

Laws of Her Majesty's Province of Upper Canada, passed in the year 1838. York: Robert Stanton, 1838.

1 Victoria – Chapter 19

An Act to authorise the establishment of Boards of Boundary Line Commissioners within the several Districts of this Province. Passed 6th March, 1838.

Whereas the errors or defects in Surveys heretofore made within this Province, are found to occasion disputes and differences between individuals, touching the boundaries of Townships, Concessions and Lots, and to involve parties in expensive litigation: And whereas, it is expedient to provide a remedy for these evils, by the appointment of Commissioners in every District, with the powers and under the restrictions hereinafter expressed: Be it therefore enacted, by the Queen's most 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 of 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, it shall and may be lawful for the Lieutenant Governor of this Province, to nominate and appoint three fit and proper persons in each and every District of this Province, (one of whom shall be a Licensed Surveyor,) to form a Board, to be known by the style and title of "The Boundary Commissioners" of the District for which they shall be so respectively appointed; and the said Commissioners for the time being, shall have power and authority, and are hereby authorised and required to hear and determine all matters of dispute touching any line, or lines, boundary or boundaries, of any Township, Concession or Lot, and of any part or parts of any lot or lots within their respective Districts, and to ascertain, fix and determine, such lines, boundaries or divisions, as shall appear just and reasonable, and to give and pronounce such judgment and decree therein, and to award execution thereupon for such costs as shall, by the said Commissioners, be ascertained to have been reasonably incurred, against the goods and chattels of all and every the person and persons whom they shall decree to pay the same, as to them or any two of them shall seem just in law or equity; and that the acts, orders, judgments and decrees, of the said Commissioners, or any two of them, shall be final and conclusive between the parties, their heirs and assigns, except in cases of appeal, to be brought within the time and in the manner hereinafter mentioned: Provided always, that the said Commissioners shall be appointed and hold their office during the pleasure of the Lieutenant Governor, and no longer.

II. Provided always, and be it further enacted by the authority aforesaid, That it shall not be lawful for any Commissioner to be appointed under the provisions hereinbefore contained, to act in any case that shall be heard and determined under the provisions of this Act, wherein such Commissioner, his father or mother, brother or sister, or child, or any relation of his wife, in the same degree of consanguinity, shall be directly or indirectly interested; but then and in such case, the place of such Commissioner so interested, by himself or his relatives as aforesaid, shall be

supplied by a Commissioner to be selected by the Commissioners of the District wherein such case shall arise, and who shall not be interested therein, from the Commissioners appointed for a District adjoining thereto; and such last-mentioned Commissioner shall be duly summoned, and shall be bound to attend the sittings of the Board for the District wherein such case shall arise, and shall have the same powers, in all respects touching such case, as if he had originally been appointed a Commissioner for such District, instead of a Commissioner for an adjoining District,

III. And be it further enacted by the authority aforesaid, That in all cases which shall arise touching the boundary line between any two or more Districts, the Commissioners appointed for each of the Districts interested in such case, shall be summoned and required to hear and determine all matters of dispute touching the same; and no decision shall be binding on any District interested therein, unless a majority of the Commissioners to be appointed for each such District shall have been present at every sitting to be holden for the purpose of hearing and determining such dispute; and the acts, orders, judgments and decrees, of such united Board of Commissioners, or the majority of the Commissioners present at such sitting, shall be final and conclusive between the Districts interested in such dispute, except in cases of appeal, to be brought within the time and manner hereinafter mentioned.

IV. And be it further enacted by the authority aforesaid, That the inhabitants of any Township or Concession, owner or owners of any lot or lots, either in fee of for any less estate of freehold, who shall require redress touching the boundary or boundaries thereof, or any part thereof, shall give notice in writing to any one or more of the Boundary Commissioners of the said District, requiring them to hear and determine the questions affecting the same; and the said Commissioners, or any one or more of them, shall, within ten days from the receipt of such notice, issue a warrant or precept to the person or persons interested in the matter, to attend the said Board, at some place and on some day in the said warrant or precept to be named, not exceeding twenty-one days from the receipt of the said notice, and which said warrant or precept shall be in the words or to the form and effect set forth in the schedule to tins Act annexed.

V. And be it further enacted by the authority aforesaid, That the said Commissioners shall, in all cases, hold their sittings at the most convenient spot near to the disputed boundary or boundaries, not in any case exceeding the distance of ten miles from the same.

VI. And be it further enacted by the authority aforesaid, That whenever any party interested in the matter shall apply for an adjournment, it shall and may be lawful for the said Commissioners, on sufficient reason being shewn to them, upon oath and upon payment of reasonable costs by the party applying for such adjournment, to adjourn the sitting of the said Board, from time to time, and to any day not exceeding twenty days from the day of sitting: Provided always, that the decision of every question shall be made within six months from the issuing of the original warrant or precept for hearing the same.

VII. And be it further enacted by the authority aforesaid, That previous to the hearing of any question, under the provisions of this Act, the said Commissioners shall, if required by any of the parties interested, proceed to and view the boundary or boundaries in dispute, in their own

proper persons; and it shall be lawful for them, and they are hereby required; to employ a competent Surveyor to make a survey and map thereof, which map shall be annexed to and filed with their judgment and decisions, as hereinafter provided.

VIII. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the said Commissioners, or any one or more of them, to summon any person or persons resident in such District, or in a District immediately adjoining thereto, to give evidence touching any matter upon which they shall be required to adjudge and determine under the provisions of this Act, and to produce any papers or documents in their possession relative thereto; and for the better discovery of the truth, and the more solemn determination thereof, it shall and may be lawful for the said Commissioners assembled at any Board, and they are hereby authorised and empowered, to administer or cause to be administered, an oath or oaths as well to the party complaining as to the party answering, and to such witness or witnesses as shall be examined or produced by either party; and also to all or any of the persons who shall be employed under the said Board, and to all other persons whomsoever, for or concerning any business relative thereto, and to take the affirmations of all person whomsoever concerning the same, who are or shall be of the people called Quakers, or such other denomination of Christians as are allowed to give their evidence on affirmation: Provided, that the said Commissioners shall in no case give judgment on the oath or affirmation alone of any party interested in any matter to be heard by the said Board, unless there shall be sufficient other evidence to warrant such judgment, independent of such oath or affirmation.

IX. And be it further enacted by the authority aforesaid, That all evidences to be taken before the Commissioners shall be reduced into writing, and be read over and signed by the persons giving the same, and such persons shall be required to attest the same upon oath or affirmation as aforesaid, and the same evidence shall be kept by the Commissioners, ready to be produced upon any appeal to be brought against the judgment or decision of the said Commissioners, as hereinafter is provided.

X. And be it further enacted by the authority aforesaid, That all copies of plans, descriptions, instructions, field-notes or other evidences of Survey, and all other documents of a public character, certified by the Surveyor General, or person in charge of the Office of Surveyor General for the time being, or by the person in charge for the time being of any other Public Office, in which any such documents maybe deposited, shall be admissable in evidence before such Commissioners, or upon any other judicial proceeding under this Act, in the same manner, and no other, as if the same were proved by evidence given viva voce: Provided always, that it shall be the duty of any person employed in any Public Office in this Province to answer upon oath, to be administered before any Commissioner for taking Affidavits in the Court of King's Bench, any questions which the Commissioners to be appointed under this Act shall in writing require to be answered; and that the evidence obtained in such manner shall be received as if given viva voce before the Commissioners: Provided it be made appear to their satisfaction, that the parties interested have had a reasonable opportunity afforded to them of proposing questions by way of cross-examination.

XI. And be it further enacted by the authority aforesaid, That if any person shall wilfully, and corruptly swear falsely in any matter deposed under this Act, either viva voce or by way of answer in any written deposition, such false swearing shall be deemed to be perjury.

XII. And be it further enacted by the authority aforesaid, That in case any action or suit shall hereafter be brought in any of the superior Courts, touching any question which might have been tried and decided before the said Commissioners, it shall and may be lawful for the defendant in such action to apply to the said Court, or to a Judge thereof in vacation, who shall, upon proof of the facts, upon affidavit to be duly sworn and laid before the said Court, or before such Judge as aforesaid, grant a rule of the said Court for the stay of all proceedings in such action, and for payment of the costs of and attending such rule by the Plaintiff in such action or suit, unless it shall appear to the Court or Judge, upon hearing the parties, their counsel or attorney in reply, that from the nature and circumstances of the question in dispute, it shall have been a proper case in the first instance to have been instituted in the superior Court.

XIII. And be it further enacted by the authority aforesaid, That if the party at whose instance such warrant or precept shall have been issued as aforesaid, shall neglect or fail to appear at the sitting thereby directed to be held as aforesaid, or at any other sitting to be holden under the provisions of this Act, either in person or by Counsel, at which his presence shall be required, or shall otherwise make default therein, it shall and may be lawful to and for the said Commissioners, and they are hereby authorized and empowered to ascertain the Costs incurred therein, as well by such party as by the respondent; and the same Costs shall be recoverable from the party making such default, in the manner herein-before directed with respect to costs on judgment or decree.

XIV. And be it further enacted by the authority aforesaid, That if the party respondent shall, in like manner, make default in appearing, either in person or by counsel, after he shall have been served with such warrant or precept as aforesaid, the same having been served at least four days previous to the day of sitting; and due proof upon oath having been given of such service, it shall and may be lawful to and for the said Commissioners to proceed to judgment, and decree in the matter in dispute in such and the same manner in all respects as if the respondent were personally present.

XV. And be it further enacted by the authority aforesaid, That in case any person or District shall be dissatisfied with the judgment of the said Commissioners, it shall and may be lawful for him or them, at any time not exceeding six months from the date of such judgment or decree, (upon giving fourteen days notice in writing of his intention to the party in whose favour such judgment shall have been given, and to the said Commissioners, who shall thereupon transmit to the proper officer of the Court, for the use thereof, a copy of their judgment, together with the said plan hereinbefore directed to be made, and the evidence taken before them the said Commissioners,) to appeal therefrom to the Court of King's Bench, or to the Court of Chancery of this Province, in the option of the parties; and the Vice Chancellor, or Judges of the said Court of King's Bench, are hereby authorised and empowered to revise, alter, affirm or annul, the decision of the said Commissioners, or to order such farther enquiry to be made, or if he or they shall see fit to direct an issue to be tried at law, touching the matter in dispute, and to make such orders and directions

therein for payment of costs and other matters respecting the same, as to him or them shall seem just and reasonable; and the decree of either of the said Courts, to be given on such appeal, shall be binding and conclusive on all parties, their heirs and assigns, and on all Districts, and on all persons claiming or to claim by or under them or any of them.

XVI. Provided always, and be it further enacted by the authority aforesaid, That if any appeal appear to either of the said Courts to be frivolous or vexatious, it shall and may be lawful for either of the said Courts to award such extra costs, to be paid by the Appellant, as to either of the said Courts shall appear reasonable.

XVII. And be it further enacted by the authority aforesaid, That every judgment and decision of the said Commissioners, in case there be no appeal against the same, shall be filed on the Records of the said Court of Chancery, within one calendar month from the expiration of the time of appealing against the same, together with the said Plan of the boundaries hereinbefore directed to be made; and the Judgment and Decree, and all orders of the said Courts of King's Bench and of Chancery, establishing any line or lines of boundary upon any such appeal, shall, together with said Plan, be filed with the Register of the County where such boundaries shall be situate, within six months after the determination and pronouncing of the same; and the said Registrar shall be entitled to a fee of one shilling and three pence, and no more, for entering the same of record; and a copy of the said Map, duly authenticated, and of all Judgments, Decrees and Orders, affecting any line or lines of boundary, shall in like manner be filed in the Office of the Surveyor General of this Province, for public use and reference; and such final Order, Judgment or Decree, shall in all cases be published three times in the Gazette of this Province, and in a Newspaper of the District wherein such line shall be, if a Newspaper shall be published therein, and if not, in the Newspaper of the adjoining District.

XVIII. And be it further enacted by the authority aforesaid, That the Commissioners in all Surveys made by them, or under their direction, shall express the courses of lines according to the bearing of the compass, and also according to the true meridional line.

XIX. And be it further enacted by the authority aforesaid, That as often as any lines or boundaries shall be finally established by the Commissioners under this Act, it shall be their duty to cause sufficient Stone Monuments to be placed to mark such boundaries; and to award the expense thereof to be paid by the parties, or either of them, as they may think just, and to enforce the payment thereof in the same manner as of costs and other expenses under this Act.

XX. And be it further enacted by the authority aforesaid, That the said Commissioners shall be entitled to receive the sum of twenty shillings each, and no more, for every day they shall be occupied in travelling to, or returning from, and sitting at any place, for the purpose of hearing and determining any matter under the provisions of this Act; and every Surveyor who shall be employed by the said Commissioners shall be entitled to receive the sum of twenty shillings for every day he shall be necessarily employed as aforesaid, and that for the purposes of this Act a day shall be construed to be eight hours, and no less.

XXI. And be it further enacted by the authority aforesaid, That the costs, charges and expenses, attending the settling any boundary lines between any Towns or Townships in this Province, not being for the mere decision of a dispute between private parties, shall be borne and paid out of the District Funds of the District wherein such Towns or Townships lie; and the costs, charges and expenses, attending the settling of any boundary line between any Districts, shall be equally borne and paid out of the District Funds of the Districts the boundary lines between which have been settled: Provided that the District shall in no case be liable to the costs of any proceeding or appeal which shall not have been instituted at the instance of the Court of Quarter Sessions in and for the said District; and the said Court of Quarter Sessions are hereby empowered, when they shall see fit, to appoint a proper person to act in behalf of the District before the said Board of Commissioners, and the District which such person shall so represent shall be bound by his acts, deeds and defaults, in the same manner as he himself, his heirs and assigns, would be bound if personally interested in the premises.

XXII. And be it further enacted by the authority aforesaid, That it shall be lawful for the Justices of any District, in Quarter Sessions assembled, to levy by assessment, to be made in the same manner and form as by Law any assessment now or hereafter may be levied, for any public purpose in any District of this Province, such sum and sums of money as shall be requisite to pay the costs and charges to arise, touching the disputed boundary or boundaries of such District; and the costs and charges of any appeal that shall be made to the decree of the said Commissioners, pursuant to the provisions herein before contained, so as that the amount of the Assessment to be made shall not exceed the one-eighth part of a penny per acre, in any one year.

XXIII. And be it further enacted by the authority aforesaid, That upon entering upon the duties imposed and required by this Act, the said Commissioners, and each of them, shall take and subscribe the following oath, which any Justice of the Peace is hereby authorised and required to administer. I, A. B., do hereby swear, that I will faithfully and to the best of my skill and understanding, discharge the duties of one of the Boundary Commissioners of the District of _____, according to the Statute in such case made and provided.

XXIV. And be it further enacted by the authority aforesaid, That in the proceedings of the said Commissioners the annexed forms shall be used.

XXV. And be it further enacted by the authority aforesaid, That this Act shall be and continue in force for and during the term of four years, and from thence to the end of the then next ensuing Session of Parliament, and no longer.

Form of Warrant or Precept.— Boundary Commissioners.

District of _____ You are hereby summoned and required to be and appear before the Boundary Commissioners of the District of _____, at a Board to be held at _____, in the Township of _____, by _____ of the clock in the forenoon of _____ the _____ day of _____, to answer the claim of _____, touching the line of

boundary between lots _____ and _____, belonging to you and the said _____.
Herein fail not as judgment will be given against you for default.

Witness my hand this _____ day of _____, eighteen hundred and _____.

A. B.

To Mr. _____.

Commissioner.

Form of Subpoena.— Boundary Commissioners.

District of _____, Between C. D. Claimant, E. F. Respondent,

You are hereby summoned and required to be and appear before the Boundary Commissioners of the District of _____, at a Board to be held at _____, in the Township of _____, on the _____ day of _____, at _____ of the clock in the forenoon, to testify the truth according to your knowledge, in a certain claim then and there to be tried, between _____ Claimant, and _____ Respondent, on the part of the _____. Herein fail not at your peril. Witness A. B., one of the Commissioners, this _____ day of _____, eighteen hundred and _____.

A. B.

To Mr. _____

Commissioner.

Form of Warrant to Levy.— Boundary Commissioners.

District of _____, You are hereby authorised and required to make of the goods and chattels of _____, in the said District, the sum of _____, Provincial Currency, to satisfy the costs of a Judgment given by the said Commissioners, at a Board held on the _____ day of _____, at the suit of _____, in the claim heard between the said _____ and _____, and should there be any overplus, after deducting the legal expense of the seizure and sale, you are to return the same to the said _____, and you are to certify to the said Commissioners, on the _____ day of _____, what you shall have done in the execution thereof. Herein fail not.

Witness

A. B.

G. H. Commissioners.

J. K.

To _____

our Bailiff.

Costs £

From: British North America Legislative Database; University of New Brunswick
bnald.lib.unb.ca

Bailiff's fees

Form of Oath to be administered.

The evidence which you shall give to the Commissioners touching the matter now upon inquiry, shall be the truth, the whole truth, and nothing but the truth. So help you, God.