

*Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1810.* Saint John, NB: Jacob Mott, Printer to the King's Most Excellent Majesty, 1810.

50 George III – Chapter 6

**An Act for regulating, laying out, and repairing Highways and Roads, and for appointing Commissioners and Surveyors of Highways; within the several Towns and Parishes in this Province. Passed the 14th of March, 1810**

I. Be it enacted by the President, Council and Assembly, That the Commissioners and Surveyors already appointed by virtue of any Act now in force for laying out Highways, Roads and Streets 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 three fit persons to be Commissioners to lay out and regulate Highways, Roads and Streets in the Town or Parish for which they shall be so appointed, and the said Justices at the same time shall appoint a competent number of fit persons to be Surveyors of the said Highways, Roads and Streets in each Town or Parish, who are to oversee and repair in the manner herein after directed, the several Highways, Public Roads and Streets 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 five 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 in cases of vacancy the Highways. Provided always and be it further enacted, That in case of the death or removal or other incapacity of any person so appointed, and sworn, or of the neglect or refusal of any person so appointed to accept of the said office, it shall be lawful for the three Justices in or nearest to the Parish for which such person was appointed or for the Justices at the general or any special Sessions of the Peace to appoint another in his stead and that such person so appointed shaft be liable to the same penalty for refusing to qualify within fourteen days after being notified of the same appointment or for neglect or refusal to do the duty after being qualified as is herein before provided for the persons to be first appointed and so *toties quoties*.

II. 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 authorised to lay out such public Highways arid Roads as they or the major part of them shall think most convenient for travellers as for the inhabitants of each Town or Parish and the next adjacent Towns, Villages and Neighbourhoods, and also to regulate the Highways, Roads and Streets 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 Comity in which such Highways, Roads and Streets lie, 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, on the application of twelve or more Freeholders residing within the Parish where the said Highways, Roads or Streets lie, 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 said Justices. Provided always, that nothing in this clause shall extend to prevent the Commissioners from altering any Highways or Roads with the consent of the inhabitants of such Parish without the necessity of summoning such Jury: The said inhabitants to be notified in writing by the Commissioners one month previous to any alteration whatever in three of the most public places of such Parish aforesaid.

III. And be it further enacted, That if any person or persons do or shall hereafter alter, stop up or encroach on any Street, Highway or Public Road by laying timber, wood, carts, trucks or any thing 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 and Trucks or other things incumbering or stopping up such Highways, Roads or Streets 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 forfeiture 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 the Public Roads, Highways or Streets 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.

IV. And be it further enacted, That the width of all Highways or 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 Highways or Roads may be laid out, so that they do not exceed in breadth six rods, and are not less than two rods.

V. 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 all male inhabitants of the age of sixteen years and upwards (except as herein mentioned) shall either in person or by able sufficient men in their stead each and every year, provided with such necessary implements as shall be directed by the respective Surveyors, work six days (allowing eight hours to each days work) on said Highways, Roads, Streets and Bridges, within the Town or Parish where they respectively dwell. Provided always, that Persons above sixteen and under twenty-one years of age, apprentices, and hired servants shall be obliged to work three days and no more, common

labourers 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 at their discretion lessen the number of days labour to be performed by any indigent person.

VI. And be it further enacted That the Commissioners in each Town or Parish for the time being shall by the first day of May 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 Surveyors in their respective districts with a list of such inhabitants and the number of days work so to be done by each, and shall within fifteen days 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 such persons as may come into their respective Parishes to reside, after the first day of May, unless they produce a Certificate of their having performed their respective proportions of labour in some other Town or Parish.

VII. And be it further enacted, That if any persons in such list named, prefer paying money to doing such labour, it shall and may be lawful for such Commissioners to take and receive from such persons the sum of four shillings per day for each days labour required to be done by them; and the monies which may be paid in lieu of such labour, 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 Highways, Streets, Roads 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.

VIII. 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 persons 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 labour 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 labour; and when any Surveyor of Highways shall judge the use of waggons, carts, trucks, ploughs or harrows more necessary than the labour of men, in that case he may call on any person within his district keeping any waggon; cart, truck, plough or harrow, with two oxen or two horses, which waggon, cart, truck, plough, or harrow, with two oxen or two horses with a competent driver shall be equal to two days labour, and such Surveyors of Highways shall be excused from any other service on the Highways than the summoning, ordering and directing thereof.

IX. And be it further enacted, That if any person or persons when so summoned to labour as aforesaid by the Surveyors of their respective districts, shall neglect or refuse to appear and labour agreeably to such summons, it shall be the duty of such Surveyor, forthwith to make report of such delinquency to some one of the Commissioners, who shall without delay make complaint to a Justice of the Peace, against every such delinquent which Justice shall on conviction, adjudge

every such delinquent to pay the sum of four shillings for every day he has so neglected to appear and labour together with costs of suit to be levied by warrant of distress and sale of such offenders goods and chattels under the hand and seal of such Justice, directed to any Constable in the Town or Parish to which such offender may belong, and in case no goods or chattels can be found it shall and may be lawful to commit such offender to the common Gaol of the County not exceeding six days; and if any person who shall appear agreeably to such summons and being under the direction of such Surveyor shall refuse or neglect to work, or shall not work in such manner as to satisfy such Surveyor, he is hereby, empowered to dismiss such person from the work, and shall forthwith make complaint against him to some one of the Commissioners who shall immediately proceed against him in the same manner as is herein before directed to be done against persons neglecting to appear and labour after being duly summoned, and the person so dismissed by such Surveyor, for such delinquency shall be adjudged to pay the sum of four shillings for every day he shall have neglected or refused to work to the satisfaction of such Surveyor agreeably to such summons, or be liable to imprisonment not exceeding six days in the manner herein before mentioned.

X. And be it further enacted, That in case any person keeping any waggon, cart, truck, plough or harrow with two oxen or two horses when called upon as aforesaid by such Surveyor, shall refuse or neglect to furnish such waggon, cart, truck, plough or harrow with two oxen or two horses with a competent driver, agreeably to such direction of such Surveyor, it shall in like manner be the duty of such Surveyor forthwith to make complaint of such offender last mentioned to some one of the Commissioners who shall immediately proceed against him in the same manner as is directed in the last preceding section, and such offender last mentioned shall be adjudged to pay the sum of eight Shillings for every day he shall so have neglected or refused to furnish such waggon, cart, truck, plough or harrow with two or two horses with a competent driver agreeably to such direction of such Surveyor or be liable to imprisonment, not: exceeding six days in the manner in the same Section mention. Provided always that if any person shall produce a certificate from any Commissioner appointed by virtue of this Act, that he has in the current year done his tour of labour or any part thereof in any Parish in this Province, he shall be excused from doing such labour or such part thereof that year, as may be so certified in any other Parish.

XI. 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 as aforesaid, 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; 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 the sum of three pounds to be recovered and applied as aforesaid.

XII. 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, the 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 persons land, without the consent or the owner or owners thereof, or agreeing with or paying them the value of the land so to be laid out into such Road, 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 expences and charges attending the said Road shall be paid by 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.

XIII. 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.

XIV. 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 or 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 four shillings for each days 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 for the Towns or Parishes opposite to each other 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.

XV. 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 eight shillings.

XVI. And be it further enacted, That the said way shall be marked in such place as the said Commissioners shall direct, with evergreen bushes 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 four shillings for each man and eight shillings for each team for each day so summoned. Provided, when the public Roads are on the bank 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 labour 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-or the number of hours he is obliged by law to work upon the Highways.

XVII. 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 offender or offenders shall be imprisoned for a time not exceeding six days.

XVIII. 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, o 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 High ways, Roads, and Bridges, in and by this Act.

XIX. And be it further enacted, That all sleds made use of for the purposes 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 whoever 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 twenty shillings; the same to be levied by distress and sale of the offenders 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 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.

XX. 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, to be fastened to such sled or sleigh, or to the harness thereof, so as distinctly to be heard 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.

XXI. 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 year, deliver into the Clerk of the peace to be by him filed in such Court, the several and respective accounts of the labour done 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, Highways, public 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 four 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.

XXII. And be it further enacted, That the Commissioners appointed by virtue of this Act shall not be required to do any required to 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 Surveyors are wanted for a greater number of days, the Commissioners shall pay them at the rate of five shillings per day out of the monies voluntarily paid into their hands or collected for Safes by virtue of this Act.

XXIII. 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 money, by virtue of any of the herein after recited or any other Acts, from being held accountable for all monies so received by them.

XXIV. And be it further enacted, 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 and 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 two years, or during the operation of this Act.

XXV. And be it further enacted, That nothing in this Act, contained, shall extend to the City of Saint John, or be construed to abridge or diminish the rights, powers and privileges of the Mayor, Aldermen and Commonalty of the said City, as granted to them by the Charter of the said City, any thing herein contained to the contrary thereof in any wise notwithstanding.

XXVI. And be it further enacted, That this Act shall continue and be in force two years and no longer.