

of the city of St. John, or any or either of them in and by the charter of the said city, any thing herein contained to the contrary notwithstanding.

VI. *And be it further enacted*, That this act shall continue and be in force for two years from the publication thereof and no longer. And whereas there is no court of sessions at present establish'd in the county of Northumberland, *Be it further enacted*, That nothing in this act shall extend or be construed to extend to the said county of Northumberland.

Continuance of the act.

Not to extend to the county of Northumberland.

CAP. XXXII.

An ACT for laying out, repairing and amending HIGHWAYS, ROADS and STREETS, and for appointing COMMISSIONERS and SURVEYORS of HIGHWAYS within the several towns or parishes in this province.

WHEREAS the laying out and making roads for the more easy communication between different parts of this province, will be of great public utility and the laying out repairing and amending highways, roads and bridges in the respective counties is of great importance to the interest and general convenience of the inhabitants of this province.

Preamble.

II. *Be it enacted by the Governor Council and Assembly*, That *Amos Botsford, George Leonard, Zephaniah Kingsley, John Welden, William Anstrutber, James White, Jonathan Leavit, John Coffin, Oziab Ansley, Joshua Gidney, John Whitlock, Samuel Peabody, Elijah Miles, Robert Pagan, Jacob Buffington, James M^cNab, Edward Stelle, Garret Clepper, Robert Coalfrith and Simon Kollock*, be and are hereby appointed commissioners to view the ground and make a straight and perfect survey thereof as near as may be from the western or Carleton district of the city of Saint John, and from the town of Saint Andrew's in the county of Charlotte, and from the town of Sackville in the county of Westmorland, to the town of Fredericton in York county, thro' the counties of King's, Queen's and Sunbury, and also a road of communication from the said town of Sackville to the city of Saint John and between the river Miramichi and the river Saint John, for which purpose and more effectually to enable the said commissioners or any three of them to execute the service

Commissioners.

To view and survey the ground from the western district of St. John, from Sackville & from Sackville to Fredericton and also a road of communication from Sackville to the city of St. John and between the river Miramichi and St. John.

To call to their assistance surveyors and chain carriers.

service and trust in them reposed by this act it shall and may be lawful for the said commissioners or any three of them to call to their assistance one or more surveyors, and as many chain carriers as they shall think necessary, who are hereby empowered and directed to enter upon and pass any lands through which the straight roads as near as may be from and to the places aforesaid may run, or they may have occasion to travel over.

Carefully to view the nature of the country &c. to return at the next sessions of Assembly, maps &c. with an estimate of expense thereof and damage to individuals.

III. *And be it further enacted*, That the acting commissioners shall carefully view the nature of the country thro' which they pass, the fitness of the soil for roads and the streams over which bridges may be erected to make the roads commodious, and that the said commissioners shall at the next sessions of the Assembly return under their hands true and perfect maps and surveys of the lines to and from the places aforesaid, or with such alterations of the straight lines as they may judge will make the roads more practicable with an estimate of the expense of the whole and several parts thereof, and also of the damage it may occasion to any person thro' whose lands they may pass.

To receive donations, to keep accounts thereof and apply the same.

IV. *And be it further enacted*, That to enable the commissioners or the major part of them, to carry the objects of this law more immediately into execution, by clearing and making the several roads so to be laid out or either of them and to defray the expenses attending the same it shall and may be lawful to and for the said commissioners or any of them to ask and receive from any person or persons, gifts or donations, for all or either of the said roads, of which they are to keep particular accounts and apply the same accordingly; and the commissioners shall be under oath for the due and impartial performance of their duties, and shall render and lay before the assembly to whom they are hereby made accountable, a just and true account of the donations received and the several disbursements and sums of money laid out and expended for the uses and purposes herein before-mentioned. And provision shall be made at the next session of the assembly for defraying the expenses of viewing, surveying, and marking the said roads; and the roads so to be marked and laid out shall be common public highways.

To be sworn.

To lay before the Assembly an account of donations and disbursements.

Expenses of viewing &c. provided for next sessions. Roads to be marked &c. shall be common public highways.

Courts of sessions, next after first of January annually, to appoint commissioners of highways, in towns and surveyors of highways.

V. *And be it further enacted*, That the justices at their general quarter sessions held for the several counties next after the first of January annually, shall appoint three fit persons to be commissioners to lay out and regulate highways in the town or parish for which they shall be so appointed. And the said justices at the same time shall appoint a number of fit persons not exceeding six nor less than three to be surveyors of the highways in each town or parish, who are to oversee, repair and keep in order the several highways within the respective towns or parishes for which they shall be so appointed, which said commissioners and surveyors shall

Said commi-

be

be sworn to the faithful discharge of their respective offices for the year ensuing before the said sessions, or before any one of the justices of the peace, within or nearest to the said town for which such commissioners or surveyors shall be so appointed, and any person being so nominated and appointed, who shall refuse to accept of such office to which he shall be so nominated and appointed, or shall neglect to be sworn as aforesaid within fourteen days next after such nomination, or having accepted shall neglect his duty, shall forfeit for every refusal or neglect, five pounds, to be recovered by bill, plaint or information in any of his Majesty's courts of record, and the forfeiture shall be applied for the repairing of the highways.

Commissioners and surveyors to be sworn.

On refusal or neglect to be sworn within 14 days or neglect of duty when sworn to forfeit £5.

VI. *And be it further enacted*, That the commissioners or the major part of them in the respective towns or parishes for which they shall be appointed commissioners are hereby empowered and authorized to regulate the roads already laid out, and if any of them shall appear inconvenient, and an alteration absolutely necessary, and the same be certified upon oath by twelve principal freeholders of the county, to be summoned by the high sheriff, his deputy or any constable in the county by virtue of a warrant to be issued by two justices of the peace for that purpose, the commissioners may, provided they all judge it absolutely necessary, alter the same and also lay out such other public highways and roads as they or the major part of them shall think most convenient, as well for travellers as for the inhabitants of each town or parish and the next adjacent towns, villages and neighbourhoods, which highways and roads so laid out shall be common public highways.

Such town commissioners, or certificate of 12 freeholders, may alter highways and lay out others.

VII. *And be it further enacted*, That if any person or persons within the said county do or shall hereafter alter, stop up, or encroach on any street, or highway, or road, that shall be laid out by the commissioners to be nominated and appointed by virtue of this act, by laying timber, wood, carts, trucks, or any things thereon, such person so offending contrary to the meaning of this act shall for every such offence forfeit the sum of forty shillings to be recovered before any one justice of the peace upon the oath of one or more credible witness or witnesses and levied by warrant directed to the constable of the town or parish where such offence shall be committed, by distraining the goods and chattels of the offenders, or in case such offender shall not be known or found, the same shall be recover'd by sale of so much of the timber or wood, and the carts, trucks, or other things incumbering or stopping the way in such road or street as aforesaid. And the said constable after public notice is given by him of the felling of such distress shall make sale thereof and out of the produce shall pay the forfeitures and charges, and return the overplus if any there be

Persons altering &c. any streets, highways or roads, by laying timber &c. thereon, to forfeit 40s.

If offenders are not known, such timber, &c. to be sold.

Constable after public notice given, to sell goods &c. to pay such forfeitures and charges and

to return over-
plus to the
owner.

Nuisances con-
tinued, liable to
same penalty.

Width of roads
left to discretion
of commission-
ers, if not more
than 8 or less
than 4 rods.

Roads &c. in
counties shall be
cleared &c. by
male inhabi-
tants from 16 to
60 years of age,
who are obliged
to work thereon
by themselves or
others.

Persons keeping
carts, &c. shall
when directed
by surveyors,
send one cart,
waggon or truck
with two oxen
or horses and an
able man, four
days every year,
to work at high-
ways, &c.
For not attend-
ing or neglect of
duty to forfeit
10l.
Other inhabi-
tants, not being
hired servants
for a year, to
work six days, or
forfeit 3l. for
each day's ne-
glect.

Surveyors to
keep a list of
owners of wag-
gons, &c. and
of others, and
an account of
the time they
have worked.

Person neglect-
ing to work with
waggon, &c. to
forfeit 1s. an
hour and others
6s.

to the owner or owners thereof, when found, which said forfeiture shall be applied by the commissioners for and towards the repairing the public roads or highways within the town or parish where the same may arise. And if the said nuisance shall continue the same shall be deemed a new offence and shall be prosecuted and liable to the penalty aforesaid.

VIII. *And be it further enacted*, That the width of all roads hereafter to be laid out shall be left to the discretion of the commissioners for the time being of the town or parish where such roads may be laid out, so that they do not exceed in breadth eight rods, and are not less than four rods.

IX. *And be it further enacted*, That the roads and highways within each county shall be cleared, repaired and maintained by the inhabitants thereof. And that every male inhabitant between the age of sixteen years and sixty years, shall either in person or by an able, sufficient man in his room, be oblig'd to work upon the highways.

X. *And be it further enacted*, That every person within each town, keeping any cart, team, or truck, shall send on every day appointed by the said surveyors of highways, one cart, or waggon; or truck, with two oxen, or two horses, and one able man to drive the same, for four days in every year, to work on the highway roads, streets or bridges, allowing ten 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, ten shillings, and that every other inhabitant not being an hired servant for a year, shall on every day appointed as aforesaid, either by himself or other sufficient person to be hired by him, provided with such necessary implements as shall be directed by the said surveyor, work for the space of six days in every year, allowing ten hours to each day's work on the said highway roads, streets or bridges, within the town or parish where they respectively dwell, and such persons not attending or neglecting to perform the said duty shall forfeit three shillings for every day's neglect, which forfeitures shall be recovered before any one justice of the peace in manner and to the uses before-mentioned.

XI. *And be it further enacted*, That the said surveyors of the highways shall make out and keep a list of all such persons who are owners of waggons, carts, or trucks, as also of every other inhabitant within their respective towns or parishes, and shall keep an exact account of the time that every such person shall have worked, and for every hour which any person shall neglect to work with his waggon, cart or truck as aforesaid, he shall forfeit and pay the sum of one shilling to the said surveyors, and for every hour every other inhabitant shall neglect to work, he shall forfeit and

pay

pay the sum of six-pence, and in case such forfeitures shall not be paid within eight days after such default, they shall be recovered before any one justice of the peace and applied in manner before-mentioned.

XII. *And be it further enacted*, That the said surveyors of the highways shall and are hereby empowered in the fittest and most seasonable time, between the first day of April and the first of November yearly (seed time and harvest only excepted) to summon the inhabitants contained in their list respectively, 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, mending or repairing, the highways, roads, streets, and bridges, in the most useful manner, during the number of days appointed by this act for each person to labour, and the surveyors of highways shall themselves be excused from any other service on the highways than the summoning, ordering and directing thereof. And when any surveyor of highways shall judge the labour of men more useful and necessary than the use of carts, waggons, or trucks, the persons who by this act are to furnish carts, waggons, or trucks, shall be obliged under the like penalty to send two labouring men instead thereof, furnish'd with necessary implements as aforesaid. *Provided*, That upon application to two of his Majesty's justices of the peace the said justices shall and may in their discretion lessen the number of days labour to be performed by such men as cannot without detriment to their families attend the same. And all persons keeping carts, waggons, or trucks, who by being sixty years old or upwards, are exempted from labouring themselves on the said highways or roads, shall nevertheless send their carts, waggons, or trucks, as aforesaid, to assist in making or repairing the same.

Surveyors to summon persons to work at highways, &c. between first of April and first of November.
Six days notice.

Surveyors exempt from other service than summoning, &c. Persons liable to furnish waggons, &c. to send two labourers instead thereof, if required.

Two justices may lessen the number of days in cases of necessity.

Persons 60 years old not exempt from sending carts, &c.

XIII. *And be it further enacted*, That the said commissioners for the time being, shall and may as they shall judge proper and necessary, divide their respective towns or parishes into districts, which they shall allot to the said surveyors in such town or parish as they shall judge most convenient the highways, roads, streets, and bridges in which district such surveyors shall respectively oversee, repair and keep in order. And every surveyor in each district shall on or before the first Tuesday in December in every year, deliver under oath to one or more of the commissioners of the town or parish to which he doth belong, an account of the labour done on the highways within his district, and shall take an oath before the said commissioner, who is hereby empowered to administer the same in the words following, viz. I A. B. Do swear, that this account now delivered by me contains the names of all the persons within my district which by law are oblig'd to work

Commissioners may divide towns into districts, & allot the same to the surveyors.

Surveyors, on or before first Tuesday in December annually, to deliver to commissioners an account of labour done. Commissioners empowered to swear surveyors. Oath.

work on highways that each person therein named has worked agreeable to law six days since the first day of April last, or four days with his cart, waggon, or truck, to the amount of ten hours in each day, or I have laid out or disposed of agreeable to law, the fines of such persons as have not work'd and the monies by me received for excusing persons from working according to the best of my knowledge and belief. *So help me God.*" And if any surveyor shall neglect or refuse to deliver an account, or take the oath hereby required, he shall forfeit the sum of five pounds, to be recovered before any one justice of the peace, and applied in manner herein before-mentioned. *Provided nevertheless,* That if any inhabitant who by this act is obliged to work on highways shall remove into any surveyor's district, or any person shall remove out after the said surveyor has work'd part of his time, the said surveyor shall make such exception in his account and oath, according to the number of days every such person did work.

Surveyors refusing to deliver an account or to take the oath shall forfeit £5.

Surveyors to make exception in their oath, according to number of days worked by persons removing to or from their districts.

Trees in highways to belong to owners of the land, but to be used if necessary.

XIV. *And be it further enacted,* That all trees that stand in any highway which shall be laid out thro' any person's land shall belong to the owner or owners thereof, but the said owner shall not hinder the public from making use of so much timber, which is standing or lying on the road as will make and repair the same, the principal timber trees to be reserved for the owner, unless absolutely necessary for the road.

Commissioners to make entries in writing of highways, &c. and return the same to the clerk of the peace.

XV. *And be it further enacted,* That the commissioners for each town or parish for which they shall be appointed, shall from time to time enter in writing all the highways or roads laid out or altered, and sign the same, and make a return thereof into the office of the clerk of the peace, for the county in which such highways or roads are laid out, to be by such clerk entered in a book kept for that purpose, and whatsoever the said commissioners shall do according to the powers given them in this act, being so entered, shall be valid and good to all intents and purposes whatsoever.

Commissioners may order surveyors to work on any road.

XVI. *And be it further enacted,* That the said commissioners for any town or parish, or the major part of them, for the time being may order any surveyor, in such town or parish, to work upon any road or highway within his district that they shall think necessary, the number of days he is oblig'd to work by this act, and such surveyor shall within eight days thereafter, warn and set to work the persons within his district who are oblig'd to work upon high-ways, upon that part of the road or highway which he shall be so ordered to amend or lay out. And if any surveyor shall neglect or refuse to warn and set to work the persons aforesaid of his district, to lay out or amend such road or highway as he shall be so ordered to lay out or amend, he shall for every such

Surveyors shall within 8 days warn and set persons to work on the roads so ordered.

Surveyors neglecting or refusing to warn and set to work the persons of

neglect

neglect or refusal forfeit forty shillings, to be recovered as aforesaid, before any one of his Majesty's justices of the peace within the county and applied by such commissioners to the purposes herein before-mentioned.

their districts on the roads so ordered shall forfeit 40s.

XVII. And whereas it may be necessary to lay out private roads within the severall counties in this province. *Be it further enacted*, That upon application to the commissioners appointed as aforesaid for any town or parish for a private road, such commissioners shall view the same, and if they are of opinion such road is absolutely necessary, and twelve principal freeholders to be summoned in manner as aforesaid, under oath, shall be of the same opinion, the said commissioners are hereby empowered to lay out such road: *Provided*, That they shall not lay out such road through any persons land without the consent of the owner or owners thereof, or agreeing with and paying to him or them the value of the land so to be laid out into such highway with such damages as he or they may sustain by said road, and in case they cannot agree then the true value shall be set and appraised by the justices of the peace issuing such warrant as aforesaid for the summoning such freeholders, and by the oath of the said freeholders so summoned, and all the expences and charges attending the said road, shall be paid by the person or persons applying for the same, and the said road when laid out shall be for the only use of the person or persons who shall pay for the same, his and their heirs and assigns, but for no other use and purpose than that of a road. *Provided always*, That the owner or owners of the land through which such private road may be laid, shall not be prevented from making use of such road if he shall signify his intention of making use of the same at the time when the jury are to ascertain the value of the land and the damages by means of laying out such road. *Provided also*, That no such private road shall be laid out more than two rods wide, against the consent of the owner or owners of the lands thro' which the same is to pass.

Commissioners may lay out private roads, if all found necessary by 12 freeholders.

Such private road not to be laid through any person's land without consent of owner or paying for the land taken into said road and damages.

If value of land &c. cannot be agreed on, the same to be set by the justices issuing warrant to summon such freeholders and by their oath and expences, &c. to be paid by person applying for the road and to be wholly for their use as a road.

Owners of land where private roads are laid may use such roads if they signify their intention to the jury.

No private road to be more than two rods wide without consent of the owner of the land where laid.

XVIII. *And be it further enacted*, That if any public road hereafter to be laid out by virtue of this act, shall pass thro' any improved lands where the damage to the owner or owners of such lands by means of such road shall be greater than the allowance made for roads in the grants of such lands, which shall be ascertained by a jury to be summoned in manner first herein before mentioned; or if such road shall occasion the removal of any buildings, then and in such cases the damage to the owner or owners of such lands shall be ascertained by such juries, and shall be paid as other contingent charges of the county are paid.

Damages occasioned by public roads passing thro' improved lands, exceeding the allowance in the grants or by the removal of buildings, to be ascertained by a jury and paid as other contingent county charges.

XIX. *And be it further enacted*, That in such of the counties in this province, where the court of general quarter sessions of the peace has been already held, - since the first day of January in

In counties where court of sessions has been held since first of January in this

year or before publication of this act, the justices may hold special sessions to appoint commissioners, &c.

this year, or shall be held before the publication of this act, it shall and may be lawful for the justices of the sessions in such counties as soon as conveniently may be after the publication of this act, to hold a special sessions and to appoint commissioners and surveyors for the towns or parishes in their respective counties, for the purposes herein before-mentioned, to serve for the present year and no longer, which commissioners and surveyors shall have all the powers and authorities and be subject to the same regulations, rules, restrictions, penalties and forfeitures to all intents and purposes as if they had been appointed at the stated session, agreeable to the directions of this act.

CAP. XXXIII

An ACT for regulating and facilitating the NAVIGATION of the RIVER SAINT JOHN, and other RIVERS in this PROVINCE.

Preamble.

WHEREAS the navigation of the river Saint John, and other rivers in this province, and particularly in those parts thereof where from the rapids, and for other causes, it is often found necessary to tow small vessels, boats, and rafts of lumber, along the sides, and near the shores of said rivers, is often obstructed by felling trees, standing on the banks of said rivers, and by casting and leaving the same across said banks; partly on the banks, and partly in said rivers, and by logs, and other heavy bodies being deposited and lodged by the freshes and otherwise, on said banks, and on the shores of said rivers.

Commissioners and surveyors of roads to be surveyors of rivers, and empowered to clear rivers, &c. of incumbrances, &c.

II. *Be it enacted by the Governor, Council and Assembly*, That the commissioners and surveyors of roads that shall be annually appointed or chosen in the several towns or parishes, in the respective counties in this province, shall be surveyors of rivers, who shall take care that all rivers, and the banks and shores thereof, within the respective districts assigned them, be cleared of all such incumbrances and obstructions to the navigation thereof, that they may be safe and convenient for the aforesaid purposes of passing up and down the same, with small vessels, boats and rafts of lumber, in manner as aforesaid, and the surveyors are hereby empowered to cut down, dig up and remove all sorts of trees, bushes, or other thing or things, that may any way straiten, hurt, hinder, incommode, impede, or obstruct the navigation of said rivers with small vessels, boats, or rafts of lumber, by towing the same or otherwise; and to warn all labourers, owners of carriages, teams and boats, or other things fit and necessary to be employed for the above purposes.

To warn labourers, &c.

III.