

Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1836. Fredericton, NB: John Simpson, Printer to the King's Most Excellent Majesty, 1836.

6 William IV – Chapter 2

An Act in amendment of the Act relating to Highways. Passed 5th March 1836.

I. Be it enacted by the Lieutenant Governor, Legislative Council and Assembly, That all that part of the seventeenth section of an Act made and passed in the fifth year of His Majesty's Reign, intituled *An Act to repeal all the laws now in force for regulating, laying out and repairing highways and roads, and for appointing commissioners and surveyors of highways in the several towns and parishes in this Province, and to make more effectual provision for the same*, which authorises the commissioners of highways, or any of them, to excuse or lessen the number of days' work to be performed by any infirm or indigent person within their respective parishes or districts, be and the same is hereby repealed; and that it shall be lawful for any two of His Majesty's Justices of the Peace, upon application of any infirm and indigent person, to remit the whole or such part of the labour as is required to be performed by such infirm and indigent person, as they in their discretion may think just and proper.

II. And be it enacted, That the notices to be given by the surveyors in their respective districts, as required by the twentieth section of the above recited Act, shall be given at least six days previous to the commencement of the work, either by personally notifying the inhabitants respectively liable to work or by leaving a written or printed notice at the last place of residence of the person or persons intended to be notified, or by publishing in one of the most public places in each district the names of the persons in the district liable to work, in manner pointed out in the said twentieth section of the herein before recited Act.

III. And be it enacted, That it shall be the duty of the respective Surveyors on or before the tenth day of September in each and every year, to make and deliver to the commissioner or commissioners respectively correct returns of the statute labour performed in their respective districts, which returns shall contain the names of all persons liable to perform statute labour within their respective districts, with the number of days' work performed by each person, and also the number of days for which any person may be delinquent.

IV. 'And whereas doubts have arisen whether in all cases where Jurors are required to serve under the provisions of the above recited Act, there be sufficient authority therein to authorise the administration of the usual oaths;' Be it therefore enacted, That in all cases where the services of Jurors are required by authority of the Act aforesaid, such Jurors shall be duly sworn in the usual manner, which oaths any one of His Majesty's Justices issuing the warrant for the summoning of the said Jurors, is hereby authorised and required to administer; and the said Justices or either of them are also hereby empowered and required, at the instance of either party, to call before the said Jurors at the time and place appointed, such witnesses as may be required to give evidence in and respecting all cases of damage or other matters that are by the above recited Act required to be decided and determined by the verdict of such Jurors; which witnesses shall be subpoenaed

under the hand of any one of the said Justices, and sworn before either of the said Justices in the usual manner, and for refusal or neglect to attend and give evidence when so required, shall be subject to such damages as persons neglecting or refusing to attend and give evidence when duly summoned are made subject and liable to by an Act made and passed in the fourth year of His present Majesty's reign, intituled *An Act to regulate proceedings before Justices of the Peace in civil suits; and all expenses attending the summoning, swearing and attendance of such witnesses, shall be estimated by the said Jurors, and paid by such party and in such manner as the said Jurors may determine and assess.*

V. And be it enacted, That in all cases where a Jury is summoned for any of the purposes provided by this Act or of the Act of which this Act is in amendment, the Justices issuing the warrant for the summoning of such Jury, or one of them, are hereby required to attend and preside at such inquest or examination.

VI. And be it enacted, That in all prosecutions instituted against delinquents for the recovery of fines under any of the provisions of the said recited Act, it shall and may be lawful for the Magistrate before whom any prosecution shall be instituted, on application by the commissioner or commissioners suing for such fine, and upon oath made by such commissioner or commissioners, or the surveyor or other person, of the offence or delinquency committed, to issue a *capias* against such delinquent, and to hold him to bail for the amount of the fine sought to be recovered, in which case the *capias*, bail bond, return and proceedings generally, shall be, as near as may be, in manner and form pointed out, made and provided in the said Act passed in the fourth year of the reign of His present Majesty, intituled *An Act to regulate proceedings before Justices of the Peace in civil suits.*

VII. 'And whereas in and by the second section of the above recited Act relating to highways, it is provided, that the fines of delinquent commissioners and surveyors shall be recovered before any one of His Majesty's Justices of the Peace at the suit of one of the acting commissioners or surveyors of the parish in which the delinquent resides: And whereas it is deemed necessary to extend the right of prosecution to any freeholder or householder resident within the said parish, and to make such fines recoverable before any two Justices of the Peace instead of one;' Be it therefore enacted, That if any commissioner or surveyor shall be guilty of refusal or neglect of any of the duties required by the provisions of the said recited Act relating to highways, such commissioner or surveyor shall forfeit for every refusal or neglect a sum not exceeding five pounds, to be recovered with costs of suit before any two of His Majesty's Justices of the Peace at the suit of any one of the acting commissioners or surveyors, or at the suit of any freeholder or householder within the parish where the delinquent resides, who may choose to prosecute for the same; and in all cases where commissioners and surveyors or either of them are made liable to prosecution by the provisions of the above recited Act relating to highways, the right of prosecution in all such cases is hereby extended to any freeholder or householder within the parish where any such delinquent surveyor or commissioner resides; which said fines and forfeitures are hereby severally made recoverable with costs of suit before any two of His Majesty's Justices of the Peace, in the same manner as fines are made recoverable by the second section of the above recited Act relating to highways, and all such fines and forfeitures when

recovered shall in all cases be applied by the acting commissioner or commissioners to the repairing of the highways in the several parishes where the same may have been forfeited respectively.

VIII. 'And whereas great inconvenience is felt from persons cutting holes through the ice in the different navigable rivers in this Province;' Be it therefore enacted, That from and after the passing of this Act, it shall and may be lawful for the Justices of the Peace of the respective Counties, at any of their respective Courts of General Sessions, to make such rules, orders and regulations relative to the cutting of holes through the ice in any of the said Rivers, as the said Justices at any of the said Courts of General Sessions may think necessary and proper for the public safety.

IX. And be it enacted, That all and every person or persons who shall be guilty of any breach or breaches of any such rules, orders and regulations as the said Justices at any of their Courts of General Sessions shall respectively make, shall be subject to a penalty of not less than twenty shillings nor more than five pounds for each and every offence; to be recovered with costs of suit before any one of His Majesty's Justices of the Peace for the County in which the offence shall be committed, at the suit of any person or persons who may prosecute for the same; which penalty when recovered shall be paid into the hands of the commissioners of roads for the parish in which the offence shall be committed; to be by them applied towards the improvement of the roads of the parish to which such commissioners belong, and be accounted for by them at the General Sessions of the County in their annual return of the statute labour.

X. 'And whereas doubts have arisen with respect to the authority of commissioners and surveyors to open roads under the provisions of the above recited Act relating to highways;' Be it enacted, That in all cases when roads are laid out, altered or extended, by virtue and authority of the above recited Act relating to highways, the commissioner or commissioners, surveyor or surveyors, as the case may be, shall have full power and authority, and they are hereby authorised to enter upon and open all such roads so laid out, altered or extended, and from the same to remove any fences, buildings and obstructions, any law, custom or usage to the contrary notwithstanding.

XI. And be it enacted, That this Act shall continue and be in force until the first day of April which will be in the year of our Lord one thousand eight hundred and forty.