

Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1786. Saint John, NB: J. Ryan, 1786.

26 George III – Chapter 32

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.

II. Be it enacted by the Governor Council and Assembly, That Amos Botsford, George Leonard, Zephaniah Kingsley, John Welden, William Anstruther, James White, Jonathan Leavit, John Coffin, Oziah Ansley, Joshua Gidney, John Whitlock, Samuel Peabody, Elijah Miles, Robert Pagan, Jacob Buffington, James M'Nab, Edward Stelle, Garret Clapper, 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 Andrews in the county of Charlotte, and from the town of Sackville in the county of Westmorland, to the town of Fredericton on in York county, thro' the counties of King's, Queen's and Sunburry [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 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.

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 foil 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.

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 said 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.

V. And be it further enacted, That the justices at their general quarter session 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 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.

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.

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 good 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 streets as aforesaid. And the said constable after public notice is given by him of the selling of such distress shall make sale thereof and out of the produce shall pay the forfeitures and charges, and return the overpluss if any there be 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 breath 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 2nd 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 fend 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 put 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 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 fend 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 fend their carts, waggons, or trucks, as aforesaid, to assist in making or repairing the same.

XIII. And be it further enabled, 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 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 said 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 surveyors districtt, 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.

XIV. And be it further enacted, That all trees that stand in any highway which shall be said 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.

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.

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 highways, 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 let 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 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.

XVII. And whereas it may be necessary to lay out private roads within the several 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 kid out more than two rods wide, against the consent of the owner or owners of the lands thro' which the same is to pass.

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.

XIX. And be it further enabled, 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 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.