

*Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1865.* Fredericton, NB: G. E. Fenety, Printer to the Queen's Most Excellent Majesty, 1865.

28 Victoria – Chapter 12

**An Act in addition to the Act in aid of the construction of Railways. Passed 8th June, 1865.**

Section.

1. When Company formed, may enter upon Lands to make surveys, &c. Proviso.
2. Powers of Company.
3. Agreement with Guardian, Trustee, or Company, to be valid.

Section.

4. Company may alter course of River &c.
5. Company to keep up Fences.
6. Allowance to Jurors, &c.

Whereas by an Act made and passed in the twenty seventh year of Her Majesty's Reign, intituled *An Act in aid of the construction of Railways*, the Governor in Council is authorized to consent and agree with any Company or body corporate possessing sufficient capital, for the construction of certain lines of Railway described in the first Section of the said Act: And whereas it is necessary to empower any Company or body corporate that may so agree, to enter upon private lands for the purpose of carrying on their works;

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

1. When and so soon as any agreement shall be entered into by any Company or body corporate for the construction of any of the said lines of Railway, or of any of the branches or extensions thereof, under and according to the provisions of the said recited Act, such Company or body corporate, by their agents, servants, and workmen, shall and may enter upon any lands of private persons for the purpose of making a survey of the line or route of such contemplated Railroad, and may cut down or remove, where necessary to the making of such survey, any trees or other obstructions on such lands; provided, however, that before entering on any land for the purpose mentioned in this Section, said Company or body corporate shall notify the owners or persons in possession of such lands, and shall carry out such purpose with as little injury as possible consistently with that object, and no cutting or removal shall be made without the written consent of the owner or person in possession of such lands, or paying for the damages occasioned thereby, such damages to be settled and agreed upon by and between the said Company or body corporate and the owner or respective owners of such lands; and in case the said parties cannot agree, then it shall be lawful for the said Company or body corporate to apply to two of Her Majesty's Justices of the Peace for the County wherein the said lands may be situate, for a Warrant, which Warrant it shall be the duty of the said Justices to direct to the High Sheriff of the County, commanding said Sheriff to summon a jury of five disinterested freeholders or occupiers of land in the said County, at a certain time and place to be named in such Warrant, of which due notice shall be given to the owner or occupier of the land, which jury shall be sworn by any Justice of the Peace for the County, to examine the proposed line of such contemplated Railroad; and in

case the said line shall pass through or extend upon any improved lands, and it shall be necessary in order to effect such survey to cut down or remove any trees or other obstructions, then the damages occasioned by such cutting down or removal shall be ascertained and assessed by such jury.

2. Any such Company or body corporate is hereby invested with all the powers, privileges and immunities which are or may be necessary to carry into effect the purposes and objects of the said recited Act, and for that purpose they shall have the right to purchase, take and hold so much of the land or real estate of private persons or Corporations as may be necessary for the location, construction, and convenient operation of the said lines of Railway, or any of the branches or extensions thereof, and the Stations connected therewith; and they shall also have the right by their engineers, agents, servants, and workmen, to enter upon any such land with horses, cattle, carts, and other carriages, to take, remove, and use for the construction and repair of the said lines of Railway, or any of the branches or extensions thereof, any earth, gravel, stone, timber, trees, bushes, or other material, on or from the land so taken; and they shall have the right of ingress and egress into, upon, and from the adjoining lands, for the purpose of making any necessary repairs to any such Railroad, whenever the same may be necessary; provided, however, that the lands so to be taken for any of the said lines of Railway shall not exceed six rods in width, except when greater width is necessary for excavation or embankment, and the quantity of land taken at each Station, except at the termini or junction of the Railways, shall not exceed five acres; and where the said lines of Railway, or any of the branches or extensions thereof, shall pass through any woodland or forest, the said Company or body corporate shall have the right to cut down and remove any trees standing thereon to the distance of four rods on either side of the said Railroad, which might be liable to obstruct or injure the same; and provided also, that in all such cases the said Company or body corporate shall, before entering upon or taking possession of any such land, pay for the said land and materials so to be taken, used, or appropriated, (in case the owners thereof demand it) such price as they and the owner or respective owners thereof may agree upon; and in case the said parties cannot agree, then the said Company or body corporate shall pay such damages as shall be ascertained and determined in the manner directed in and by the first Section of this Act, together with the cost of assessment; provided nevertheless, that the jury in assessing such damages shall take into consideration the benefit (if any) to the owner of such land by the construction of such Railway, in diminution of the damages, and the land so taken by the said Company or body corporate shall be held as lands taken and appropriated for highways.

3. If any such Company or body corporate shall take any lands of any body corporate, guardians, committees, executors, administrators, or other trustees, held for and on behalf of those whom they represent, whether Corporations, infants, idiots, lunatics, married women, or persons deceased, who are or shall be interested in the said lands, the respective contracts, agreements, and sales of such Corporations, guardians, committees, executors, administrators, or trustees, shall be valid and effectual to all intents and purposes, and their respective receipts shall be sufficient discharges therefor; and it shall be lawful for them respectively to agree and settle with the said Company or body corporate for the damages (if any) by reason of taking such land; and in case of disagreement, such damages to be ascertained and determined as provided by the first Section of this Act.

4. Any such Company or body corporate may alter the course of any river, stream, or water course, and may make or construct in, upon, across, under or over any land, streets, roads, valleys, rivers, streams, lakes, or other waters, such temporary or permanent inclined planes, embankments, cuttings, aqueducts, bridges, roads, conduits, drains, piers, arches, or other works, as they may think proper, and may raise or sink the level of any such rivers, streams of water, roads, streets, or ways, in order to carry them over or under, on the level of, or by the side of any of the said lines of Railway, or the branches or extensions thereof, as they may think proper; provided, however, that the said Company or body corporate shall previously pay to the owner or owners of the land to be entered upon, taken or affected by any act to be done under the powers contained in this Section, such damages as may be agreed upon; and in case the said parties should not agree, then the said Company or body corporate shall pay such damages, together with the costs of assessing the same, as shall be ascertained and determined upon in the manner directed in and by the first Section of this Act.

5. Any such Company or body corporate shall erect and maintain legal and sufficient fences on each side of the land taken by them for any of the said lines of Railway, or the branches or extensions thereof, where the same shall pass through enclosed or improved lands; and for neglect to erect and maintain such fences, they shall be liable to be indicted in any Court having competent jurisdiction, and to be fined in such sum as shall be adjudged necessary to erect or repair the said fences, and such fine shall be expended in the erection or repair of such fence under the direction of a person appointed by such Court for that purpose; provided however, that such fences shall not be required at the receiving and landing places of passengers and freight, and at such other places as fences are not elsewhere usually required.

6. In all cases where a jury shall be summoned under any of the provisions of this Act, the said jury shall be allowed the sum of two dollars each for their services respectively for each time they shall be so summoned; the Justices shall be allowed the sum of fifty cents for the Warrant; and the Sheriff the sum of four dollars for summoning the jury and attending them at the enquiry; and the whole of the sum necessary to bear such expenses shall be paid into the hands of the said Justices, by the party applying for such Warrant, previous to the issuing thereof.