

*Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1796.* Fredericton: Christopher Sower, Printer to the King's Most Excellent Majesty, 1796.

36 George III – Chapter 7

**An Act for regulating, laying out and repairing Highways and Roads and for appointing Commissioners and Surveyors of Highways within the several Towns or Parishes in this Province, and for suspending for a limited Time, all the Laws now in force relating to the same. Passed, the 12th March, 1796.**

I. Be it enacted, by the Lieutenant Governor, Council and Assembly, That an act made and passed in the twenty sixth year of His Majesty's Reign intituled, "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" also an act made and passed in the thirty first year of His Majesty's Reign intituled, "An Act in addition to and in amendment of an Act intituled, '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,'" be and the same are hereby suspended for the term of five years or during the operation of this act.

II. And be it further enacted, That the Commissioners and Surveyors already appointed by virtue of the said act, shall continue in their respective Offices until others shall be appointed and sworn as is hereafter directed; and that the Justices at their General Sessions to be held for the several counties next after the first day of January annually shall appoint a number of fit persons, not exceeding five nor less than three, to be Commissioners to lay out and regulate highways and roads 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 eight nor less than three to be Surveyors of the said highways in each town or parish, who are to oversee and repair in the manner herein after directed the several highways within the respective towns or parishes for which they shall be 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 or parish 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 being duly notified of such nomination, or having accepted shall neglect his duty, shall forfeit for every refusal or neglect three pounds, to be recovered, with costs of suit, before any two of His Majesty's Justices of the Peace; and the forfeiture shall be applied for the repairing of the highways. And it shall be the duty of the Clerks of the Peace in the several counties, upon such appointments being made forthwith to send lists thereof to the Clerks of the respective towns or parishes in such counties, and such Clerks of each town or parish shall within twenty days after receiving the list of such appointment give notice of the same.

III. 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 impowered and authorised to lay out such 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, and also 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 disinterested freeholders of the county in which such road lies, to be summoned by the High Sheriff, his Deputy or any Constable of the county by virtue of a warrant to be issued by two Justices of the Peace for that purpose on the application of twelve or more freeholders residing within the parish where the said road lies, then the said Commissioners shall alter the same; and the said Commissioners or the major part of them shall instead thereof lay out such other highways or roads as they judge most convenient to answer the purpose aforesaid, which highways and roads so laid out shall be common highways; and the charge arising from summoning such jury shall be paid by the persons applying to the said Justices—Provided always, That nothing in this clause shall extend to prevent the Commissioners from altering any road with the consent of the Inhabitants of such parish without the necessity of summoning such jury.

IV. And be it further enacted, That if any person or persons do or shall hereafter, alter, stop up or incroach on any street, highway, or road already laid out, or that shall be hereafter laid out in pursuance 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 with costs of suit 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, and where no such effects are to be found the offender or offenders to be imprisoned for six days, or in case such offender shall not be known or found the same shall be recovered by the sale of so much of the timber, or wood, and the carts, trucks, or other things incumbering or stopping up the way in such road or street as aforesaid. And the said Constable after public notice is given by him of the selling 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, to the owner or owners thereof when found; which said forfeitures shall be applied by the Commissioners for and towards the repairing of the public roads or highways within the district of 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.

V. 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 six rods, and are not less than five rods.

VI. And be it further enacted, That the highways, roads and bridges within each county shall be cleared, maintained, and repaired by the Inhabitants thereof; and that every male Inhabitant of the age of sixteen years and upwards (except as herein after mentioned) shall either in person or by an able sufficient man in his room in each and every year, provided with such necessary implements as shall be directed by the said Surveyors work six days (allowing eight hours to each

day's work) on the said highways, roads, and bridges within the town or parish where they respectively dwell—Provided always, That Inhabitants between sixteen and twenty one years of age, Apprentices and hired Servants shall be obliged to work three days and no more, common Laborers and Journeymen Mechanics four days and no more—Provided also, That upon application to two of His Majesty's Justices of the Peace in the county, the said Justices shall and may in their discretion lessen the number of days labor to be performed by any aged or indigent Persons.

VII. And be it further enacted, That the Commissioners in each town or parish for the time being shall by the first day of April in each and every year make out a list of the Inhabitants in such town or parish with the number of days work to be performed by each, and shall advertise the same at the most public place in such town or parish, and shall also furnish the Surveyor in their respective districts with a list of such Inhabitants and the number of days work so to be done by each, and at the same time shall direct the said Surveyors at what places the work shall be done; which work shall be done by such Inhabitants under the direction of such Surveyors. And it shall further be the duty of the said Commissioners to add to their list the names of such persons as may come into their respective Parishes to reside after the first day of April unless they produce a certificate of their having performed their proportions of labor in some other town or parish.

VIII. And be it further enacted, That if any Inhabitants in such list prefer paying money to doing such labor, it shall and may be lawful for such Commissioners to take and receive from such Inhabitants the sum of two shillings and six pence per day for each day's labor required to be done by them, provided the same is paid into the hands of the Commissioners on or before the first day of June in every year, and if such money is not paid until after that time they shall be obliged to pay three shillings per day or perform such labor. And the monies which may be paid in lieu of such labor, as well as forfeitures which may be received by virtue of this act, shall be laid out under the direction of such Commissioners on such roads, streets, and bridges, between the first day of May and the first day of November in every year and accounted for by them to the Justices at their first General Sessions in every year.

IX. And be it further enacted, That the Surveyors of Highways in their respective districts shall be and are hereby empowered in the fittest and most seasonable time between the first day of May and the first day of November yearly to summon the inhabitants contained in their respective lists, 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 labor in making, mending or repairing the highways, roads, streets and bridges in the most useful manner during the number of days appointed for each person to labor—and when any Surveyor of Highways shall judge the use of carts, waggons, trucks, ploughs or harrows more necessary then the labor of men, in that case he may call on any person within his district keeping any cart, truck, plough or harrow with two oxen or two horses; which cart, truck, plough or harrow with two oxen or two horses shall be equal to two days labor; and such Surveyors of Highways shall be excused from any other service on the Highways than the summoning, ordering and directing thereof.

X. And be it further enacted, That if any transient person under the direction of such Surveyor shall neglect or refuse to work, or shall not work in such a manner as to satisfy such Surveyor, he is hereby empowered to dismiss such Inhabitant from the work and shall make complaint against him to some one of the Commissioners who shall immediately proceed against him in the same manner as is hereafter directed to be done to Inhabitants neglecting to work after being duly warned.

XI. And be it further enacted, That the Surveyors shall by the first day of November in each and every year deliver in writing to the Commissioners a list of such delinquents within their respective districts as have, after being duly warned, neglected to perform the whole or any part of the labor assigned to them respectively—and it shall be the Commissioners duty, within ten days after receiving such list, to make complaint to any Justice of the Peace against every such delinquent which Justice shall on conviction adjudge every such delinquent to pay the sum of three shillings for every day he has so neglected to work, together with costs of suit, to be levied by warrant of distress and sale of such offender's goods and chattles under the hand and seal of such Justice, directed to any Constable in such town or parish, and in case no goods or chattles can be found it shall and may be lawful to commit such offender to the common Gaol of the county not exceeding six days—Provided always, That if any person shall produce a certificate from any Commissioner appointed by this act, that he has in the current year done his tour of labor in any parish in this province, he shall be excused from doing such labor that year in any other parish.

XII. 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 highway or roads are laid out, to be by such Clerk entered in a book kept for that purpose, and whatsoever the said Commissioners toll do according to the powers given them in this act being so entered shall be valid and good to all intents and purposes whatsoever; and; that every Commissioner who shall refuse or neglect to perform the duty enjoined and required of each of them as aforesaid, shall forfeit and pay for every such refusal or neglect a sum not less than twenty shillings nor more than five pounds to be recovered and applied as aforesaid.

XIII. 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 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 person's 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 the 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 expenses 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 through which the same is to pass.

XIV. And be it further enacted, That if any Public road hereafter to be laid out by virtue of this act, shall pass through 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 the manner first herein before mentioned on the application of the owner or owners of the said land, 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 land shall be ascertained by such Juries and shall be paid as other contingent charges of the county are paid.

XV. And be it further enacted, That the Commissioners of highways and roads for each town or parish or a major part of them be and they are hereby authorised and required after the first Snow and as soon as the rivers and marshes are safe for the passing of cattle on the ice to order the Surveyors of highways and roads for the said town or parish to summon forthwith so many Inhabitants as the said Commissioners shall in their discretion think necessary to work after such manner as they the said Surveyors shall direct in cutting and carrying bushes or marking ways. And such person not attending or refusing to perform the said work as directed by the said Surveyors shall forfeit the sum of three shillings for each day's neglect. And the rivers and the several parts of the same when frozen over as aforesaid shall be considered as a part of the towns or parishes to which they are respectively opposite for the purposes directed by this clause—And the Commissioners of the towns or parishes opposite to each upon any river are hereby authorised and required to agree upon and determine the distance upon the said river which is to be worked upon by their respective towns in pursuance of this act.

XVI. And be it further enacted, That every person keeping a team shall be obliged forthwith on being summoned by the said Surveyors to send his team with a competent driver to work in such manner as the said Surveyors shall direct; and on any such person neglecting to send his team and a good driver or not performing such reasonable work as the said Surveyors shall direct, the owner of the said team shall forfeit the sum of six shillings.

XVII. And be it further enacted, That the said way shall be marked in such place as the said Commissioners shall direct and with tops, erected at the distance of not more than four rods lengthways of the said path from each other and five feet in height, and on any of the said marks being displaced the Surveyors shall summon forthwith as many of the nearest Inhabitants with their teams as they may judge necessary to replace them; and in case of refusal or neglect every person so offending shall forfeit the sum of three shillings for each man and six shillings for each team for each day so summoned.—Provided, when the public roads are on the banks of the river the said path shall be marked on the river. The said fines and forfeitures to be recovered by

complaint to a Justice of the Peace as in case of refusal to labor on the highways and to be appropriated by the Commissioners towards performing the said service. Provided always, That the number of hours which any person shall work in pursuance of the directions of this clause shall be deducted from and allowed as a part of the number of hours he is obliged by law to work upon the highways.

XVIII. And be it further enacted, That if any person shall wilfully cut or take down or destroy any of the bushes so to be erected by virtue of this act, he shall forfeit and pay the sum of twenty shillings upon conviction before any one of His Majesty's Justices of the Peace upon the oath of one or more credible witness or witnesses to be levied by warrant of distress and sale of the offenders goods, rendering the overplus if any, after deducting the costs and charges, to the offender; one half of the said forfeiture to the use of the Poor of the town or parish where such offence shall be committed, the other moiety to him or them who shall inform and sue for the same; and for want of such effects to levy on, the said offender or offenders shall be imprisoned for a time not exceeding six days.

XIX. And be it further enacted, That the said Surveyors of the Highways by the direction of the Commissioners shall have full power and authority, and they are hereby required during the Winter season to summon such and so many of the Inhabitants having, horses, oxen, or teams in their respective districts as they in their discretion shall think fit, to work at the time and place appointed on the Highways or Public Winter Roads by breaking roads in the Snow with their said horses, oxen, or teams whenever the depth of Snow shall render the same necessary not exceeding four days in each Winter and at no greater distance than three miles from their own houses. And such Inhabitants shall perform the same work over and above the work which such Inhabitants are liable to perform upon the highway, roads and bridges in and by this act.

XX. And be it further enacted, That all sleds made use of for the purpose of carrying or transporting wood, hay, or other heavy materials shall not be less than four feet eight inches in width from outside to outside of the runners, and whosoever shall make use of any ox or horse sled of less dimensions, and be thereof convicted by the oath of one or more credible witness or witnesses before any of His Majesty's Justices of the Peace, or on the view of such Justice, shall be fined in the sum of twenty shillings; the same to be levied by distress and sale of the offender's goods and chattels by warrant under the hand and seal of such Justice rendering the overplus, if any, after deducting the costs and charges of such distress and sale, to the offender; which fines shall be paid and appropriated in like manner with the other penalties mentioned in this act. And it shall be the duty of all Commissioners and Surveyors of Highways and Constables in the respective parishes to prosecute all offences and breaches of this clause of the act—Provided always, That nothing herein before contained shall be construed to extend to any sled a man may use upon his own farm only, or to any bob-sled, or single ox or horse sled, or pleasure sleigh drawn by one or more horses.

XXI. And be it further enacted That no horse-sled or sleigh shall be drawn on the highways or public roads of this province unless the same shall be furnished with one or more bell or bells for

each horse drawing such sled or sleigh under the penalty of five shillings for every offence, to be recovered from the owner or driver thereof in the manner and to the uses last before mentioned.

XXII. And be it further enacted, That the respective Commissioners of Highways shall at the first sitting of the Court of General Sessions of the Peace in the respective counties in each year, deliver in to the Clerk of the Peace to be by him filed in such Court the several and respective accounts of the labor alone on the highways so to be given them by the said Surveyors, and also an account with proper vouchers of all sums of money received by them for fines or forfeitures accruing by virtue of this act and the purpose for which such sums shall have been expended; and if such sums or any part thereof remain in their hands they shall pay the same into the hands of the County Treasurer to be disposed of by the order of the Justices or the major part of them in their General Sessions for the making repairing and amending the roads, streets, and bridges in the district of the parish where such money was forfeited—And if any Commissioner shall neglect or refuse to deliver in such accounts or any or either of them to the Clerk of the Peace as aforesaid, he shall forfeit and, pay for every offence the sum of three pounds to be recovered before two Justices of the Peace in such county respectively to be paid into the hands of the Treasurer and applied in the manner herein before mentioned, and shall also be subject to an action of debt to be brought by and in the name of the Treasurer of such county for any sum so remaining in his hands.

XXIII. And be it further enacted, That the Commissioners appointed by virtue of this act shall not be required to do any work on the highways, and that the Surveyors shall not be required to superintend the work more than six days; and in all cases where additional Surveyors are wanted the Commissioners shall continue the Surveyors and pay them at the rate of three shillings per day out of the monies voluntarily paid into their hands or collected for fines by virtue of this act.

XXIV. And be it further enacted, That no prosecution or suit for the recovery of any of the penalties mentioned in this act, shall be brought or instituted after the expiration of six months from the time of committing the offence intended to be prosecuted—Provided nevertheless, That nothing in this act shall be construed to extend to prevent those intrusted with public monies by virtue of any of the herein before recited acts from being held accountable for all monies so received by them.

XXV. And be it further enacted, That this act shall continue and be in force five years and no longer.