

Laws of Her Majesty's Province of Newfoundland, passed in the year 1845.

8 Victoria – Chapter 3

**An Act to Regulate the Making and Repairing of Roads, Streets, and Bridges, within this Colony.
(Passed 23rd April, 1845.)**

Whereas it is expedient to Regulate the Making and Repairing of Roads in this Colony,

I. Be it therefore enacted, by the Governor, Council and Assembly in Legislative Session convened, that all Sums of Money which may be hereafter granted by the Legislature for the Construction, Repair, and Improvement of Roads, Streets, and Bridges, in this Colony, shall be expended and appropriated under the provisions of this Act.

II. And be it further enacted, that for the purposes of this Act, it shall and may be lawful for the Governor, or Administrator of the Government, for the time being, by and with the advice of Her Majesty's Council, from time to time to appoint Boards of Road Commissioners for the several Districts of the Colony, or for any Road or Street therein, and to appoint Chairmen for the same, respectively; and also, by and with such advice as aforesaid, to fill up, from time to time, any vacancies that may occur in such Boards by the death, absence, or refusal to act, of any Members thereof.

III. And be it further enacted, that the number to form a quorum of such Boards, respectively, shall be prescribed by the Governor, or Administrator of the Government for the time being, by and with the advice aforesaid, and such Boards shall be, and they are hereby authorized, in manner hereinafter prescribed, to make, construct, repair, improve, and (with the approval of the Board of Control, as is hereinafter mentioned) alter all or any Roads, Streets, or Bridges, over which they may have been appointed: and also, shall and may appoint such Surveyors and other Officers under them, as may be deemed necessary. Provided nevertheless, that no Commissioner who may discharge the duties of a Surveyor or Secretary, shall receive a salary, or any pecuniary compensation for his services in such behalf; and provided also that no Commissioner shall, under a penalty of One Hundred Pounds for every such offence, be engaged or concerned, directly or indirectly, in any Contract or Agreement for making, constructing, repairing, or improving, any Road, Street or Bridge, to be entered into in pursuance of the provisions of this Act.

IV. And be it further enacted, that it shall not be lawful for, any of the said Boards of Commissioners to proceed in the construction, repair or improvement of any Roads, Streets, or Bridges, for which any monies may have been appropriated, in any other manner than by written Contracts, to be entered into by Tender; and all such Contracts shall be in duplicate, and shall be signed by the Contractors respectively, and by a quorum of the Commissioners of the respective Boards, or by the Chairman, duly authorised to sign on their behalf; and one part thereof, to which shall be attached a copy of the Specification and of the Diagram or Plan, if any, of the Work therein contracted for, shall be held by each of the parties thereto.

V. And be it further enacted, that previously to any such Contract, as aforesaid, being entered into, written or printed notices thereof, specifying in a clear and distinct manner the Work to be performed, and requiring tenders therefor, shall be posted for Sixteen Days on the places of Public Worship, if any, and if not, then in some other conspicuous places in the Town, Harbour or Settlement, nearest the place where the Work is to be done; and all Tenders for any Contract or Work shall be signed by the persons making the same, with their names and the addition of their places of abode and occupations, respectively; and to every such Tender shall be annexed and undertaking in writing signed by two sufficiently responsible persons, under a penalty equal in amount to the sum specified in such Tender, as sureties for the due performance of the Contract, in the event of such Tender being accepted; and such undertaking shall set forth the addition of the places of abode and occupation of the said Sureties, and their signatures shall be attested by some Householder of the District, who shall, sign his name as Witness to the same, and such undertaking shall be in the form following:

in consideration of the Contract for [describe the Work tendered for] being given to [name of person tendering] we hereby undertake to become bound to our Sovereign Lady the Queen, her Heirs and Successors, in the Sum of [amount for which the Tender may be made] conditioned for the due performance by the said [person tendering] of the said Work in manner prescribed in the Specification of the same.

In presence of E. F.
Witness our Hands,
The day of _____ A. D.
A. B.
C. D.

And all such Tenders shall be opened by the said Boards of Commissioners respectively, in the presence of the parties tendering and their proposed Sureties, should they desire if, at the time and place appointed for opening the same.

VI. And be it further enacted, that in all cases the lowest Tender made, with sufficient security, shall be accepted, unless the same shall be considered unreasonable; and in case no Tender be made within the period advertised for Tender, or in case all Tenders made be considered unreasonable, then, and in such case, further notice at the discretion of the Commissioners shall be given for Benders, and so on as many times as the same may be required.

VII. And be it further enacted, that the said Boards of Commissioners, before entering into any such Contract as aforesaid, shall take security, as is hereinbefore provided, for the due performance of the same; and it shall be competent for the Boards of Road Commissioners, if they shall think proper, to advance to any Contractor or Contractors one third of the amount of his or their Contract, which said one third shall be paid to the said Contractor or Contractors on the production to the Colonial Secretary of a Certificate under the hand of the Chairman of the Board of Road Commissioners with which he has contracted, of such Contract having been entered into; and that on the production of a Certificate from the Board of Commissioners of one half of the amount of work contracted for being completed, such Contractor or Contractors shall be entitled to receive a second third paid of the amount of his or their

Contract; duplicates of which Certificates to be given as aforesaid shall, at the same time, be forwarded by the Chairmen of the respective Boards of Road Commissioners to the Board of Control; and such Commissioners shall so frame their Contracts that the same shall be finished within a limited time, and payment of one-third of the full amount thereof respectively, shall always be withheld until the work therein contracted for shall appear by the affidavit of the Inspector or Surveyor of such Boards respectively, specifying the particulars and measurement of such work, to have been fully completed, examined and passed, agreeably to Contract.

VIII. And be it further enacted, that previously to any sum or sums of money being expended in the opening or making of any new Road, the proposed line of Road shall first have been surveyed by or under the direction of the respective Boards of Commissioners and approved by them: Provided always, that no line of road on which monies have been expended by the Legislature, shall be altered without the expressed approval of the Board of Control hereinafter, mentioned, and no new Road shall be gravelled until after the expiration of twelve months, from the time of such road being made.

IX. And be it further enacted, that if any complaint shall arise as to the unsuitableness of any line of Road adopted by any Board of Commissioners, and such complaint shall be preferred to the Board of Control by any Five Persons residing within the vicinity of the District in which such line of Road shall be laid out, it shall be lawful for the said Board of Control, if they shall see fit, to order the same to be re-surveyed by a Surveyor acting under their instructions, whose survey and report or decision thereon, shall, if adopted by the Board of Control, be final.

X. And be it further enacted, that whenever it shall become necessary for the opening, making or widening any Road, Street, or other work, to appropriate any Piece or Parcel of Land, being private property, if shall and may be lawful for the Board of Commissioners, before such Road, Street, or other Work, shall be opened, laid down, or commenced, to pay, by certificate addressed to the Colonial Secretary, out of such Monies as shall be at their disposal for the purpose of making such respective Road, Street, or other Work, a fair and reasonable compensation to every person having any interest in the Land so intended to be appropriated, and also to compensate any person or persons for any damage which may be occasioned to his or their property by the making, opening, or widening such Road, Street, or other Work; and if the said Board of Road Commissioners and the owner or owners of such property cannot agree upon the amount of compensation to be paid, such amount shall be ascertained by one of the Justices of the Peace within the District where the Land is situate, and two Assessors, one of whom shall be nominated by the said Board of Road Commissioners and the other by the owner or owners of the Land, and who, or a majority of whom, shall assess and award the amount, off compensation (if any) that shall be paid for the value of the said land, or for the damage occasioned, together with all reasonable costs incurred by the attendance of Witnesses, which award shall be final; and if the owner or owners of the Land shall neglect to nominate an Assessor within Five Days after being thereto required, the said Justice of the Peace shall, upon the requisition of the said Board of Road Commissioners, nominate an Assessor on behalf of the said owner or owners; and the said Justice of the Peace and the two Assessors shall be paid the Sum of Ten Shillings each for their services in that behalf; Provided, that every such award shall be made in writing within Ten Days after any day that may be appointed by the said Justice for the hearing of the case; and upon payment or tender to the parties interested, of the sum or sums awarded for compensation, pursuant to the terms of the

award, it shall be lawful for the said Boards of Road Commissioners respectively, or any person authorised by them, to enter into and upon, and take possession of any land so to be appropriated for any Road, Street, or Lane, as aforesaid.

XI. And be it further enacted, that in all cases where any Sum or Sums of Money appropriated in any Act of the Legislature to any Road, Street, or Bridge, shall be found to be more than sufficient for making, constructing, or repairing the same, as the case may be, it shall be lawful for the Boards of Road Commissioners respectively, to appropriate and apply such surplus Money to the making, constructing, or repairing, any other Road, Street, or Bridge, within the District for which such Money shall have been granted. Provided always, that where any Sum of Money granted for any particular part of any Main Road shall be found more than sufficient for the purpose of such grant, the surplus thereof shall be expended on such other parts of the same line of Road within the District as may require the same.

XII. And be it further enacted, that no Road to be hereafter opened or made, shall be Gravelled to a greater width than Seven Feet, or shall have a Base of a less width, from Drain to Drain, than Fourteen Feet, when such Road shall be situated more than Five Miles, from St. John's, or Four Miles from Harbour-Grace, Carbonear, or Brigus, respectively; and that where any Land within Thirty Feet of the centre of any Road now laid out remains unappropriated—and where any Land within Thirty Feet of the centre of any Road hereafter to be laid out, shall, at the time of such Road being laid out, be unappropriated—such land shall not be granted, conveyed, or appropriated to any private purpose.

XIII. And be it further enacted, that the Chairman of the said Boards of Commissioners, respectively, shall have the like power and authority in all respects, with regard to the abatement of nuisances, as in and by an Act passed in the Sixth Year of the Reign of her present Majesty, entitled, "An Act for Granting to Her Majesty a Sum of Money for making, constructing, and repairing Roads, Streets, and Bridges in this Colony, and for regulating the expenditure of the same," are vested in the Chairman of the Boards of Road Commissioners appointed under that Act.

XIV. And be it further enacted, that the Chairman of the Board of Commissioners of each District shall, on or before the first day of December in every year, and oftener it required, transmit in duplicate to the Colonial Secretary, to be laid before the Governor, a correct statement of all Works done, and Monies paid on such Road, Streets, and Bridges, as may be within his District, together with an estimate of the probable amount which may be necessary to complete the same; which statement and estimate shall have been previously submitted to a meeting of Commissioners for such District for that purpose to be convened.

XV. And be it further enacted, that all monies granted under any former Act for the making, constructing, or repairing any Road, Street, or Bridge, and unappropriated, and not contracted for, shall be applied to the purposes for which they have been so granted, by the respective Commissioners to be appointed under this Act, and by none others.

XVI. And be it further enacted, that it shall and may be lawful for the Governor, or Administrator of the Government for the time being, by warrant under his hand and seal, to appoint five persons to form

and be a Board of Control of the Public Works on all Roads, Streets, and Bridges, within this Colony, and to appoint one Member of the said Board to be the Chairman thereof, at a Salary of One Hundred Pounds, and one other Member of the said Board to be the Secretary thereof, at a salary of One Hundred Pounds; and it shall and may be lawful for the said Boards of Commissioners, respectively, and they are hereby required to transmit to the said Board of Control all tenders made for any work or contract, as well those rejected as accepted, all contracts whatsoever entered into, and reports of the appointment of all Surveyors or Inspectors made by them, together with a statement of the extent of work under inspection, and the amount of intended remuneration for survey and inspection; and such Boards of Commissioners shall likewise transmit sworn proof of the completion of the several contracts, according to agreement, before the payment of the last instalment on any such contract or contracts shall be permitted or allowed; all which reports and statements shall, before the payment of the last instalment, be subject to the approval, order and control of the said Board.

XVII. And be it further enacted, that it shall and may be lawful for the Governor or Administrator of the Government for the time being, by and with the advice of Her Majesty's Council, to nominate and appoint one fit and competent person as a Surveyor, at an annual Salary of One Hundred and Fifty Pounds, which Surveyor shall be under the direction of the Board of Control, and shall be ex officio Inspector of all Roads in the Colony; and it shall be the duty of the said Surveyor to report to the Boards of Road Commissioners of the several districts through which he may pass, any matters which he may consider necessary to bring under their notice; and it shall further be the duty of the said Surveyor to make, through the said Board of Control, to the Governor or Administrator of the Government, at least once in every year, and oftener if required, a full report of the state of each road which he may have inspected, specifying the amount that may be necessary for the completion or repair of such roads respectively, together with such general information on the subject of roads as he may think necessary and useful, or which he may be required to furnish; and it shall be further lawful for the Governor or Administrator of the Government for the time being, to appoint one or more additional Surveyors, upon the representation of the Board of Control that such appointment is necessary for the purposes of this Act.

XVIII. And be it farther enacted, that for the purposes of this Act the District of St. John's shall comprehend all Roads, Streets and Bridges within the Electoral District of St. John's, and also the Main Roads between St. John's and Bay Bulls, St. John's and Holyrood, Holyrood and Salmonier, Salmonier and St. Mary's, and Colliers and Ship Harbour: That the District of Conception Bay shall comprehend all Roads, Streets and Bridges, within the Electoral District of Conception Bay. North of Holyrood, aforesaid, and including the Roads connecting the Bays of Conception and Trinity: That the District of Trinity Day, South, shall Comprehend all Roads, Streets and Bridges, within the Electoral District of Trinity Bay, from Dildo Cove to Split Point: That the District of Trinity Bay, North, shall comprehend all Bo ads, Streets and Bridges from Bonaventure to Catalina: That the District of Bonavista shall comprehend all Roads, Streets and Bridges within the Electoral District of Bonavista, and also the Roads between Bonavista and Trinity Bays, and in the Town of Catalina: That the District of Fogo shall comprehend all Roads, Streets, and Bridges within the Electoral District of Fogo: That the District of Burin shall comprehend all Roads, Streets, and Bridges within the Electoral District of Burin: That the District of Fortune Bay shall comprehend all Roads, Streets, and Bridges within the Electoral District of Fortune Bay: That the District of Placentia and St. Mary's shall comprehend all Roads, Streets, and

Bridges within the Electoral District of Placentia and St. Mary's, except the Main Roads hereinbefore included within the District of St. John's; and that the District of Ferryland shall comprehend all Roads, Streets, and Bridges within the Electoral District of Ferryland, South of Bay Bulls, and inclusive thereof.

XIX. And be it further enacted, That if shall be lawful for the Governor, or Administrator of the Government, for the time being, by Warrant on the Colonial Treasurer, to pay to the Colonial Secretary, out of Monies remaining in the Treasury unappropriated, a Sum not exceeding one-half per cent, on the gross amount granted in any Road Act, to defray the expense of employing a Clerk to assist the said Secretary in discharging the duties imposed by this Act.

XX. And be it further enacted, that it shall be lawful for the Governor, or Administrator of the Government, for the time being, to appropriate a further Sum, not exceeding, in the whole, ten per cent, upon the amount granted in any Act for making, repairing, and improving, Roads, Streets, and Bridges, towards defraying all expenses attendant upon the expenditure of such amount; that is to say, The expenses of Surveying, Inspecting, Overseeing,—the remuneration of Chairmen, Secretaries, and all other necessary Officers,—Printing, Stationery, and Postage;—to be paid by the Treasurer of the Colony out of any Monies remaining in his hands unappropriated, by Warrant from the Governor, or Administrator of the Government, for the time being.

XXI. And be it further enacted, that no Action shall be commenced against any Commissioner, Surveyor, Contractor, or other person, for anything done by him in pursuance of the provisions of this Act, until one Calendar Month next after notice in writing shall have been delivered to him, or left at his usual place of abode, by the party who intends to institute such action, his or her Attorney or Agent; in which notice shall be clearly and explicitly contained the cause of action, the name and place of abode of the person who is to bring the same, and the name and place of abode of his or her Attorney or Agent.

XXII. And be it further enacted, that it shall be lawful for any such Commissioner, Surveyor, Contractor, or other person, at any time within One Calendar Month after such notice shall have been given, to tender amends to the party complaining, or to his or her Agent or Attorney, and in case such amends be not accepted, or in case where no tender has been made, to plead the general issue to any Action to be thereafter brought, and to give such tender, if any, or any other special matter, in evidence; and in case the Plaintiff in any such Action shall not, at the trial thereof, recover a verdict for more than the amount of such tender, if any, the Defendant in such Action shall be entitled to his or her Costs of Suit, and to the like remedy for the recovery thereof as though a verdict had passed against the Plaintiff.

XXIII. And be it further enacted, that in any case where such Commissioner, Surveyor, Contractor, or other person as aforesaid, shall neglect to tender any amends, or shall have tendered insufficient amends before Action brought, it shall be lawful for him, by leave of the Court wherein such Action shall be brought, at any time before the trial thereof, to pay into Court such money as he shall see fit, whereupon such proceedings, orders, and judgments shall be had, made, and given in and by such Court, as in other Actions where the Defendant is allowed to pay money into Court.

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XXIV. And be it further enacted, that this Act shall continue and be in force for the period of five years, and thence until the end of the then next Session of the General Assembly.