

*At the General Assembly of the Province of Nova Scotia, begun and holden at Halifax, on Wednesday, the First day of February, 1826, in the Seventh year of the Reign of our Sovereign Lord George the Fourth, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith &c. &c. being the Sixth Session of the Twelfth General Assembly, convened in the said Province.*

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**An Act relating to Commissioners of Highways in Halifax, and certain other Places.**

Whereas, by virtue of several acts of the general assembly of this province, repealed during the present sessions, commissioners have been appointed for repairing the streets and highways in the town and peninsula of Halifax, and in the towns of Annapolis Royal, Windsor, Liverpool, Lunenburg, and Pictou, and it is expedient to provide for the continuance of the authority vested in the said commissioners—

I. Be it therefore enacted, by the Lieutenant-Governor, Council and Assembly, that the several and respective persons who now are commissioners for repairing, keeping in repair, and paving the streets and highways in the town and peninsula of Halifax, and in the towns of Annapolis Royal, Windsor, Liverpool, Lunenburg, and Pictou, respectively, during the pleasure of the Governor, Lieutenant-Governor, or the Commander in Chief, for the time being, for the purpose and in the manner prescribed by this act; and upon the death, removal, or refusal to act, of any one of the Commissioners for either of the said places, it shall be lawful for the Governor, Lieutenant-Governor, or Commander in Chief, for the time being, with the advice of His Majesty's council, to appoint some respectable inhabitant and freeholder of the town or place where the vacancy occurs, to supply the same; and such appointment to renew whenever necessary, to the end that the said commissioners for each of the said places, may continue to be, in number, five for Halifax, and three for the other towns.

II. And be it further enacted, that the jurisdictions, powers and authority, of the commissioners of the said several towns, shall be respectively confined and restricted to the bounds and limits following, that is to say:—

For Halifax – to the town and peninsula of Halifax, the Dutch Village, and to the road leading round Bedford Basin to Sackville Bridge.

For Annapolis Royal – to such parts of the said town as extend eastwardly to the intersection of the main road to Halifax, by that which leads to the Dalhousie Settlement; southwardly, to the General's Bridge, so called; westwardly to Allen's Creek, so called; and northwardly to Hog Island, including the same.

For Windsor – for such parts of that town as extend from the island, called Smith's Island, to the northward and eastward, as far as the bridge over the Trecothie Creek [Trecothic Creek];

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on the main road leading out of the town of Windsor as far as the church; and on the southward and westward to the Falmouth Ferry.

For the town of Liverpool – to such parts thereof, as extend from Fort Point by the western side of Liverpool Harbour, to the bridge crossing the main road, leading to the falls, near Moore’s tan-yard; thence south-west one mile; thence south-east one mile; thence north-east until it strikes the harbour of Liverpool, and thence by the said harbour to Fort Point aforesaid.

For the town of Lunenburg – to such parts thereof as extend east to the Garden Lots; south-west to Burn’s tan-yard; west to Fenner’s tavern; and north to the bridge in the rear of the town.

And for the town of Pictou – to such parts thereof as extend from the west side of the town gut, so called; on the west to the west side line of the farm now occupied by David Lowden on the east; and from the waters of the harbour of Pictou on the south, to the rear line of the original lots laid out and fronting on the said harbour on the north.

III. And be it further enacted, that each of the places aforesaid, for which commissioners now are or shall hereafter be appointed, shall be by them divided into such and so many wards and divisions as they shall judge convenient, and such ward or division as each can respectively superintend, shall be assigned to him; and they shall appoint a clerk and a receiver of monies for their respective jurisdictions.

IV. And be it further enacted, that in every town or place, subject respectively to the jurisdiction of the commissioners of highways, appointed or to be appointed – it shall be the duty of such commissioners respectively, and they are hereby respectively required and authorized, to remove all obstructions and incumbrances, from time to time, being in or upon the streets, roads, or highways, within their respective limits; and to prevent all encroachments in or upon such streets, roads, or highways; and to manage, direct, and execute, all repairs, alterations and improvements, required thereupon; and to make and open new streets or highways, where the same shall be authorized to be made; and to make and repair all bridges now or hereafter to be erected: and to enforce and cause to be observed all the regulations and provisions, which by this act are, or hereafter shall be, enacted, or in force, touching such bridges or highways, or the work or labour to be performed thereon; and especially to ask, require, call out, levy, and receive, of and from the several persons inhabiting within their respective limits or jurisdiction, and liable to perform highway labour, and penalties or compositions therefor, as are hereinafter provided, or shall be hereafter due, payable, or to be performed, by any such inhabitants.—Any further, to prosecute for all offences committed against the provisions of this, or any future act relating to highways; and moreover in the name of the said commissioners respectively, to bring any action, or actions, against any person or persons, holding or receiving monies appropriated to the repair of streets, roads, or highways, or refusing, or neglecting to pay, or satisfy, any fine or penalty appropriated thereto; or his, her, or their proportion of any rate or

assessment of monies for highway work, or commutation or compensation therefor, or refusing, or neglecting to perform his proportion of highway labour.

V. And be it further enacted, that in every suit to be prosecuted as aforesaid, the commissioners prosecuting the same shall have the like process and remedy for the penalty or sum sought to be recovered, as if the amount thereof were a private debt contracted with them respectively; and such suit shall be heard and determined in the courts, or before the justices, possessing jurisdiction over suits, for debts to the like amount.

VI. And be it further enacted, that every person within the jurisdiction of the respective commissioners aforesaid, keeping any cart, team or truck, shall send on every day appointed by the commissioners, one cart, team or truck, with two oxen or two horses, or with one horse in case he owns no more, and one able man to drive the same, for four days in every year; to work on the highways, roads, streets or bridges, allowing eight hours to each day's work; and such person not attending, or neglecting to perform the said duty, shall forfeit for every day's neglect, if owning two or more horses, ten shillings; and if owning only one horse, seven shillings; and that every other householder, or other person, able of body, between the ages of sixteen and sixty, not being a military person, or holding a commission from His Majesty in the military or civil departments of the army, or an hired servant, minor, apprentice, journeyman or day-labourer, shall, on every day appointed as aforesaid, either by himself or other sufficient person, to be hired by him, and provided with such necessary implements as shall be directed by the said commissioners, work and continue so to do for the space of six days in every year, on the said highways, roads, streets or bridges, within the town or place where they respectively reside. And every hired servant, minor, apprentice, journeyman and day labourer, shall, on every day appointed as aforesaid, either by himself or other sufficient person, and provided with necessary implements as aforesaid, work and continue so to do, for the space of two days, on the said highways, roads, streets or bridges, within the town or place where they respectively reside; and such householder, hired servant, minor, apprentice, day labourer or other person, not attending, or neglecting to perform the said labour, shall forfeit three shillings for every day's neglect.

VII. And be it further enacted, that all persons keeping carts, teams or trucks, who, by being sixty years old or upwards, are exempt from labouring on the said highways, or roads, shall nevertheless, when summoned so to do, send their carts, teams or trucks, for four days, to assist in making and repairing the same.

VIII. And be it further enacted, that it shall and may be lawful for the said commissioners, to order and direct the inhabitants on the respective districts, as often as they shall deem necessary during the winter, to work on the public highways with their horses, oxen and sleds, in order that the roads may be rendered passable. And every inhabitant refusing or neglecting to obey such order, shall forfeit for each refusal or neglect, the sum of ten shillings. Provided always nevertheless, that no inhabitant shall be compelled to furnish more than one day's labour of himself or cattle for any one fall of snow, or to work in any case where the fall or drift of snow shall not exceed the depth of twelve inches.

And whereas, the labour of men may, in certain places, be more useful than the employing teams, carts or trucks:

IX. Be it therefore enacted, that when the said commissioners shall judge the labour of men more useful or necessary than the employment of carts, teams, or trucks, then and in every such case, the persons who by this act are required to furnish carts, teams or trucks, shall instead thereof be, and they are hereby required, under the like penalties, to send two labouring men, provided with necessary implements as aforesaid, to labour during the time appointed as aforesaid.

X. And be it further enacted, that every person resident in the town or peninsula of Halifax, and keeping carts or trucks, with more than two horses, shall, besides the performance of highway labour, with a cart or truck, horse or horses, and man to attend the same, during four days as hereinbefore provided, be subject and liable to pay for the additional horses so kept above the number of two, the following sums, that is to say, for a third horse, seven shillings, and for a fourth and every other horse, five shillings each.

XI. And be it further enacted, that every person resident as last aforesaid, who may keep horses not employed with carts or trucks, or for which he may not be subject to the labour or payments herein-before provided, shall pay for such horses annually as follows – for one horse, seven shillings; for each additional horse, five shillings.

XII. And be it further enacted, that the constables for the several towns and places aforesaid, shall make out lists of all such persons who are owners of horses, teams, carts or trucks; as also of every other householder and other persons liable to perform labour under this act, within the respective districts of the said commissioners, and deliver the same to them; and when required by them respectively, such constables shall summon the persons contained in such lists, to meet on such days, and at such places as the said commissioners shall direct, to perform the labour required by this act.

XIII. And be it further enacted, that the said respective commissioners shall at the most reasonable time, between the first day of April and the first day of November, yearly, (seed time and harvest in all the said places, save the town of Halifax, excepted) cause the persons contained in their lists respectively to be summoned, giving them at least six days notice of the time and place where they are to be employed, and shall there oversee and order the persons so summoned, to labour in making and repairing the highways, roads, streets and bridges, within the jurisdiction of the said commissioners respectively, in such manner as the said commissioners shall deem most useful and necessary, during the time, by this act required, for the performance of highway labour; and the said commissioners shall be excused from any other service on the highways.

XIV. And be it further enacted, that the said commissioners, or the major part of them, shall and may, from time to time, order and direct the streets and lanes, or any of them, within

their respective wards or divisions, to be cleaned, repaired, raised, sunk, altered, or paved, as they may think best; and also cause to be dug, gathered, and carried out of, or brought into, the said streets, lanes and roads, such gravel, stones, earth, or other materials, from the shores of the harbours within their respective jurisdictions, provided the same be done with as little injury as possible to the proprietor or proprietors of the soil; and shall and may also employ boatmen, carts, workmen, and labourers, and pay and satisfy them for their services as they shall judge necessary and conducive to the accomplishing the ends and designs of this act; and also make contracts with any fit persons for the repairing and paving the streets, highways and lanes, within their jurisdictions respectively, or any part thereof, on the best terms that can be procured for the public; and shall and may, if they think proper, bargain or compound with any of the inhabitants by the year for such sum or sums of money as the said commissioners may think reasonable for the share or proportion of highway labour, or payments required by this act, from such inhabitants, for and towards the repairing, paving, or keeping in repair, the said streets or highways, provided such composition money be paid in advance; and shall also have power and authority to put up bars or fences, to shut up any street, streets or highways, while the same are undergoing repairs, by paving or otherwise.

XV. And be it further enacted, that the said commissioners respectively, shall have power to raise, sink, alter, or new lay, any drain, water courses, pipes or common sewers, as often and in such places, as they may think proper, provided the same be done with as little detriment and inconvenience to the neighbours and others as the circumstances of the case will admit of; and the said commissioners may cause the course or direction of any gutter, water-course or channel, running in or through the said street or highways, to be turned or altered as they think proper.

XVI. And be it further enacted, that every person within the towns of Halifax, Annapolis Royal, Windsor, Liverpool, Lunenburg and Pictou, shall be obliged to keep the gutters and streets before the houses, building, or land, inhabited or occupied by him, her, or them, clear and free from dirt, filth and nuisances of every kind; and that whenever any earth, ashes, manure, stones, brick, shavings, chips, dirt, filth, offal, or any other thing, shall be found lying, thrown, or placed, in any of the said streets, lanes, or highways, the same person or persons, before or nearest whose house, building or land, the same shall be, shall forfeit and pay a fine of twenty shillings, together with the expense incurred by the said commissioners in removing the same; and the said commissioners, or any one of them, are hereby authorized to cause such earth, ashes, manure, stones, shavings, rubbish, dirt, filth or offal, to be instantly removed, without giving any notice to the owner or supposed owners thereof, or being at all answerable for the same. Provided always, that no person shall be liable to the said penalty, unless he shall have thrown or placed the said nuisance in the street, lane, or highway, where the same shall be found, or not having thrown or placed the same in the said street, lane or highway, shall suffer the same to continue for the space of twenty-four hours.

XVII. And provided always, and be it further enacted, that any person or persons, by leave of the said commissioners, may place or deposit in any such street, lanes, or highways, stones, bricks, timber, or other materials, for the purpose of building houses, or other work, and may set up, or erect posts, bars, or inclosures, for the better securing such materials, and continue the same for such time only as the commissioners, or the major part of them, may give leave, and in manner and form as they shall in writing direct, and no longer, on pain of forfeiture thereof.

XVIII. And be it further enacted, that it shall and may be lawful for the said commissioners, or the major part thereof, to cause any well or wells to be dug or sunk, and pumps to be therein placed, in any part of the streets and lanes, where they shall judge necessary and most convenient for the same to be placed, and constructed in such manner as the said commissioners may direct.

XIX. And be it further enacted, that the said commissioners shall cause all sign posts, show glasses, show boards, porches, steps, fences, cellar doors, and all and every other material, matter or thing, belonging to any house, warehouse, shop, cellar or building, or to any lot of ground or inclosure, which cause or occasion any nuisance, annoyance, encroachment, or obstruction, in any of the streets, lanes and highways, within the respective jurisdiction of the said commissioners, to be wholly removed, or otherwise to be placed or altered in such manner and form as shall be approved by them, or the surveyor employed by them; and, in case it can be done without any particular inconvenience to the public, shall and may permit and suffer the same to remain.—Provided, the owners or proprietors thereof, or any of them, will give security that the same shall not be repaired, or again rebuilt; and also, to pay and satisfy to the said commissioners, or the major part of them, a reasonable yearly ground rent, for the part of the streets so encroached on, to the satisfaction of said commissioners, during the continuance of such encroachment.

XX. And be it further enacted, that every person or persons intending to erect any building upon, or close to the line of any street or highway within the jurisdiction of such commissioners respectively, shall, before digging a foundation, or beginning to erect such building, make application to the said commissioners to cause the line of such street or highway to be defined and laid out, and shall dig such foundation, and erect such building, within the said line, so as to avoid making any encroachment upon such street or highway; and if it shall be necessary to employ a surveyor on such occasion, the expense of such surveyor shall be defrayed by the person or persons so intending to build as aforesaid; and if any person or persons shall erect any building upon the line of any such street or highway, without making application, and having the line thereof ascertained as aforesaid, he, she or they, shall forfeit and pay the sum of ten pounds, to be recovered and applied for the purposes of this act, and shall also remove such building, if it shall be found to have encroached upon any such street or highway, or otherwise the said commissioners shall and may proceed to remove the same, or take such other steps as are allowed by law in cases of common nuisance.

XXI. And be it further enacted, that when and so often as the commissioners shall have proceeded as directed by this act, to ascertain the line of any street, lane, or highway, for any person or persons about to erect any building thereon, and the person or persons about to build, shall be dissatisfied with the line pointed out by the said commissioners, it shall and may be lawful for the Chief-Justice, or any other judge of the supreme court, in term time, or during vacation, upon the application of the commissioners or the person or persons so dissatisfied, to issue a precept to the sheriff of the county, or his deputy, to summon a jury of the freeholders nowise interested in establishing or altering the line of the said street, to meet at some convenient day therein mentioned, to view and lay out the line of such street, or lane, or highway, who shall have an oath administered to them by the judge who shall issue the precept, well and truly to lay out and fix the line of such street, lane, or highway, according to the best of their skill and judgment, and the witnesses, if any shall be offered by either party, shall be sworn before the said judge; and if the jurors, or either of the parties shall require it, a new survey shall be made of the line of such street, lane, or highway, which being done, the sheriff or his deputy shall make a return forthwith, under the hands of himself and the jurors, to the judge, who having approved and confirmed the same, shall direct the said return to be filed in the office of the prothonotary of the supreme court, and an exemplification thereof to be deposited in the office of the surveyor-general. Provided always, that if the said judge shall not approve and confirm the said return, a new precept may be issued for the purposes aforesaid, and the said judge shall direct by whom the costs and expenses of the said proceedings shall be paid, which said costs and expenses shall be taxed, and shall in no case exceed ten pounds.

XXII. And be it further enacted, that no person shall be at liberty to dig up or break open the soil of any street, or highway, within the jurisdiction of the said commissioners respectively, without first applying to them and obtaining their permission in writing, specifying the purpose for which such breaking of the soil is required; and the said commissioners may impose such terms upon the person applying, as the security of passengers, by day or night, shall appear to them to require; and any person acting contrary hereto, or to the terms imposed by the said commissioners, shall forfeit and pay five pounds for every such offence.

And whereas it is necessary to provide for the preservation of the side paths or ways, which are or hereafter may be made along any public street or highway, within the respective towns and places aforesaid:

XXIII. Be it therefore enacted, that every person who shall drive any cart, truck or carriage, or ride with a horse upon or over any such side path or way, or roll heavy articles of any description over, or place the same thereupon, to the injury or obstruction of such side paths or ways – such person, so offending, shall for every such offence forfeit and pay a fine not exceeding forty shillings, and not less than five shillings; to be recovered with costs, in the manner, and to be applied as aforesaid.

XXIV. And be it further enacted, that in addition to the rates, duties, and services, by law imposed for the making and repairing of streets and highways, within the jurisdiction

aforesaid, it shall and may be lawful for the treasurer of each county, for the time being, in which the said commissioners have jurisdiction, and he is hereby required to pay to the said commissioners respectively, out of the county treasury quarterly, three fifths parts of the monies arising from the duty from time to time collected on licensed houses and shops, within the respective jurisdictions aforesaid, to be applied by the said commissioners for the purposes of this act, and within their jurisdiction aforesaid.

XXV. And be it further enacted, that the said commissioners respectively shall keep a regular and exact amount of all monies received by them, and of all services performed in the execution of this act, under their direction, within their respective jurisdictions, and shall, on or before the tenth day of February in every year, make up and render, under their hands, or the hands of the major part of them, in Halifax, to the treasurer of the province, and in the other places aforesaid to the court of general sessions of the peace, a general, regular and fair account, in writing, of all monies received and paid by them in the execution of, or under and by virtue of this act; and also of all services done and performed as aforesaid, and of the costs and expense of doing the same for the past year, to the end that the said account for Halifax may be audited and passed in the General Assembly at their next meeting; and the accounts in the other places aforesaid, be audited and passed by the said court of sessions.

XXVI. And be it further enacted, that no action or suit shall be commenced against any person or persons for any thing done in pursuance of this act, until twenty days notice thereof shall be given in writing, to one or more of the said commissioners, or after six calendar months next after the fact committed for which such action or suit shall be brought; and every such action shall be brought, laid and tried, in the county within which the commissioners have jurisdiction, and not elsewhere. And the defendant or defendants, in such suit or action, may tender amends, or may plead the general issue, and give this act, and the special matter, in evidence at any trial to be held thereupon: and if the matter or thing shall appear to have been done in pursuance of this act; or if it shall appear that the said action or suit was brought before the twenty days notice thereof given as aforesaid, or that sufficient amends were tendered, or if the action or suit shall not be commenced within the time herein limited, or within the county aforesaid – then the jury shall find for the defendant or defendants; and if a verdict shall be given for the defendant or defendants, or if the plaintiff or plaintiffs in such actions shall become nonsuit, or suffer a discontinuance thereof, or if upon any demurrer or demurrers in such action or actions, judgment shall be given for the defendant or defendants, then and in either of the cases aforesaid, such defendant or defendants shall recover treble costs, and have judgment therefor accordingly.

And whereas the main public road, leading from Halifax to Sackville Bridge, is frequently encumbered and obstructed, to the great annoyance and danger of travellers and passengers on the road – for remedy whereof,

XXXVII. Be it enacted, that all logs, spars, bark, scantling, boards, planks, slabs, cordwood, hoop poles, staves, laths, fending materials, stones, and timber of any kind, which shall be found in the ditches or track of the said road, between M'Alpine's house and the Sackville

Bridge, shall be ipso facto forfeited; and it shall and may be lawful for the said commissioners for Halifax, or any of them, without any suit or process of law whatsoever, to cause all articles so found to be instantly seized and disposed of in such way or manner, as they shall think proper; and if the same shall be sold, the proceeds of such sale shall be applied by the said commissioners for the repair and improvement of the said road.

XXVIII. And be it further enacted, that the commissioners, appointed or to be appointed under this act, shall, within their respective jurisdictions aforesaid, have and exercise all powers and authorities which are now, or hereafter may be, vested in any surveyor or surveyors of highways, and that no surveyor or surveyors of highways shall have, exercise or enjoy, any power or authority whatsoever within the respective places or jurisdictions aforesaid, but the same shall be wholly suspended during the operation of this act.

XXIX. And be it further enacted, that the act of the General Assembly of this province, made and passed in the forty-first year of the reign of His late Majesty King George the Third, entitled, "An Act for the repairing, keeping in repair, cleaning and paving, the Streets in the Town and Peninsula of Halifax, and for removing obstructions therein, and also to suspend the power and authority vested in the Surveyors of Highways within the Town and Peninsula of Halifax, after the first day of August next, during the operation of this act;" and also the act, passed in the forty-second year of the same reign, entitled, "An Act in addition to the last recited Act; and also the Act, made and passed in the fifty-eighth year of the same reign, entitled, 'An Act in addition to and in amendment of the first mentioned Act,'" and every matter, clause and thing, in the said acts respectively contained, be, and the same are hereby, repealed.

XXX. And be it further enacted, that the act, passed in the third year of His present Majesty's reign, entitled, "An Act to extend the act, passed in the forty-first year of His late Majesty's reign, entitled, 'An Act for the repairing, keeping in repair, cleansing and paving, the streets in the Town and Peninsula of Halifax,' to the Town of Windsor;" and also the act, passed in the same year of His present Majesty's reign, to extend the said recited act to the Towns of Liverpool and Lunenburg; and also the act, passed in the fourth year of His present Majesty's reign, to extend the same recited act to the towns of Pictou and Annapolis Royal, and every matter, clause and thing, in the said respective acts contained, be, and the same are hereby, repealed.