repeal certain parts of an Act passed in the thirty-third year of His present Majesty's Reign, intituled, 'An Act to authorize and direct the laying and collecting the Assessments and Rates in every District of this Province, and to provide for the payment of wages to the Members of the House of Assembly.'"

XV. And be it further enacted by the authority aforesaid, That the Overseers of every Township, reputed Township, or Place, shall severally make out and keep a list of every person who is the owner of a cart, waggon, plough, sled, or team, within their division, and likewise of all the inhabitants of such division, who are liable, under the directions of this Act, to work upon the Highways, a copy of which list, shall be subscribed by the said Overseers respectively, and delivered to the Justices of the Peace, acting within the County or division to which they the said Overseers belong, within twenty days after they shall have been appointed Overseers as aforesaid, and the said Overseers for every Township, reputed Township, or Place, and each of them, shall carefully and diligently collect the several compositions, forfeitures, and sums of money directed and allowed to be received and taken within the same, by virtue of this Act, within the year for which he is appointed Overseer, and shall also, keep one or more book or books, containing an account of the duty or labour, done, compounded for or unperformed by every person liable to discharge the same within his division, and also a just, true and fair account, to be verified on oath, if required, which oath the Justices are hereby authorised to administer, of all such money as shall come into his hands in respect to such division, by virtue of and for the purposes of this Act, and to whom, and on what occasion he shall have paid and applied the same, and also of the sums of money that shall then remain due and owing, from any person or persons in respect of payments, compositions and forfeitures, to be taken and received for and in respect of the said Highways, by virtue of this Act; which book or books shall be delivered to the said Justices, acting within their respective divisions or Counties, at some Special Sessions to be holden, for that purpose, in the month of March in every year.

XVI. And be it further enacted by the authority aforesaid, That the Roads and Highways in and through every Township, reputed Township or Place, shall be cleared, repaired and maintained by the inhabitants thereof, and that every person liable to work by virtue of this Act, shall either in person or by a sufficient man in his stead, be obliged, to work on the said Road, and shall have and bring with him, one spade, pick-axe, bar, or such other tool or instrument, useful for the purposes aforesaid, as he may be owner of, and be directed by the Overseers to bring for and during any space of time he may be liable to work on the said Roads in each and every year, allowing eight hours to each day's work, and that every person within each Township, reputed Township or Place, keeping a cart, waggon, or team of two horses, oxen or beasts of burthen or draught, used to draw the same, shall send on every day to be appointed by the said Overseers, a cart, waggon, or team, and one able man to drive the same, for such space of time as he shall be held liable to work on the said Roads by this Act, to work on the Highways, Roads, Streets or Bridges, allowing eight hours to each day's work, which said days work shall be held equivalent to two days personal labour, and if any labourer or driver shall refuse or neglect to work, or to carry good and sufficient loads during the time above mentioned, it shall and may be lawful for the said Overseer to discharge such labourer or driver, team and cart, and such labourer or driver of such team or cart,

shall be liable to the forfeiture which every such person would have incurred by virtue of this Act, in case such labourer had not attended, or such team, cart and driver had not been sent.

XVII. And be it further enacted by the authority aforesaid, That each Overseer shall from time to time give to every person, or leave or cause to be left at the house or usual place of abode of every person within his division, liable to perform the duty and labour by this Act directed, three days notice at least, either verbally or in writing, of the day, hour and place upon which each of the said days duty shall be performed, and every person possessed of a cart, waggon or team, having been duly notified as aforesaid, and not having paid such composition as hereinafter is mentioned, who shall make default in sending such cart, waggon or team, with an able man to drive the same, or in performing the said duty at the time and place to be notified to him in manner aforesaid, shall for every such default, forfeit and pay the sum of ten shillings, and that every person as hereinafter mentioned, liable to such personal labour, having been duly notified, and not paid such composition money as directed by this Act, who shall not appear or send a sufficient man in his stead, with such tool or instrument, at such time and place as by the said notice shall be directed, shall forfeit and pay for every such default, the sum of five shillings; all which forfeitures shall be applied to the use of the Highways of the Townships, reputed Townships or Places respectively, in which such default shall have been made, and the said Overseers shall fairly and equally demand and require such duty and labour from every person liable to perform the same, according to the directions of this Act, without favor or partiality to any person or persons whatever, and every Overseer shall and may, and he is hereby required with all convenient speed, after default made as aforesaid, to proceed to the recovery of the fines and forfeitures hereby inflicted in manner hereinafter directed, so that the same may be recovered before he makes up his accounts in manner directed by this Act.

XVIII. (Repealed by 56th George III. c 39, s 1.)

XIX. And be it further enacted by the authority aforesaid, That it shall and may be lawful for any person who may be desirous of compounding for any Statute Labour as aforesaid, to pay the composition money allowed by this Act, to the Overseer of the Highways of the division in which such person shall reside, within two months after the appointment of the said Overseer, which payment shall be in full satisfaction of the Statute Labour of such person, for the current year in which the same shall be made, and the Overseer of each and every division, shall apply such composition money to the use of the Highway, within the year of his appointment.

XX. And be it further enacted by the authority aforesaid, That when the said Surveyors of the Highways, or any of them, acting, within their said Counties, shall be of opinion that a further sum will be wanting, to undertake any particular work of manifest general advantage, on the Public Highways, that he or they may and is and are hereby required to certify the same, by a writing under their hands, to the Justices of the Peace in General Quarter Sessions assembled, within their respective Districts, and may report to them an estimate of the additional sum required to complete such, work, and if it shall appear to the majority of the said Justices, then and there assembled, that such proposed work is necessary, and that it is expedient to undertake the same, they may come to a resolution to such effect, and declare they will take the matter into

consideration at the next ensuing General Quarter Sessions, advising such resolution in each respective District to which they may belong, and in case it shall be deemed advisable by the greater number of the Justices, at such subsequent Quarter Sessions assembled, upon further consideration, that such resolution should be confirmed, it shall and may be lawful for the said Justices to order and direct such work to be performed, and when performed, to order and direct the Treasurer of the District to pay the amount of the same, (provided, it do not exceed fifty pounds,) out of the District Treasury.

XXI. And be it further enacted by the authority aforesaid, That if any tree shall be cut down after the passing of this Act, Or fallout of any inclosed land, into or across any of the Public Highways that the owner or occupier of such inclosure; shall within the space of twenty four hours after he shall receive notice of its having so fallen, remove the same; and if after such notice thereof is given to such owner or occupier as aforesaid, he shall neglect to remove such tree out of such Road, within the space of twenty four hours, he shall forfeit and pay the sum of ten shillings, for every day such tree shall be unremoved, after receiving such notice as aforesaid.

XXII. And be it further enacted by the authority aforesaid, That all fines and forfeitures accruing by virtue of this Act, shall be recovered before any two or more of His Majesty's Justices of the Peace, by confession; or upon the oath of one credible witness, and shall be levied by warrant under the hand and seal of either of the said Justices, by distress and sale of the goods and chattels of the person so offending, (rendering the overplus money, if any there be,) to the owner or owners, after deducting, the necessary charges of such distress and sale, and in default of such distress, it shall and may be lawful for any Justice as aforesaid, to commit the person so offending to the common gaol for any time not exceeding one month, unless the fines and forfeitures, costs and charges shall respectively be sooner by him paid: and the produce of all compositions, fines and forfeitures, shall be applied towards the making or repairing of the Public Roads and Bridges, within the Township and division where the same shall arise.

XXIII. And be it further enacted by the authority aforesaid, That if any Overseer of the Highways shall neglect to apply any composition money to the use of the Highways, in such manner as he shall have been directed by the Justices of the division, at their Special Sessions; or refuse to account to the Justices for the same, it shall and may be lawful for such Justices, upon conviction of the offender, by confession or on oath of one credible witness, to commit him to the common Gaol of the District, until he shall render a true account of such composition money, under oath, and shall pay or cause the same to be paid into the hands of such Justices, provided such imprisonment shall not exceed three months.

XXIV. And be it further enacted by the authority aforesaid, That such money as shall be received by the Justices as aforesaid, shall by them be paid to the Overseer, for the next ensuing year, to be by him applied in like manner as other composition money.

XXV. And be it further enacted by the authority aforesaid, That if any Overseer, who shall be sworn to an account of composition money under and. by virtue of this Act, shall swear falsely, he shall,

upon conviction thereof, suffer all the pains and penalties to which persons convicted of wilful and corrupt perjury are liable.

XXVI. (Repealed by 56 Geo. III. c 39, s 1.)

XXVII. And be it further enacted by the authority aforesaid, That, after any fall of snow, by which any Highway shall be obstructed, it shall and may be lawful for the said Overseers of the Town or Township through which the said Highway may run, and they are hereby required in their respective divisions, to order and direct such and so many persons liable to work on the said Highways and Roads next adjoining the same, being persons possessed of a sleigh or sledge and team, to open a free passage through the said Highway, by driving or causing their sleighs or sledges to be driven, over and through the said Highway. Provided always, That this said labour shall not interfere, or be construed a part of the Statute Labour herein after mentioned.

XXVIII. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the said Overseers, and they are hereby required to cause the inhabitants liable to work on the said Highways and Roads, to set up or cause to be set up, on each side of the said Highways and Roads, or over any frozen waters, stakes or beacons, so as to direct travellers, when and so often as occasion may require, by reason of great falls or drifts of snow; and any person refusing or neglecting so to do, when thereunto required by the said Overseer, shall be liable to the same fines and forfeitures, as those neglecting to perform their proportion of Statute Labour on the Highways or Roads, as herein after mentioned, and to be recovered in manner aforesaid.

XXIX. And be it further enacted by the authority aforesaid, That it shall and maybe lawful, for any two or more Justices of the Peace, within their respective divisions, and they are hereby empowered, from time to time, whenever they shall judge proper, to hold any Special Sessions, besides that which is herein before directed in the month of March, for executing the purposes of this Act, and to adjourn the same, as they shall think fit, causing six days public notice to be given of the time and place of holding such Special Sessions, and the adjournments thereof.

XXX. And be it further enacted by the authority aforesaid, That from and after the passing of this Act, every person included or inserted in or upon the Assessment Roll of any Township, reputed Township, or Place; shall in proportion to the estimate of his real and personal property, be held liable to work on the Highways or Roads, in each and every year, as follows: that is to say, if his property be not rated at more than twenty-five pounds, then his proportion of labour on the Highways shall be three days; if at more than twenty-five pounds, and not more than fifty pounds, four days; if more than fifty pounds, and not more than one hundred pounds, six days; if at more than one hundred pounds, and not more than two hundred pounds, eight days; if at more than two hundred pounds, and not more than three hundred pounds, ten days; if at more than three hundred pounds, twelve days. Provided always, That every person possessed of a waggon, cart, or team of two horses, oxen, or beasts of burthen or draught, used to draw the same, shall be liable to work on the Highways not less than six days, any thing herein contained to the contrary, in any wise notwithstanding.

XXXI. And be it enacted by the authority aforesaid, That if through inadvertence or otherwise, the name of any person or persons having real or personal property, shall not have been inserted on any Assessment Roll, such person or persons shall nevertheless be liable to work on the Highways or Roads, in proportion to the amount of the sum for which he or they ought to have been assessed.

XXXII. And be it further enacted by the authority aforesaid, That when and so often as it may appear to the Justices in Special Sessions assembled, for the purposes of this Act, that the full amount of the Statute Labour will not be wanted in any Town, Township, reputed Township, or Place, within their division, it shall and may be lawful for the Justices to lessen the same, in proportion to the labour required by Law, from each and every inhabitant thereof.

XXXIII. And be it further enacted by the authority aforesaid, That the Overseers of the Highways, and all persons acting, or who shall have acted under their directions, in the execution of such orders as they shall have received from the Justices of the Peace, acting as Commissioners of Highways, relative to the performance of their duty on such Highways, are hereby discharged from any action of trespass now pending; or hereafter to be brought in any of His Majesty's Courts within this Province, for any act or acts that the said Overseers, or any person or persons acting under their direction as aforesaid, may, in the execution of such orders and directions, have committed or done.

XXXIV. Provided always, and be it further enacted by the authority aforesaid, That if any action or suit shall be commenced against any person or persons for any thing done or acted in pursuance of this Act, then and in every such case, such action or suit shall be commenced or prosecuted within three Calendar months after the fact committed, and not afterwards, and the defendant or defendants in any such action or suit, shall and may plead the general issue, and give this Act and the special matter in evidence, at the trial to be had thereupon, and that the same was done in pursuance and by the authority of the present Act; and if the same shall appear to have been so done, or if any such action or suit shall be brought after the time limited for bringing the same, then the Jury shall find for the defendant or defendants; or if the plaintiff or plaintiffs shall become nonsuit or discontinue his, her, or their action, after the defendant or defendants have appeared, the defendant or defendants shall and may recover treble costs, and have the like remedy for the recovery thereof, as in any other cases by Law.

XXXV. And be it further enacted by the authority aforesaid, That when any Highway or Road shall be altered, amended, or laid out, under the provisions of this Act, that the soil and freehold of such Highway or Road shall be thereby vested in His Majesty, His Heirs, and Successors.