

At the General Assembly of the Province of Nova Scotia, begun and holden at Halifax, on Thursday the Sixth day of February, 1812, and continued by several Prorogations to Thursday the Fifth day of February 1818, in the Fifty-Eighth year of the Reign of our Sovereign Lord George the Third, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith &c. &c. being the Eighth Session of the Tenth General Assembly, convened in the said Province.

58 George III – Chapter 22

An Act to facilitate the opening and working His Majesty's Coal Mines, with as little injury as possible to the Proprietors of Lands in this Province.

Whereas in grants or patents of land made in this province, His Majesty has thought proper to reserve to himself, his heirs and successors, all coals, and other mines and minerals; and His Majesty, in compliance with the wishes of very many of his subjects, has been pleased to allow, that his coal mines, in this province under certain regulations, may be opened and worked; and as the opening and working coal mines will add much to the increasing prosperity of the country, it is expedient that such rules and regulations may be established, as will secure the grantees of land against any unnecessary waste or trespass that may be committed by those who may be authorized by the crown, under such general reservation, to open and work mines of coal:

I. Be it therefore enacted by the Lieutenant Governor, Council, and Assembly, that whenever it has been, or may hereafter be, deemed expedient by His Majesty's government to open and work, or cause to be opened and worked, any mine or mines of coal within any lands of any person or persons, for the purpose of raising and taking away coal which has been or may be found and discovered within the same, it shall and may be lawful for the justices in their general or special sessions of the peace for the county or district within which such lands lie, on the application in writing of any person or persons, who may be licensed and authorized by the authority aforesaid to open and work any such mine or mines, to cause the clerk of the sessions to make out a list of the names of all the freeholders within at least two of the townships in the said county or district next adjacent to the township in which any such lands are situated; the names of which freeholders shall then be written on distinct and similar slips or pieces of paper, which shall be rolled up and put together into a box provided for that purpose; from which box the said clerk shall then and there, in the presence of the said justices, draw the names of twenty-four of such freeholders, who shall be persons having no interest in or claim to such lands, and not of kin to any person or persons having such interest or claim, and not being of kin to the person or persons licensed as aforesaid and applying for the opening and working of such mine or mines; and the said justices shall then and there direct and cause the said clerk to make out, and issue a precept in writing, directed to the sheriff of such county or districts, or his deputy; to which shall be annexed a list of the names of the freeholders drawn as aforesaid; in and by which precept the said sheriff or his deputy shall be commanded to summon the persons whose names are contained in the said annexed list, to appear at some convenient

place upon or near to the said lands, upon a certain day in the said precept mentioned, which shall be at least fourteen days after the issuing thereof; which precept shall be made returnable in the court of general sessions of the peace in and for the said county or district which shall be holders; of the issuing of which precept, upon whose application, and also of the time and place of meeting of the said freeholders, and for what purpose, notices in writing shall be forthwith made out and signed by the said clerk; one of which notices shall, with all reasonable dispatch, be posted up in one of the most public places in each and every township within the said county or district; and in case the owner or proprietor of such lands does not reside within such county or district, then a notice to the same effect shall also be inserted in one of the public newspapers published in this province.

II. And be it further enacted, that upon the day appointed in and by the said precept for the appearance of the said freeholders, the said sheriff or his deputy, shall call over the said list of freeholders, and of those in attendance; the twelve whose names appear first upon the said list shall then and there be sworn as a jury by the said sheriff or his deputy, to the faithful discharge of the duties required of them by this act; and the said jury shall and may then proceed and lay out and set off at the place opened, or intended to be opened, within lands of any person or persons, so much thereof as in their opinion will be sufficient to sink a proper shaft, or pit, to come at the vein or veins of coals, and also sufficient for lodging and depositing whatever may be raised from such mine or mines, and whatever may be necessary to bring to such mine or mines for the purpose of opening and working the same to advantage; and the said freeholders shall, at the same time, lay out and mark so much of such lands adjoining to, or contiguous to, such shaft or pit, as in their judgement will be necessary to pass through for the purpose of making a sufficient drain or sough to draw off and carry away any water that may be found in such mine or mines, and also so much of such land as may be needful and necessary, for advantageously opening and making a road or way to or from the respective shafts or pits of any such mine or mines, to the nearest navigable sea water, navigable river, or public highway, whichever may be most convenient and useful for such mine or mines; and the said jury shall, also, assess such damages to the owner or owners, tenant or tenants, of such lands, according to their several interests therein, as the said jury shall think reasonable, and as such owner or tenant ought to receive for being deprived of the use and benefit of the lands laid off as aforesaid, and for the injury that may be done thereto, as also for the expense which may be imposed upon such owner or tenant for making fences or ditches for the purpose of separating all the lands laid off as aforesaid from other parts of the tract or tracts of land within which the lands so laid off are contained; and shall also fix and ascertain what may be a reasonable annual rent for the use and occupation of the lands off as aforesaid.

III. And be it further enacted, that a list or panel of the names of the said jury, shall be made out and annexed to the said precept; and that the verdict or finding of the said jury, ascertaining or fixing the said damages and rent, and expressing by, and to whom, the same are to be respectively paid, and at what time or times, shall be written and entered at the foot of the said list or panel, and shall be signed by each and every of the said jurors; and the said precept, with the said panel and verdict of the jury annexed thereto, shall be returned

by the said sheriff or his deputy into the said court of general sessions at the time at which the said precept is made returnable; and the said court of general sessions, upon the application of either of the parties interested in the said verdict or finding of the jury; shall and may confirm the same; and the said precept, and the verdict or finding of the jury thereupon, shall be filed of record in the said court; and when and so soon as the said person or persons, who shall be liable in and by the said verdict to pay the damages and annual rent fixed and ascertained therein, and shall enter into a bond or bonds to the person or persons respectively to whom the said annual rent is to be paid, for such sum and with such sureties as the said court of general sessions for such county or district shall approve, conditioned to pay yearly and every year the rent so fixed and established, so long as he or they shall continue to work such mine or mines, then, and in such case, the said court of general sessions shall make an order authorizing such person or persons to take possession of the lands set off as aforesaid, with the power to hold the same so long as he or they shall continue to work such mine or mines, and pay the stipulated annual rents.

IV. And be it further enacted, that it shall not be lawful for any person or persons to use all or any part of such lands so set off, for any other use or purpose whatsoever, except such only as shall be needful and necessary for making roads, opening drains, and building and erecting necessary works, and all other purposes necessarily connected with opening and working such mine or mines to the most profit and advantage; and that the person or persons so authorized as aforesaid, and all other persons employed in and about such mine or mines, shall use the said lands so set off as necessary to be sued for the purposes aforesaid, in such way and manner as will be least injurious to the owner or occupant, owners or occupants, of the said lands, or any other lands adjoining and contiguous thereto.

V. And be it further enacted, that it shall be lawful for the person or persons to whom possession of any lands shall be given under this act, to make and repair the road and way laid out to and from such mine or mines, and to build and erect thereon railways, or any other contrivances needful to facilitate the transportation of the articles necessary to be carried to and from the same; and also to build and erect on the ground set off for the use of the shaft, houses, sheds and buildings, to shelter and cover the workmen, and any articles needful and necessary to be used in and about the premises.

VI. And be it further enacted, that the person or persons erecting or building any engine, machine, railway, house, shed, or other buildings, on the lands, or any part thereof, which may be set off to him or them as aforesaid, shall be at liberty during his or their occupancy thereof, to take down the same, and to remove the materials thereof, if he or they shall think proper, notwithstanding such buildings and erections may be considered in law as attached to the freehold; and the owner or owners of all the lands set off under the authority of this act, for the use and accommodation of any mine or mines, shall be entitled to take possession of all such lands, so set off, in case the working of the mine, for the use of which such lands may have been appropriated, shall have ceased for a period of six months next before the taking such possession, unless the working thereof shall have received any temporary interruption from any unforeseen accident; and it shall be lawful for such owner

or owners to hold such lands so taken possession of, as in his or their first or former estate, any thing in this act, to the contrary thereof, notwithstanding. Provided always, that before any such possession be taken, reasonable notice be given, and time allowed, to the person or persons working any such mine or mines, to remove all his or their effects and materials of every kind, from off the premises.

VII. And be it further enacted, that in case it may be found expedient to re-commence working any mine after the lands set off for the use thereof shall have been taken possession of by the owner or owners as aforesaid, or in case it may be found necessary to alter, change, or add to the quantity of land set off under the authority of this act for the use of any mine or mines, in either case, the same course of proceedings shall be adopted and followed that is directed by this act to be observed in the first instance.

VIII. And be it further enacted, that in case any change of the persons, authorized to work any mine or mines, may, from time to time take place, or any failure of the sureties joined in any bond or bonds directed to be taken as aforesaid may happen, it shall and may be lawful for the justices in sessions as aforesaid, if they shall see just cause and sufficient reason so to do, on the application of either part, to order other bonds to be entered into, it being the intent and meaning of this act, that the owner of the said, while kept out of possession, shall be regularly paid the compensation allowed him by this act, and if the party required to give such bond, shall neglect or refuse to give the same at the time appointed, it shall and may be lawful for the said justices to order, that possession should be restored to the original owner or owners of such lands, who are at liberty after such order to sue for the possession, together with whatever compensation may be due for the time possession of any such land may be held, after such bond or bonds ought to have been given.

IX. And be it further enacted, that all cost and expence attending the carrying this act, or any part thereof, into effect, shall be paid by the party authorized as aforesaid, to open and work any mine or mines.

X. Provided always, that nothing in this act contained, shall extend, or be construed so as to exchange, alter, take away, or diminish, any right, title, or interest which is now vested in the Crown, under and by virtue of any reservation or reservations heretofore made, or which hereafter may be made, in any grant or grants, patent or patents of land, whereby all coals, gold and silver, and other mines and minerals, are reserved to the king, his heirs, and successors; and it shall be lawful, notwithstanding this act, or any thing herein contained, for the king, his heirs and successors, and for all persons having lawful authority under him or them, whether as tenants or otherwise, to sue for, prosecute, maintain and defend, by all lawful ways and means, the title, rights and interest of the crown, under and by virtue of such reservations, in the same way, and by the same ways and means that the same might or could have been done, previous to the passing of this act.