

Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1855. Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1855.

18 Victoria – Chapter 18

An Act relating to Highways. Passed 12th April 1855.

Section.

1. Cap. 66, Revised Statutes, repealed.
2. Parishes, divisions of; appointment of Commissioners and Surveyors.
3. Commissioners to lay out highways.
4. Alterations, when and how to be made.
5. When objected to, procedure.
6. Roads, when deemed public highways.
7. Damages by roads to improved lands, how ascertained.
8. Sessions to order payment.
9. Certain rods to be restored by the Sessions.
10. Private roads, how laid out.
11. Public roads, width of.
12. Feeds of jurors, &c.
13. Old roads, when not considered public.
14. Useless roads, when to be shut up.
15. Return to be made of highways laid out penalty for neglect
16. Illegally obstructing highways, penalty
17. Roads, how to be maintained; scale of labour. Indigent persons how relieved.
18. Estates of females, minors, and non-residents to be assessed.
19. Lists of labour to be performed to be published, and Surveyors instructed.
20. Money in lieu of labour may be received; expenditure.
21. Surveyor's duty as to performance of statute labour.
22. Surveyors to make return, to whom and when.
23. Names of residents or of persons employed to be given to Commissioners; penalty.

Section.

24. Surveyors to report defaulters to Commissioners; who shall proceed, &c.
25. Wagons, &c. to be furnished when required; penalty..
26. Delinquents may be held to bail.
27. Windfalls, bridges and roads, intermediate repair of.
28. Preparations for marking ways after snow.
29. How winter roads to be marked.
30. Destroying marks, penalty.
31. Snow is to be shovelled and winter roads broken in addition to statute labour.
32. Bells to be attached to horse sleds, &c.
33. Statute labour may be applied to secure Riverbank in certain places.
34. To be performed when most practicable, and returns made.
35. Commissioners to make returns with vouchers; balances. Form of return.
36. Commissioners exempt from statute labour.
37. Balances of money and other receipts to be paid to County Treasurer.
38. On Commissioners' neglect to render Accounts, proceedings.
39. Fees of Constables and other officers to be paid by Sessions.
40. Prosecutions for penalties to be within six months.
41. Appeal in cases of over-assessment.
42. Condition of appeal.
43. Not to interfere with local laws.
44. Proceedings to effect the object of this Act, in incorporated Counties.

Be it enacted by the Lieutenant Governor, Legislative Council and Assembly, as follows:—

1. Chapter 66, of the Revised Statutes, "Of Highways," is hereby repealed.
2. The Sessions are authorized, if they see fit, to divide each Parish into as many Districts as there are Commissioners, and to appoint or assign a Commissioner, with as many Surveyors to each District, as they think necessary. The Commissioners and Surveyor to enforce and superintend the performance of the Statute Labour in their respective Districts, and to make due return thereof.
3. The Commissioners shall lay out such public highways as they consider best adapted for public accommodation.
4. When any public highway shall in the opinion of such Commissioners require alteration, they shall give inhabitants of the Parish one month's notice of the intended alteration, by posting up such notice in at least three of the most public places in such Parish. At the time and place specified the Commissioners shall attend, and proceed, to make such alterations, unless the owner of the land over which the road may pass, or one third part of the owners or occupiers of land in such Parish, object.
5. Such objection being made, a Justice, on the application of five freeholders of such Parish, shall issue his Warrant directed to any Sheriff or Constable within the County, commanding him to summon five disinterested owners or occupiers of land in the said County, who shall be sworn to examine the said road; the said Justice shall also subpoena such witnesses as either party may require. Any person served with such subpoena neglecting to obey the same, shall incur a penalty not exceeding five pounds, to be paid to the Commissioners for the use of the roads; the expenses of such witnesses shall be estimated by the jurors, and paid as they may direct. If the jury determine that the alteration shall be made, the Commissioners shall proceed to make the same accordingly, but in no case shall any road be taken possession of, or be deemed dedicated to the public, until the damages (if any) assessed be paid. Should the road so laid out or altered as aforesaid extend upon any improved land, or Occasion the removal of any buildings or fences, the damage in such case shall be assessed by the said jury at the time aforesaid. If in any such alteration a new road be opened, and the old road or any part of it be shut up and revert to the owner of the land on which said new road may pass, the jury shall take into consideration the value of such old road, or any part thereof so shut up, in diminution of damages. Where roads are laid out, altered, or extended under any law relating to highways, and the damages (if any) paid as aforesaid, the Commissioners or Surveyors may enter upon and open such roads, and remove therefrom any obstructions.
6. All roads not recorded, upon which public money has been expended, are hereby declared public roads or highways.
7. The damage to the owner arising from any public road to be laid out through his improved land, or from the removal of any obstructions, shall, on his application, be ascertained by a jury

summoned as directed by the fifth Section of this Act. The Justice issuing the Warrant shall preside at the Inquest.

8. The Commissioners shall lay the assessment of damages by the jury before the Sessions, who shall order payment therefor in Such proportions by such Parishes as they may deem just, and issue their Warrant therefor, to be assessed and collected as County rates, and paid to the person entitled thereto.

9. Any such road intended for the convenience of a particular district, whether wholly in one Parish or between two or more Parishes, shall be reported by the Commissioners to the Sessions, specifying the bounds and limits thereof and the names of the persons raiding therein. If the Sessions adopt the report, they shall appoint two or more Assessors within such district, who shall assess the damages sustained in laying out such road, upon such residents, to be levied and collected as County rates.

10. The Commissioner upon application for a private road, shall view the same, and upon the written consent of the owner of the land, may lay out the road; if the owner object, a jury shall be summoned as directed by the fifth Section of this Act, at the instance of the Commissioners or parties interested, which jury shall determine as to the necessity of the road; and if necessary, and the parties disagree as to value and damages, they shall proceed to assess the same, and when assessed, the amount shall be paid to the owner of the land through which the road passes. The expense of laying out such road shall be paid by the applicant and no such road shall be laid out more than two rods wide against the consent of the owner.

11. Public roads shall not be more than six nor less than four rods wide, at the discretion of the Commissioner.

12. Each juror summoned as aforesaid shall be entitled to two shillings and six pence, and the officer summoning, ten shillings; the whole sum necessary to meet such expenses shall be paid to the Commissioners by the applicant previous to the issuing the Warrant. The Commissioner shall pay the officer and the laws their fees on the return of the verdict in all cases connected with a public road; if the jury return an affirmative verdict such expenses shall be included in the assessments provided in the eighth and ninth Sections of this Act, collected as therein directed, and paid to the person advancing the same.

13. On any alteration being made in any road pursuant this Act, and the parts between the points of such alteration shall not be settled by the erection of dwelling houses therein, or when the same shall not cut off any proprietor from the road so altered, the Commissioners shall direct that the said points between such alteration shall be stopped up and enclosed by the proprietor of the land between such points, after which the old road shall not be considered public. The Commissioner shall not so direct until he considers the new part equally as good and passable as the old road.

14. If the Commissioners think that any road is not required for the convenience of the inhabitants of the Parish through which the same passes, or the inhabitants of the adjacent Parish, they may, by the consent of the owner or owners of the land through which it passes, shut up the same.

15. The Commissioners for such Parish shall designate in writing, the width, marks, bounds, and lines of such roads as are laid out, altered, or shut up, and within three months thereafter make return thereof to the Clerk of the Peace, who shall enter the same in a book to be kept for that purpose. Any Commissioner or Clerk of the Peace neglecting the duty required of him shall pay for each neglect three pounds.

16. Whoever shall alter, encroach on, or obstruct any public road, shall for each offence, forfeit forty shillings; and if the offender do not remove such encroachment or obstruction within three days thereafter, he shall again forfeit a like sum of forty shillings, and so on in like manner until such obstruction be removed; should the offender not be known, the Commissioner or Surveyor, if the incumbrance be saleable, shall, unless sooner claimed, after three days public notice, sell the same, and apply the proceeds to repairing such road; if not saleable, they shall cause the same to be unmoved, and the person employed by them shall be allowed therefor, according to the time he is employed, a deduction of his statute labour.

17. All roads, streets, and bridges in each County, shall be cleared, maintained, and repaired by the male inhabitants thereof, being eighteen years of age and upwards, (except Ministers of the Gospel and licenced Schoolmasters employed as such, not having property liable to assessment; and emigrants from Great Britain and Ireland arriving within the year the assessment is made,) who shall work either in person or by sufficient substitutes in such year, with such implements as the Surveyor shall direct, the number of days (eight hours actual labour to each day) as follows, namely: all persons between the age of eighteen and twenty one years, two days; and persons of twenty one and above, three days; and for any real or personal estate he may possess not exceeding one hundred pounds, one day; exceeding one hundred pounds and not exceeding three hundred pounds, two days; exceeding three hundred pounds and not exceeding five hundred pounds, three days; and so on in like manner (for every two hundred pounds one day additional) for any real or personal estate he may possess, not in the whole to exceed thirty days in any one year; and for every two hundred pounds of real or personal property, over and above such sum as will together with the three days poll rate make thirty days, the owner of such property shall be taxed at the rate of two shillings and six pence for every two hundred pounds, which shall be paid in money; two Justices on the application on oath any infirm and indigent person, may remit in whole or in part his statute labour for the year such application be so made: Prodded that the real estate referred to in this Section shall be situate in the Parish in which the owner thereof resides.

18. All divided or undivided estates of females, minors, and non-residents, shall be assessed in the same ratio as the estate of residents, to be levied and collected as other Parish and County rates, to be paid to the Commissioners of the Parish in which such estate is situate, in proportion to the

assessment made on such estate, to be by them applied in repairing the roads or streets in such Parishes.

19. The Commissioners in each Parish shall by the first day of May in each year, make a list of the inhabitants of such Parish, and assess the number of days to be performed by them respectively, according to the best of their judgment, and shall advertise the same in the most public place of said Parish; each Commissioner shall divide his district into as many sub-districts as there are Surveyors, and shall furnish the Surveyors in the respective sub-districts with a list of inhabitants liable to work in such sub-districts, and the number of days' work to be done by each, and shall within fifteen days direct to said Surveyors where the work shall be done; the Surveyors to direct the work. The Commissioners shall add to their lists the names of the persons that may come to reside in their respective Parishes after the said first day of May, except as before excepted, and assess the number of days' work to be performed by each, unless they produce a certificate of the performance of, or their liability to do statute labour in some other Parish.

20. The Commissioners of any Parish or District may, previous to the commencement of the labour, receive from any person assessed to perform such labour, the sum of two shillings and six pence each days' labour required, in lieu of the labour and the moneys so paid, as well as the forfeitures under this Act, shall be laid out by such Commissioner or Commissioners on the roads and bridges between the first day of May and October in each year, first giving six days' public notice by advertisement within the Parish or District of the time and place they intend to expend the same, and let out the work by public auction to the lowest bidder.

21. The Surveyor when directed by the Commissioner shall, at the most suitable time between the first days of May and August in each year, summon the inhabitants, giving at least six days' notice to each person liable to work, either by personal service, or leaving it at his house, or by publishing the same by notice in writing in three of the most public places in the sub-district, which shall contain the names, the number of days' work by each respectively, and the implements to be used by each; they shall expend the labour in making or improving the roads and bridges in the best manner, subject to the orders of the Commissioners, and they may call on any person in their sub-district having any wagon, cart, truck, plough or harrow, oxen or horses, to furnish the same with a competent driver, and shall allow him three days' labour for one.

22. Every Surveyor, on oath, before the term day of August in each year, shall deliver to the Commissioners a return of the names of the persons in his sub-district liable to perform statute labour, the number of days' work performed by each, and the delinquency.

28. Every person when required by any Commissioner shall, within twenty four hours, give him a statement in writing of all persons residing in his house, or in his employ, liable to perform statute labour, and any person neglecting to give such statement, or giving a false one, shall pay a sum not exceeding five pounds, to be recovered in the name of any one of the Commissioners of the Parish or District, when recovered to be paid to the Commissioners, and applied to making and repairing the roads.

24. The Surveyor, within six days after the neglect of any person duly notified to appear and labour, or pay the commutation money, or appearing and refusing to work to the satisfaction of the Surveyor and being dismissed therefor, shall report the same to the Commissioner, who shall forthwith make complaint in his own name to a Justice against such delinquent, and he, on judgment obtained, shall for each day's neglect adjudge him to pay four shillings, with costs of suit; the delinquent shall not suffer more than six days imprisonment in either case, and the proceedings shall be before the Justice as in civil suits.

25. Any person keeping any Wagon, cart, truck, plough, harrow, two oxen, or two horses, when duly required to furnish the same with a competent driver shall neglect to do so, a Surveyor shall forthwith make complaint to the Commissioner, who shall immediately proceed against him in the manner directed by the last preceding Section; the offender shall be adjudged to pay twelve shillings for every day's neglect, or be liable to be imprisoned not exceeding six days.

26. In all actions for the recovery of the fines imposed by this Act, the delinquent may be held to bail on the oath of a Commissioner; the proceedings in such case shall be as in civil suits before Justices.

27. During the interval between the performing of the statute labour, the commissioner may, as occasion requires, direct the Surveyors to summon so many of the inhabitants as may be necessary to remove all trees or windfalls out of the roads, and to repair all bridges and such parts of roads as may require it, and to furnish the materials therefor, and call upon persons keeping any vehicle or team to attend with the same; the work then performed to be deducted from the number of days each person may be obliged to work on the roads; any person not attending or refusing to work shall forfeit eight shillings for each day's neglect or refusal, and sixteen shillings for neglecting to furnish the vehicle or team as aforesaid, to be recovered and applied as directed by the twenty fourth Section of this Act.

28. The Commissioners after the first snow, and when the rivers and marshes are safe for the passing of cattle on the ice, shall direct the Surveyors to summon forthwith so many inhabitants as they shall think necessary to perform such work as the Surveyors shall direct in cutting, carrying and erecting bushes, and making ways; any person not attending, or refusing to work as directed, shall forfeit eight shillings for each day's neglect, to be recovered and applied as aforesaid. The rivers and the several parts thereof when frozen as aforesaid shall be considered as part of the Town or Parish to which they are respectively, opposite; and the Commissioners for the Town or Parish opposite to each other shall determine the distance upon the said river which is to be worked upon by the respective Parishes.

29. The said way shall be marked as directed by the Commissioners with evergreen bushes five feet high, erected lengthwise on the path not more than four rods from each other, and shall be replaced in the same manner when necessary. When the road is on the bank the path shall be marked on the river, and every person keeping a team, on being summoned by the Surveyor, shall forthwith send such team with a competent driver to work as directed, and neglecting to do so

shall forfeit sixteen shillings, to be recovered and applied for the purposes of this Section or the sum he shall forfeit shall be allowed as so much of his statute labour.

30. Any person who shall wilfully cut, take down, or destroy any bushes so ejected, shall pay twenty shillings; one half to be applied for the use of the Parish where the offence is committed, the other to the informer; the offender shall not be imprisoned for want of goods whereon to levy more than six days.

31. The Surveyors in their districts during the winter season when necessary, shall summon so many of the inhabitants liable to do statute labour, as they may think fit, to attend with shovels to shovel snow and assist to break roads, and so many of such inhabitants having horses or teams as they think necessary, to attend on the roads and break the same in the snow with such horses or teams, not exceeding four days in each winter, nor more than three miles from their own house, such work not to be deducted from their statute labour; any person not attending either in person or by a good and sufficient substitute, or refusing to work, shall pay five shillings for each day's neglect, and ten shillings per day for not attending or refusing to work with his horse and team as aforesaid, to be recovered as prescribed by the twenty third Section of this Act, and applied by the Commissioners to breaking winter roads. The Surveyors in performing the duty imposed by this Section shall be subject to the orders of the Commissioners.

32. Every horse-sled or sleigh drawn on any road shall have fastened to it or the harness thereof, two or more bells so as to be distinctly heard, under the penalty of five shillings for each offence, to be recovered from the owner or driver by any person who shall sue for the same, and to be paid and applied as directed by the twenty third Section.

33. The Road Commissioners in the Parishes of Maugerville and Sheffield, in the County of Sunbury, and of Canning, Cambridge, and Gagetown, in Queen's County, may apply such parts of the statute labour of the inhabitants or proprietors of land in said Parishes respectively, as they deem necessary, to secure and defend the road on the banks of the River Saint John therein, and to procure materials necessary for that purpose.

34. That part of the said statute labour so employed where the public highway runs may be performed at the times in each year when most practicable, under the direction of the Commissioners; the Commissioners and Surveyors shall make returns thereof in time to be submitted to the June Sessions of the Counties respectively.

35. The Commissioners, on or before the fifteenth day of December in each year, shall deliver to the Clerk or of the Peace of their Respective Counties, returns with vouchers, to be by the said Clerks filed in their office, which returns shall be according to the form hereinafter set forth. If any balance remain in the hands of the Commissioner, he shall pay the same to the County Treasurer, to be disposed of by the Sessions for the benefit of the roads and bridges where such money was collected.

FORM OF RETURN

The undersigned Commissioners (or Commissioner) of the Parish of _____ (or District of the Parish of _____, as the case may be), certify that all persons assessed to work in the said Parish (or District) have either worked, paid the commutation or fines, or been prosecuted as the law directs, except the persons excused.

[Here insert an account of the receipts and expenditures, shewing the balance of money, if any, in hand thus—]

Statement of moneys expended.
Statement of moneys received.
From whom fines not received.
List of persons excused.
Cause of such excuse.



Specify the items.

A. B.

36. All Commissioners shall be exempt from the performance of statute labour under this Act.

37. Any balance remaining in the hands of any Commissioner on the fifteenth day of December in each and every year, or received by him after that period to the expiration of the year of his office, shall be handed, with a statement of the Parish and District in which the same was collected, to the County Treasurer, to be held by him subject to the order of the Commissioners for the ensuing year of the Parish in which the same was collected, to be by them expended on the roads in such Parish.

38. If any Commissioner shall neglect or refuse to render his account for all moneys received, or work done by him, or shall retain in his hands any moneys, contrary to the provisions of this Act, or not properly expend the same, any General or Special Sessions may order him to be brought before them; the officer Deceiving such order shall execute the same according to the exigencies thereof. The said Sessions, on the Commissioner being brought before them, may, if they see fit, commit him to gaol until he shall have purged the contempt, unless they on cause shewn, deem it proper to discharge him, and in addition thereto the party so offending shall for any neglect or refusal, and any Commissioner or Surveyor shall for any other neglect of any of the duties imposed on him by this Act, be liable for every offence to a penalty of not less than forty shillings or more than five pounds, to be recovered on the complaint of any freeholder before any two of Her Majesty's Justices of the Peace of the County, one half to be paid to the person suing for the same, and the other half to the Overseers of the Poor of the place where the offence was committed, for the use of the poor.

39. The General Sessions of the Peace in the several Counties shall pay to Constables and other officers, their reasonable fees for services performed by them under this Act, not otherwise provided for.

40. Every prosecution for any of the forfeitures mentioned in this Act shall commenced within six months after the offence.

41. Any person thinking himself over-rated or assessed too high by the Commissioners, may, after notice, appeal to the next Sessions; if the appeal be sustained, they may relieve him by deducting the surplus from the amount of statute labour to be performed by him the next year.

42. No appeal shall be allowed unless the appellant, within one month after notice of assessment or summons to work, leave a memorandum with the Clerk of the Peace, or with the Commissioner to be transmitted to him, which memorandum shall be accompanied with an affidavit, to the following effect:—

County of _____ to wit:

I, A. B., of _____ in the said County, do make oath that the whole of the property, real and personal, held by me, or any person in trust for me, does not exceed _____, and that my whole yearly income does not exceed _____ . A. B.

Sworn at _____ this _____ }
day of _____ A. D. 185____. } C. D., J. Peace.

43. Nothing contained in this Act shall interfere with the rights of any City, Town, Parish, for which special or local laws relating to statute labour are now in force.

44. In incorporated Counties the County Council may, in the manner provided by any law relating to Municipal authorities, make such bye laws as they deem necessary to carry into effect the object contemplated by this Act, and generally to provide for the repairing, cleaning, improving, and maintaining the roads in the County, or any part thereof, and provide therefor either by an assessment on the poll, property, and income of the inhabitants, by a statute labour impost, or otherwise, or raise such sum as they require for that purpose, in such amounts as they deem necessary, and in the manner provided by any laws in force for levying, assessing, and collecting County or Parish rates, and may enforce the observance of any laws by such penalties as they may prescribe.