

Laws of His Majesty's Province of Upper-Canada; Passed in the Second Session of the Provincial Parliament of Upper Canada, Met at Newark, on the Thirty-First day of May, in the Thirty-Third Year of the Reign of our Sovereign Lord George the Third (1793). Niagara: Gideon Tiffany, Printer to the King's Most Excellent Majesty, 1795.

33 George III – Chapter 4

An Act to regulate the laying out, amending and keeping in repair, the Public Highways and Roads within this Province.

Whereas the regulations hitherto in force in this province, for laying out the public high ways and roads, and amending and repairing the same, have been found insufficient, and much inconvenience and complaint have been occasioned thereby; Be it enacted by the kings mod excellent, majesty, by and with the advice and consent of the legislative council, and assembly of the province of Upper-Canada, constituted and assembled, by virtue of and under the authority an Act passed in the parliament of Great-Britain, entitled an Act to repeal certain parts of an Act passed in the fourteenth year of his majesty's reign, entitled, "An Act for making more effectual provision for the government of the province of Quebec, in North America, and to make further provision for the government of the said province," and by the authority of the same, That from and After the passing of this Act, a certain ordinance passed in the seventeenth year of the reign of his present majesty, entitled, "An ordinance for repairing and amending the public high ways and bridges, in the province of Quebec," shall be, and the same is hereby repealed.

II. And be it further enacted by the authority aforesaid, That each and every justice of the peace, Acting under and by virtue of his majesty's commission, shall be and they are hereby declared to be commissioners to lay out and regulate the high ways and roads, within the respective counties, divisions or limits in which they shall Act, of the several districts within this province.

III. And be it further enacted, That the persons to be employed as overseers of the high ways and roads, in every parish, township, or place within this province, shall be nominated and appointed according to the provisions for that purpose made, in a certain Act of the legislature of this province, entitled, "An Act to provide for the nomination and appointment of parish, and town officers within this province."

IV. And be it enacted by the authority aforesaid, That the said commissioners or the major part of them, and they are hereby empowered and authorized to regulate the roads already said out, and if any of them shall appear to be inconvenient, and that an alteration be necessary, and the same be certified on oath, by twelve principal freeholders of the district, to be summoned by the high sheriff, his deputy, or any constable of the division, by virtue of a warrant to be issued by two justices of the peace for that purpose, the commissioners may alter the same, and also lay out such other public highways and roads, as they or the major part of them, shall think most convenient as well for travellers as for the inhabitants of each neighboring parish, township or place which highways and roads, so said out, shall be common public highways.

V. And be it further enacted by the authority aforesaid, That the width of the roads hereafter to be said out, shall be left to the discretion of the commissioners for the time being, of the parish, township, or place, through which such roads may pass, so that the same be not less than thirty feet, and do not exceed sixty feet: Provided always, That the front roads on the water, and between every concession, shall in no case be less than sixty feet.

VI. And be it further enacted by the authority aforesaid, That all bridges hereafter to be built upon any public highway or road, within this province, shall not be less than eighteen feet in width, and in order to provide materials for the same, it shall and may be lawful, for the said overseers, to direct the laborers performing such duty, as herein after is mentioned to cut down and make use of any trees standing upon open and unimproved lands, that may be most convenient and best adapted to the building or repairing such bridges.

VII. And be it further enacted by the authority aforesaid, That wherever any public highway or road, is or shall be laid out by any deep water, or dangerous precipice, that the overseers, shall and are hereby required to cause good and sufficient fences to be erected thereon, for the security of his majesty's subjects, and others, who may travel on the said road. Provided also, and be it enacted, That where any road shall hereafter be said out through inclosed or improved lands, it shall and may be lawful for the said commissioners or the major part of them, to view the same and to make an agreement with the owner or owners of such inclosed or improved land for the recompence to be made for such ground, and if the said commissioners cannot agree with the owner or owners or the said owner or owners, shall refuse to treat, or take such recompence or satisfaction as shall be offered, then the justices of the peace at any general quarter sessions, to beholden for the limit wherein such ground shall lie, upon certificate in writing, signed by the commissioners making such view aforesaid, of their proceedings on the premises, and upon giving fourteen days notice in writing, to the owner or other person interested in the said ground, or to his, her, or their agent, signifying an intention to apply to such quarter sessions for the purpose of taking such ground, shall empanel a jury of twelve disinterested men, out of the persons returned to serve as jury men, at such quarter sessions, and the said jury shall upon their oaths to the best of their judgment, assess the damages to be given, and recompence to be made to the owner or owners, or others interested as aforesaid. Provided always, That all roads already marked, or said out, in the Eastern District of this province, under the authority of any commander in chief, or under the authority of any former ordinance of the province of Quebec, shall be and the same are hereby adopted and confirmed, and if any such roads are not yet opened, the same shall be said open under and by virtue of this Act, and that no compensation shall be made to any person or persons through whose land the same may run; Provided always, that the said roads be open in the same direction that was originally marked out.

VIII. And be it further enacted, That in all cases where it shall be found necessary, by the said commissioners to alter the direction of any road or highway, so that the ground it formerly occupied shall become unnecessary for public purposes, that then and in such case it shall and may be lawful for the said commissioners, and they are hereby required to dispose of the said ground; and to that end, to cause a jury to be summoned by a warrant under their hands and seals, to estimate the value thereof, and the choice of first buying the same, according to such

valuation, shall be given to the owner of the lands adjoining, on each side of the said road; but in case the lands shall belong to different owners, that then it shall be equally divided between them if they shall be disposed to purchase the same, and the monies arising from such sale, shall be applied towards indemnifying the owner or owners of the lands, as such road or highway may pass through by such new direction; and such sale so made shall be deemed valid and legal in all courts of law and equity within this province.

IX. And be it further enacted by the authority aforesaid, That the said commissioners for the time being, shall and may as they shall judge proper and necessary, divide their respective parishes, or townships into divisions, which they shall allot to the overseers of the highway, and the said overseers, shall superintend, repair and keep in order, the highways, roads, streets and bridges in their several divisions, and the said commissioners or the major part of them, may from time to time, order any overseer to work upon any road or highway within his division, as they shall think necessary, and the said overseer shall within ten days after having received such order summons such persons within his division, as are obliged to perform duty or labor, and set them to work on such part of the road or highway as they shall be directed to amend or lay out, and shall direct all persons performing labor on the said highways and roads, to destroy as much as may be in their power all burrs, thistles, and other weeds, that are hurtful to the purposes of husbandry, and in case of any wilful neglect, every person neglecting or refusing to obey such orders, shall be subject to the like penalty as if he had been a wilful defaulter for that day or for such time as he shall have neglected or refused, and if any overseer shall refuse or neglect to summon such persons as aforesaid, and to set them to work on such road or highway shall be directed to lay out or amend, he shall for every such neglect or refusal, forfeit the sum of twenty shillings to be recovered in manner herein after to be set forth.

X. And be it further enacted by the authority aforesaid, That the overseers for every parish, or township shall severally make out and keep a list, of every person who is owner of a car, cart or team within their division, and likewise of all the inhabitants of such division, who are liable under the directions of this Act, to work upon the highways, which list shall be subscribed by the said overseers respectively, and delivered in to the commissioners of the division to which they belong within twenty days After they shall have been appointed overseers as aforesaid, and the said overseers for every parish, or township, and each of them, shall carefully and diligently collect the several compositions, forfeitures, penalties and sums of money directed and allowed to be received and taken within the same by virtue of this Act, within the year for which he is appointed overseer, and shall also keep one or more book or books, containing an account of the duty or labor done, compounded for, or unperformed by every person liable to discharge the same, and also a just, true and fair account to be verified on oath if required (which oath the justices are hereby authorized to administer) of all such monies as shall have come to his hands in respect of such parish, or township, by virtue of and for the purposes of this Act, and to whom and on what occasion he shall have paid and applied the same, and also of the sums of money, that shall remain due and owing, from any person or persons in respect of the payments, compositions, penalties, and forfeitures to be taken and received, and in respect of the said highways by virtue of this Act, which book or books, shall be delivered in to the commissioners listing within their respective divisions, at some special sessions to be holden for that purpose in the month of March

in every year, and if any overseer, shall neglect or refuse to deliver such account, or to make such oath if required, he shall forfeit and pay the sum of twenty pounds, to be recovered and applied in manner herein After mentioned

XI. And be it further enacted by the authority aforesaid, That the roads and highways, in and through every parish, township or reputed township shall be cleared, repaired and maintained by the inhabitants thereof, and that every person being a householder or freeholder, shall either in person or by a sufficient man in his stead, be obliged to work on the roads, and shall have and bring with him, one spade, pike-axe, bar, or such other tool or instrument useful for the purposes aforesaid, as shall be directed, for and during any space of time not exceeding twelve days in every year, allowing eight hours to each days work, and that every person within each parish, or township, keeping a cart, plough, wain, waggon, or team, of two horses, oxen, or beasts of draught, used to draw the same, shall send on every day to be appointed by the overseer, a cart, wain, waggon and team, and one able man to drive the same for any space of time not exceeding six several days in every year, to work on the highways, roads, streets or bridges allowing eight hours to each days work, which said days work shall be held and taken as equivalent to two days personal labor, and if any laborer or driver shall refuse to work and labor, or to carry proper and sufficient loads during the time above mentioned, it shall and may be lawful for the said overseer to discharge such laborer, or driver, team or cart, and to receive from the said laborer, or driver or from the owner of such team and cart the forfeiture which every such person or persons would have incurred by virtue of this Act, in case such laborer had not attended, or such team, cart and driver had not been sent.

XII. And be it further enacted by the authority aforesaid, That each overseer shall from time to time give to every person, or leave, or cause to be left at the house or usual place of abode of every person within his division liable to perform the duty and labor by this Act directed, three days notice at least of the day, hour, and place upon which each of the said day's duty shall be performed; and every person possessed of a wain, waggon, cart, carriage or team, having been duly summoned as aforesaid, and not having paid such composition as herein after is mentioned, who shall make default in sending such carriage and team with an able man to drive the same, or in performing the said duty, at the same time and place to be notified to him in manner aforesaid, shall for every such default forfeit and pay the sum of ten shillings; and that every householder or freeholder liable to such personal labor as aforesaid, having been duly summoned, and not having paid such composition as herein after is mentioned, who shall not appear or send a sufficient man in his stead with such tool or instrument, at such time and place as by the said notice shall be directed, shall forfeit and pay for every such default the sum of five shillings, all which forfeitures shall be applied to the use of the highways of the parish, or township respectively, in which such default shall have been made, and the said overseer shall fairly and equally demand and require such duty and labor from every person liable to perform the same, according to the directions of this Act, without favor or partiality, to any person or persons whatsoever, except in the case of poor persons herein after mentioned, and every overseer shall and may and is hereby required with all convenient speed after default made as aforesaid, to proceed for the recovery of the penalties and forfeitures hereby inflicted, in manner herein after directed, so that the same may be recovered before he makes up his accounts in the manner directed by this Act.

XIII. Provided always, and it is hereby enacted, That any person liable to perform the said duty, by sending a carriage, cart and team, with a driver to the same, in manner aforesaid, shall and may compound for such duty, if he or she shall think fit, by paying to the said overseer, at the time and in the manner herein After mentioned, the sum of six shillings for each carriage, team and driver for each day, and that every freeholder or householder, liable to perform such duty or labor as aforesaid, shall and may compound for the same, if he shall think fit, by paying to the overseer the sum of three shillings, for and in lieu of every such day's duty or labor, respectively, at the time and in the manner herein after directed. Provided always, that upon application to be signed by any two or more neighboring householders to any two of his majesty's justices made by any person having four children under the age of fourteen years, and not possessing more than two hundred acres of land, it shall and may be lawful for the said justices by an order under their hands and seals, to lessen the duty or labor of such persons, according to the discretion of the said justices.

XIV. Provided always, and it is hereby further enacted, That the overseers of every parish, township or place, shall on or before the third Sunday in the month of March, cause public written notice to be given in the church or chapel of such parish, township or place, and if there be no church or chapel then at the most public place of meeting therein, of the time and place, when and where persons permitted under the authority of this act, and inclined to compound for the said duty, may signify such their intention to the said overseers, and all and every person signifying the same, who shall then, or within the space of one calendar month after the date of such notice, pay to the overseer of his division, the composition authorized and allowed by this Act, shall be discharged from the performance of such duty, and the said composition money shall be employed by the commissioners for the use of the highways, but in case the said composition money be not paid within one month, the parties neglecting to pay the same, shall be considered defaulters, and shall be liable to the same forfeitures as they who shall make wilful default. Provided always and be it enacted, That if it shall appear to the justices at any special sessions, for the roads to be holden, that from the liberty herein before given for compounding for the performance of the statute duty, there will be a difficulty in procuring the necessary carriages and teams in any particular parish, township or place within their respective divisions, without paying high and extravagant prices for the same, it shall and may be lawful for such justices to order and direct the team duty hereby required or so much thereof as they shall think fit to be performed in kind, in such parish, township, or place except in respect of such teams as belong to persons not possessing more than two hundred acres of land within the same, and that it shall and may be lawful for such justices in those parishes, townships or places where the prices of daily labor exceeds the sum of three shillings, to order and direct the persons so exempted from performing the team duty to perform the labor upon the said highways in person, which order shall supersede the power or liberty of compounding for labor, any thing herein before mentioned to the contrary notwithstanding.

XV. And whereas the monies that may arise by fines and compositions may not be sufficient for purchasing materials and other necessaries for erecting and building bridges, and making such other improvements on the public roads as cannot be accomplished by the ordinary statute labor; Be it further enacted by the authority aforesaid, That where the major part of the commissioners of the highways, ailing within any division, shall be of opinion that a further sum will be wanting to

undertake any particular work of manifest general advantage, on the public highway, that they may certify the same by a writing subscribed with their names, to the justices of the peace, in general quarter sessions assembled, within their respective districts, and may report to them an estimate of the additional sum that may be required to complete such work, and if it shall appear to the major part of the justices then and there assembled, that such proposed improvement or work will be of public benefit to the district, and that it is expedient to undertake the same, they may come to a resolution to such effect, and declare that they will take the matter into consideration at the general quarter session next ensuing, advertising such resolution in the public papers, or giving such other notice thereof as they shall deem necessary, and in case it shall be deemed advisable by the greater number of the justices at such subsequent quarter session assembled, upon further consideration that such resolution should be confirmed, it shall and may be lawful for the said justices, to order and direct that the sum, provided the same do not exceed fifty pounds, be raised and collected either in the whole or by installments of and from the freeholders and inhabitants within the said district, to be paid out of the district assessment for the said district.

XVI. And be it further enacted by the authority aforesaid, That if any person or persons shall alter, stop up, or any wise incumber or encroach on any street, highway or road already said out, or that shall be laid out by the commissioners aforesaid, by laying timber or wood, or wilfully leaving any cart, waggon, carriage, plough or any instrument of husbandry, or any rubbish, dung or manure in any highway (excepting only with respect to such waggon, cart or carriage, during such reasonable time, as the same shall be loading or unloading, and standing as near the side of such highway as conveniently may be) so as to intercept or hinder the free passage of any other carriage of his majesty's subjects, or shall pull down or destroy any fences that shall be put up, by virtue of this act, he shall forfeit and pay for every such offence the sum of five shillings.

XVII. And be it further enacted, That after the passing of this act, it shall and may be lawful for any owner or occupier of lands adjoining to his majesty's highway or road, to girdle or cause to be girdled, any tree standing upon such lands within the distance of thirty yards, from the side of the said road, and that from and after the first day of September, that will be in the year one thousand seven hundred and ninety-four, if any girdled tree or dead tree shall be found standing within thirty yards of the said road, it shall and may be lawful for any person taking with him a credible witness to give a verbal or written notice to the owner or occupier of the said lands to cut down or remove such girdled or dead tree or trees, and in case any owner or occupier of the said lands shall neglect or refuse to cut down or remove any such tree by the space of thirty days After such notice as aforesaid, he shall forfeit and pay the sum of ten shillings, for every day that the said tree shall be differed to remain uncut or unremoved after the expiration of such period as aforesaid, which penalty shall be levied and applied in manner and for the purposes herein after mentioned; and also that from and after the first day of September, if any tree shall be cut down or fall out of any inclosed land into or across any of the public highways, that the owner or occupier of such inclosure, shall within the space of twenty-four hours after the same shall be so fallen, remove the same, and if after such notice thereof given to such owner or occupier as aforesaid, he shall neglect to remove such tree out of the said road by the space of twenty-four hours, he shall forfeit

and pay the sum of ten shillings, for every day that the said tree shall be unremoved after receiving such notice as aforesaid.

XVIII. And be it further enacted by the authority aforesaid, That the penalties severally inflicted by virtue of this Act, and all other fines and forfeitures accruing by virtue thereof shall be levied and recovered by warrant under the hand and seal of some justice of the peace, acting within the division, where such refusal or neglect shall have been made or offence committed, which warrant such justice is hereby empowered and required to grant, upon conviction of the offender by concession, or upon oath of one credible witness, of any offence committed against any one of the enactments or provisions herein contained, and in default of payment of such fines and forfeitures, to levy the same by distress and sale of the goods and chattels of the person so offending; and that the produce of all compositions, penalties, fines and forfeitures, shall be applied towards the making or repairing of the public roads and bridges, within the parish, or township where the same shall arise, and if any person shall refuse to pay the sum or sums payable by virtue of this Act, for neglecting or refusing to obey the notice or summons of the overseer, the same being duly served within ten days after demand thereof made, such sum shall and may be levied by the overseer, constable or any person authorized by warrant under the hand and seal of one justice of the peace acting within the said division, by distress and sale of the goods and chattels of the person so refusing or neglecting, rendering the over plus to the owner or owners thereof, the necessary charges of making such distress and sale being first deducted, and in default of such distress, it shall and may be lawful for any such justice to commit the person so refusing to the common gaol, for any time not exceeding one month, unless the penalty, forfeiture, costs and charges, shall respectively be sooner by him paid.

XIX. And in order to prevent as much as possible any inconvenience to persons liable to work upon the roads, Be it further enacted by the authority aforesaid, that it shall and may be lawful for the said justices in the said parishes, townships or places, respectively, to appoint two periods or times in the year, within which no statute duty upon the roads shall be performed; namely, one month in the spring, commencing upon the twentieth day of April, and ending upon the twentieth day of May; and three months in the summer commencing upon the first day of July, and ending upon the first day of October in every year.

XX. And be it further enacted by the authority aforesaid, That After every fall of snow, by which any principal highway leading through this province, shall or may be obstructed and the passage through the same thereby interrupted or hindered, it shall and may be lawful for the overseers of the towns, townships or parishes, through which the said highway may run, and they are hereby required to order and direct such and so many as they shall deem necessary of the freeholders or householders next adjoining the same, being possessed of a sleigh, or sledge and team, to open a free passage through the said highway, by driving or causing their sleigh or fledge to be driven over and through the said highway.

XXI. And whereas it often happens that after falls or drifts of snow, the highways through several parts of this province, are so covered over as to leave no visible tract or path to guide travellers, particularly where the said highways pass through extensive cleared fields, (for the sake of

shortening the communication in the winter) over and along rivers or bodies of frozen water; Be it therefore enacted by the authority aforesaid, That in such cases it shall and may be lawful for the overseers, and they are hereby required to warn and direct the householders and freeholders in such parishes, townships or places respectively, to erect or set up flakes or beacons on each side of the said highway, road or common path, so as to direct travellers, particularly at night and in bad weather; and any householder or freeholder neglecting or refusing to obey such summons, and to perform such duty or labor, shall be liable to the same penalties, fines and forfeitures as those neglecting to perform their proportion of duty or labor on the highway, as herein before mentioned, and to be recovered in like manner.

XXII. And be it further enacted by the authority aforesaid, That it shall and may be lawful for any two or more justices of the peace within their respective divisions, and they are hereby empowered from time to time, whenever they shall judge proper to hold any special sessions besides that which is herein before directed in the month of March, for executing the purposes of this Act, and to adjourn the same from time to time as they shall think fit, causing notice to be given of the time and place of holding such special sessions and of the adjournments thereof, to the several justices acting and residing within such limits by the constable or other proper officer within the same.

XXIII. Provided always and be it further enacted, That if any action or suit, shall be commenced against any person or persons for any thing done or acted in pursuance of this Act, then and in every such case, such action or suit shall be commenced or prosecuted within three calendar months after the fact committed and not afterwards, and the defendant or defendants in any such action or suit shall and may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of the present Act, and if the same shall appear to have been so done or if any such action or suit shall be brought after the time limited for bringing the same, then the jury shall find for the defendant or defendants, or if the plaintiff or plaintiffs shall become non-suit or discontinue his, her or their action, after the defendant or defendants shall have appeared, the defendant or defendants shall and may recover treble costs and have the like remedy for the recovery thereof, as in any other cases by law.

XXIV. And be it further enacted by the authority aforesaid, That any person who shall be seized of two hundred acres of land or more within this province, and shall not reside in the said province, or have any tenants or tenant resident on his said lands; such person shall be liable to pay the sum of twenty shillings per annum, to be applied towards keeping in repair the king's highway, and the said sum shall be chargeable on such lands as aforesaid, and they shall be liable for payment of the same, for so long as they shall remain unoccupied, or be the property of any person not residing within the province aforesaid.