

Laws of Her Majesty's Province of Upper Canada, passed in the year 1849. Montreal: Stewart Derbyshire & George Desbarats, 1849.

12 Victoria – Chapter 35

An Act to repeal certain Acts therein mentioned, and to make better provision respecting the admission of Land Surveyors and the Survey of Lands in this Province. 30th May, 1849.

Whereas Laws now in force in this Province respecting Land Surveyors and the Survey and Admeasurement of Lands are in many cases, owing to the changes which have taken place in the method of surveying lands, found to be inapplicable: And whereas it is expedient to consolidate and amend them: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower-Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That the Ordinance passed in the twenty-fifth year of the Reign of His late Majesty King George the Third, by the Lieutenant-Governor and Legislative Council of the late Province of Quebec, intituled, *An Ordinance concerning Land Surveyors and the Admeasurement of Lands*,—and the Act of the Legislature of the late Province of Upper-Canada, passed in the thirty-eighth year of the Reign of His said late Majesty King George the Third, intituled, *An Act to ascertain and establish on a permanent footing the boundary lines of the different Townships of this Province*,—and the Act of the said Legislature, passed in the fifty-ninth year of the Reign of His said late Majesty King George the Third, and intituled, *An Act to repeal an Ordinance of the Province of Quebec, passed in the twenty-fifth year of His Majesty's Reign, intituled, An Ordinance concerning Land Surveyors and the Admeasurement of Lands' and also to extend the provisions of an Act passed in the thirty-eighth year of His Majesty's Reign, intituled, 'An Act to ascertain and establish on a permanent footing the boundary lines of the different Townships of this Province, and further to regulate the manner in which Lands are hereafter to be Surveyed,'*—and the Act of the said Legislature, passed in the second year of Her Majesty's Reign, and intituled, *An Act to extend the provisions of an Act passed in the fifty-ninth year of the Reign of His late Majesty King George the Third, intituled, 'An Act to repeal an Ordinance of the Province of Quebec, passed in the twenty-fifth year of His late Majesty's Reign, intituled, "An Ordinance concerning Land Surveyors and the Admeasurement of Lands, and also to extend the provisions of an Act passed in the thirty-eighth year of His late Majesty's Reign, intituled, "An Act to ascertain and establish, on a permanent footing the boundary lines of the different Townships in this Province,"" and further to regulate the manner in which Lands are hereafter to be surveyed,"*—and the Act of the Legislature of this Province, passed in the Session held in the fourth and fifth years of Her Majesty's Reign, and intituled, *An Act to grant authority to licensed Surveyors, in that part of this Province called Upper-Canada, to administer an Oath in certain cases, and to protect them while in the discharge of their duty in Surveying Lands*,—shall be and the said Acts are hereby repealed: Provided always, that no Ordinance, Act or provision of law repealed by those hereby repealed, of By any of them, shall revive, but shall be and remain repealed; And provided also, that all the boundary or division lines legally established, and ascertained under the authority of the

Ordinance or Acts hereby repealed, or any of them, shall remain good, and all other acts, and things legally done and performed under the authority of the said Ordinance and Acts, or any of them, and in conformity to the provisions thereof, shall remain good and valid notwithstanding such repeal, and all prosecutions and all actions or suits at law or in equity actually commenced before the passing of this Act, under the provisions of the said Ordinance or Acts, or any of them, may be continued, tried and determined, and execution may be done therein, as if this Act had not been passed.

II. And be it enacted, That no person shall, after the passing of this Act, survey lands for hire or profit within Upper-Canada or Lower-Canada, or act in any way as a Land Surveyor within either portion of this Province, for hire or profit, unless he shall be duly authorized to practice as a Land Surveyor according to the provisions of this Act, or shall have been so authorized before the passing thereof, according to the Laws then in force, under a penalty of Ten pounds currency for each offence, to be recovered by any person who shall sue for the same in any Court having Civil Jurisdiction to the amount, of such penalty, one moiety whereof shall belong to Her Majesty and make part of the Consolidated Revenue Fund of this Province, and the other moiety shall belong to the person suing for the penalty.

III. And be it enacted, That from and after the passing of this Act, no person shall be admitted to practice as a Land Surveyor in and for Upper-Canada or Lower-Canada, until he shall have attained the foliage of twenty-one years, nor unless he shall have gone through a course of Geometry, including at least the first six books of Euclid, and of plain Trigonometry, Mensuration of Superficies, Plotting and Map Drawing, and be well versed therein, and shall also be sufficiently conversant with Spherical Trigonometry and Astronomy to enable him to ascertain the latitude, and to draw a meridian line, and shall have served regularly and faithfully, for and during the space of three successive years, under an Instrument in writing duly executed before two witnesses, or in Lower-Canada under a Notarial Acte, as Apprentice to a Land Surveyor for Upper-Canada or Lower-Canada, duly admitted and practising therein as such, nor until He shall have received from the said Land Surveyor a certificate of his having so served during the said period: Provided nevertheless, that any person who shall have been admitted to practice as a Land Surveyor in Lower-Canada shall not, in order to be admitted to practice in Upper-Canada, be holden to serve under an Instrument in writing during three years as aforesaid in Upper-Canada, but only during six months of actual practice in the field with a Land Surveyor duly admitted and practising in Upper-Canada, after which he may undergo the examination by this Act prescribed, on complying with all the other requirements thereof, and the like rule shall apply to persons admitted to practice in Upper-Canada who shall wish to practice in Lower-Canada; Provided also, that; any Land Surveyor duly admitted to practice in any of Her Majesty's Dominions other than this Province; shall not be holden to serve under an Instrument in writing during three years as aforesaid, but only during twelve successive months of actual practice, after which he may undergo the examination by this Act prescribed, on conforming with all the other requirements thereof; And provided also, that any person who shall, before the passing of this Act, have been *bonâ fide* an Apprentice under some agreement in writing, to a Land Surveyor duly admitted and practising in and for Upper-Canada or Lower-Canada, and shall have served regularly and faithfully as such, shall be entitled to reckon the time he shall have so served as part of the three years

during which, under this Act, he ought to serve before he can be admitted as a Land Surveyor, provided such person shall, within three months after the passing of this Act, become regularly articulated by an Instrument in writing as aforesaid to some Land Surveyor, duly admitted and practising in and for Upper-Canada or Lower-Canada, and shall afterwards complete the remainder of the said period of three years, according to the requirements of this Act; And provided also, that the fact of his having so served before the passing of this Act, shall be proved on oath, by himself, and by other evidence to the satisfaction of the Board of Examiners, any one of whom is hereby empowered to put the requisite questions, and to administer the requisite Oath or Affidavit, which shall be signed by the person making the same, and shall remain with the said Board: Provided also, that if any Surveyor shall die or leave the Province, or be suspended or dismissed as hereinafter provided, his Apprentice may complete his term of Apprenticeship, under an instrument in writing as aforesaid, with any other Surveyor duly admitted: Provided also, that it shall be lawful for any Surveyor to transfer, by an Instrument in writing as aforesaid, his Apprentice, with his consent, to any other Surveyor duly admitted, with whom he shall serve the remainder of the term of his apprenticeship.

IV. And be it enacted, That, before any person shall be admitted to practise as a Land Surveyor in Upper-Canada or for Lower-Canada, he shall be publicly examined with respect to his ability, and the sufficiency of his instruments, by a Board of Examiners composed of the Commissioner of Crown Lands, and six other competent persons to be appointed from time to time by the Governor, Lieutenant-Governor, or Person administering the Government of this Province for the time being, and who shall take an Oath of Office, and any three of such seven Examiners shall form a *quorum*; and the said Examiners, if satisfied of his ability as hereinbefore provided, and of his having complied with all the requirements of this Act, and of the sufficiency of his surveying instruments, shall give him a Certificate thereof, and of his being admitted as a Land Surveyor, in the form of a Schedule A. to this Act.; and such Certificate shall, on his complying with the other requirements of this Act, enable him to practise as a Land Surveyor in and for Upper-Canada or in and for Lower-Canada, as the case may be: Provided always, that it shall be the duty of the said Examiners to cause all persons applying for admission to practise as such Land Surveyors, to produce satisfactory Certificates as to character for probity and sobriety, and to perform such practical operations in their presence as they shall require, previous to their giving him their Certificate, and to answer such questions on oath, (which oath any one of the Examiners may administer) With regard to the actual practice of such applicant in the field and with regard to his instruments.

V. And be it enacted, That the said Board, or a majority thereof, shall and may appoint from time to time a fit and proper person to be Secretary of the Board, who shall attend the sittings thereof, and keep a record of its proceedings, of which he shall have the custody.

VI. And be it enacted, That the said Board shall meet at the Office of the Commissioner of Crown Lands, on the first Monday in each of the months of January, April, July and October, in every year, unless such Monday be a Holy-day, (in which case they shall meet on the day next thereafter not being such holy-day,) and may adjourn such meeting from time to time if they shall deem it necessary.

VII. And be it enacted, That every person desiring to be examined by the Board as to his qualification to be admitted as a Land Surveyor, shall give due notice thereof in writing to the Secretary of the said Board, at least one week previous to the meeting thereof, and shall then pay to the Secretary five shillings as his fee for receiving and entering such notice; and each applicant obtaining a Certificate, shall pay to the said Secretary ten shillings as his fee upon the Certificate.

VIII. And be it enacted, That each applicant receiving a Certificate as aforesaid, shall pay to the Secretary a sum of two pounds ten shillings, currency, for the same, out of which sum the expenses attending the examination of such applicant (if any) shall first be paid, and the remainder shall be divided equally among such Members of the Board as shall have attended the examination of such applicant, and shall not be salaried officers of the Government.

IX. And be it enacted, That each applicant after receiving the above mentioned Certificate, shall enter into a bond jointly and severally with two sufficient sureties to the satisfaction of the said Board of Examiners, in the sum of two hundred and fifty pounds currency, to Her Majesty, Her Heirs and Successors, conditioned for the due and faithful performance of the duties of his office, and shall take and subscribe the oath of allegiance, and the following oath, before the Board of Examiners who are hereby empowered to administer the same

“I, A. B. do solemnly swear (or affirm, as the case may be) that I will faithfully discharge the duties of a Land Surveyor, agreeably to law, without favour, affection or partiality. So help me God.”

And the said oaths shall be deposited in the Office of the Commissioner of Crown Lands, and the said bond shall be deposited and kept in the manner by law prescribed with regard to the bonds given for like purposes by other public officers, and shall enure to the benefit of any party sustaining damage by breach of the condition thereof, and the certificate shall be registered in the office of the Registrar of the Province.

X. And be it enacted, That it shall be lawful for the Board of Examiners to suspend or dismiss any Land Surveyor from the practice of his profession, as they shall in their discretion deem proper whom they shall find guilty of gross negligence or corruption in the execution of the duties of his office: Provided nevertheless, that the Board shall not suspend or dismiss such Land Surveyor, without having previously summoned him to appear in order to be heard on his defence, nor without having heard the evidence, which shall have been offered either in support of the complaint or in behalf of the Surveyor inculpated.

XI. And be it enacted, That each and every chain-bearer, whether acting in Upper or in Lower-Canada, shall, before he commences his chaining or measuring, take an oath or alarm, to act as such justly and exactly according to the best of his judgment and abilities, and to render a true account of his chaining or measuring to the Surveyor by whom he may have been appointed to such duty, and that he is absolutely disinterested in the survey in question, and is not related or allied to any of the parties interested in the survey within the fourth degree, according to the computation of the civil law, that is to say, within the degree of Cousin German, which oath the

Surveyor employing such chain-bearer is hereby authorized and required to administer; nor shall any person related or allied to any of the parties within the said degree, be employed as a chain-bearer on any survey.

XII. And be it enacted, That the Commissioner of Crown Lands shall procure a Standard of English Measure of length, and a Standard of the old French Measure of length, compared with and corrected by the Standards for such Measures established in this Province, which shall remain in his office for the purpose of comparing therewith the Standards to be kept by each Surveyor as hereinafter provided.

XIII. And be it enacted, That each and every Land Surveyor duly admitted, and practising, or who shall be hereafter admitted for Upper or Lower-Canada, shall procure and shall cause to be examined, corrected and stamped or otherwise certified, by the Commissioner of Crown Lands, or some one by him deputed for that purpose, a Standard Measure of length, under the penalty of the forfeiture of his License or Certificate, and shall, previously to proceeding on any survey, verify the length of his chains and other instruments for measuring by such standard.

XIV. And be it enacted, That from and after the passing of this Act, if any person or persons shall, in any part of this Province, interrupt, molest or hinder any Land Surveyor, while in the discharge of his duty as a Surveyor, such person or persons shall be deemed to have been guilty of a misdemeanor, and being thereof lawfully convicted in any Court of competent jurisdiction, may be punished either by fine or imprisonment, or both, in the discretion, of such Court, such imprisonment being for a period not exceeding two months, and such fine not exceeding five pounds, without any prejudice to any civil remedy which such Surveyor or any other party may have against such offender or offenders, in damages by reason of such offence; and any Land Surveyor, when engaged in the performance of the duties of his profession, shall be, and he is hereby authorized and empowered to pass over, measure along and ascertain the bearings of any Township line, concession or range line or other governing line or side line, and for such purposes to pass over the lands of any person whomsoever, doing no actual damage to the property of such person; any law to the contrary notwithstanding.

XV. And be it enacted, That every such Land Surveyor who shall survey or admeasure lands in Lower-Canada shall, when thereunto required by the parties, place one or more boundary marks of stone, either to mark the boundary of any property or to show the course of any line of division, of which boundary marks, the length above ground shall be six inches at least, between Seigniors or between Co-Seigniors, or between two Townships, or between a Seignior and a Township, or between the Waste Lands of the Crown and a Seignior or Township, and at least three inches above the ground between persons holding grants in a Seignior or Township, and at least twelve inches in the ground in every case; and under such boundary marks he shall place pieces of brick, or delf, or earthenware, slag of iron, or broken glass, and in the country parts and open ground, before every boundary mark, a post of squared timber.

XVI. And be it enacted, That each and every such Land Surveyor who shall hereafter be employed in any survey in Lower-Canada shall, as soon as his operations shall be finished, if he have placed

any boundary mark, or if thereunto required by any party employing him, or by the Court under whose order he shall act, draw up a *Procès Verbal*, in which he shall on pain of nullity and under the penalty imposed for any contravention of this Act, insert the date of the said *Procès Verbal*, and shall mention by the order of what Court or at whose desire and at what time or times he shall have operated, the residence of the parties and their additions, and his own name and residence: And in such *Procès Verbal* the Surveyor shall, under the penalty last aforesaid, faithfully detail what he shall have done, according to the nature of the survey required of him, stating whether any and what title deeds were produced to him, according to which he may have guided his operations,—what is the form and the area of ground which lie has surveyed,—what chainings he has performed, and what lines he has drawn, gone over or verified,—what remarkable fixed objects his lines may have intersected or run close to,—the true and also the magnetical course by his instrument of any lines he shall have drawn or verified, and the day and place, when and where the variation of such instrument shall have been then last ascertained by him, and whether it was so ascertained by the public, meridian lines or marks hereinafter mentioned, (if any such lines or marks are established) or by direct astronomical observation; lie shall also state what he has put under any boundary marks he may have placed, their respective distances from each other, (when there are several,) and their distance from any remarkable and fixed object: And the said Land Surveyor shall, on pain of nullity, and of the penalty last aforesaid, cause such *Procès Verbal* to be signed by the parties if they be present and able and willing to sign, and if they or any of them be not present or be unable or unwilling to sign, mention shall be made of the fact; and any party assenting to the *Procès Verbal*, but unable to sign, shall make his mark; and such *Procès Verbal* shall be signed by the Land Surveyor and by two witnesses, the said *Procès Verbal* being first read aloud in the presence of all the persons signing the same, all which facts shall be mentioned in the *Procès Verbal*, on pain of nullity and under the penalty last aforesaid, and he shall preserve the same as a minute, of which he shall give copies to the parties concerned; and he shall not enter any interlineations nor make any erasure in his minutes, nor in the copies thereof, but shall mention the number of words struck out, and also the number of marginal references in each of his minutes, or copies of *Procès Verbaux*, which references shall, in the minute, be signed with the initials of the parties, witnesses and Land Surveyor, or of such of them as can sign, and in any copy by the initials of the Land Surveyor, otherwise they shall be null and void.

XVII. And whereas from various causes, and more especially since the expiration of the Act of the Legislature of Lower-Canada, passed in the second year of the Reign of His Majesty King William the Fourth, and intituled, *An Act to repeal an Ordinance therein mentioned and to provide more ample regulations respecting Land Surveyors, and the Admeasurement of Lands*, and the consequent revival of the Ordinance hereby and by the said Act repealed, many *Procès Verbaux* of Survey have been drawn up in a manner substantially correct, but not in the precise form required by the said Ordinance, and doubts might arise as to the validity of such *Procès Verbaux*, and law-suits and vexatious proceedings might grow out of the same: For remedy thereof—Be it enacted, That all now existing *Procès Verbaux* of Survey in Lower-Canada signed or assented to by the parties interested, or made under the order of any Court and accepted and confirmed by such Court, and every other such *Procès Verbal* of Survey made before or within three months after the passing of this Act, which shall substantially contain such particulars as may be requisite for the full understanding of the Survey or operation to which it relates, and of the doings of the Surveyor and

the intention of the parties interested with regard to the same, shall be held to be authentic and valid, and shall have effect according to the tenor thereof, whatever be the form in which the same may have been drawn up.

XVIII. And whereas it hath also happened that boundary stones and other boundary marks have been placed by Surveyors, which have not the dimensions, or are not of the materials, or are not accompanied by the marks prescribed by the said Ordinance, and law-suits and difficulties might arise in consequence: For remedy thereof—Be it enacted, That every such boundary mark in Lower-Canada, placed by a Surveyor before or within three months after the passing of this Act, and referred to in his *Procès Verbal*, shall be held to be effective and valid, if its place can be ascertained from such *Procès Verbal*, whatever be the form, dimensions or material thereof: Provided always, that nothing contained in this Section or in that next preceding it, shall be construed to render valid or effective any *Procès Verbal*, or boundary made or placed more than three months after the passing of this Act, and with regard to which the absolute requirements of this Act, on pain of nullity, shall not have been complied with, but such *Procès Verbal* or boundary shall be null and void and of no effect, except only that in places where stones of the proper size cannot be procured, (which fact shall appear by the *Procès Verbal*,) boundary marks of wood or other material may be used, and they shall have the same effect as the boundary marks of stone mentioned in this Act.

XIX. Provided always, and be it enacted, That in Cities, Towns and places in Lower-Canada where, from local circumstances, boundary stones or marks cannot be placed, the Surveyor shall in his *Procès Verbal* mention the fact, and shall fix the boundaries and describe his operations, by referring to streets, neighbouring properties and other fixed objects, so as to enable any other Surveyor from such *Procès Verbal*, to repeat the operations, and ascertain the boundaries, points lines and other particulars therein mentioned.

XX. And be it enacted, That the Surveyor employed to make any Survey in the Townships of Lower-Canada shall govern himself by the Surveys made under the plans and instructions issuing from the Surveyor-General's Office, or that of the Commissioner of Crown Lands, or other Officer performing the duties of Surveyor-General as aforesaid, and , whenever it shall happen that the posts or boundary marks between any lots or ranges of lots shall be effaced, removed or lost, such Surveyor may examine witnesses on oath, (which he is hereby authorized to administer), for the purpose of ascertaining the former boundaries, but if the same cannot be ascertained, then the Surveyor shall measure the true distance between the nearest undisputed posts, limits or boundaries, and divide such distance into such number of lots as the same contained in the original Survey, of a breadth proportionate to that intended in such original Survey, as shown on the plan and field-notes thereof of record in such Public Office as aforesaid, and when any part of any Concession or Range Line, intended in the original Survey to be straight, shall be obliterated or lost, then the Surveyor shall run a straight line between the two nearest points or places where such line can be clearly and satisfactorily ascertained, and shall plant all such intermediate posts or boundaries as he may be required to plant in the line so ascertained, and the limits of each lot so found shall be taken to be and are hereby declared to be the true limits thereof; any law or usage to the contrary thereof in any wise notwithstanding.

XXI. And be it enacted, That the Governor of this Province may, if he shall at any time deem it expedient, direct a meridian line to be properly drawn and marked, or the bearings between certain fixed points and objects to be so ascertained as to enable a Surveyor thereby to ascertain the variation of his instrument from the meridian, in or near the Cities of Quebec and Montreal, and the Town of Three-Rivers, and the Towns of Sherbrooke and New Carlisle, by some Land Surveyor whom the Governor may appoint, and by which the Land Surveyors, operating in such Districts, may verify their instruments when necessary.

XXII. And be it enacted, That the measure for Land in Lower-Canada shall be the same as it was before the Year of Our Lord one thousand seven hundred and sixty, in all grants of Seigniories, and in the Concessions which have therein been made up to the present time, but in the Townships of Lower-Canada the measure for Land shall be English measure.

XXIII. And be it enacted, That every Land Surveyor who shall, in Lower-Canada, after the expiration of three months from the passing of this Act, put as evidence or indications of his boundary marks, any other matter than is ordered by the Fifteenth Section of this Act, shall for each offence incur a penalty of Five pounds.

XXIV. And be it enacted, That each Land Surveyor practising in Lower-Canada shall collect and place in regular and due order, all and every the minutes of *Procès Verbaux* that may have been, or may be drawn up by him, in the order of time in which such *Procès Verbaux* may have been drawn up; and shall collate and put up minutes of his *Procès Verbaux* of every year in separate bundles, folded and covered with strong paper in the manner of a register, on the back of which shall be endorsed the general contents of each bundle, and he shall make a repertory and index thereto.

XXV. And be it enacted, That when any Land Surveyor practising in Lower-Canada shall die, his registers, minutes, plans and other papers relative to his professional acts, and signed by him, shall be holden to be public records of the Court of Queen's Bench within the jurisdiction of which he may have acted as a Land Surveyor, and shall be deposited in the Office of the said Court, for the benefit of all persons therein concerned—who shall have free access thereto; and the Clerk or Clerks of the said Court shall deliver copies thereof to such persons as may require them, upon their paying the usual and legal fees; and the widow, or if there be no widow, the heirs of such Land Surveyor so deceased, and whose registers, minutes, plans and other papers shall so have been deposited, shall be entitled to an annual correct account of the fees received by the said Clerk or Clerks, for the copies so delivered, and to receive one half thereof, for and during the space of five years from and after the day of the decease of such Land Surveyor.

XXVI. And whereas it is expedient to provide means for ascertaining and permanently defining and marking the angles and boundary lines of Townships or Concessions in Upper-Canada: Be it therefore enacted, That stone monuments or monuments of other durable materials, shall be placed at the several corners, governing points or offsets of every Township that hath been surveyed, or may hereafter be surveyed in Upper-Canada, and also at each end of the several

Concession Lines of such Townships; and that lines drawn in the manner hereinafter prescribed from the monuments so erected, or to be erected, shall be taken and considered to be the permanent boundary lines of such Townships and Concessions, respectively.

XXVII. And be it enacted, That the monuments to be placed as above mentioned shall be so placed under the direction and order of the Commissioner of Crown Lands of this Province.

XXVIII. And be it enacted, That the courses and lengths of the said boundary lines, so ascertained and established, shall on all occasions be and be taken to be the true courses and lengths of the boundary lines of the said Townships and Concessions, in Upper-Canada, whether the same do or do not, on actual survey, coincide with the courses and lengths in any Letters Patent of Grant or other Instrument mentioned and expressed in respect of such boundary lines.

XXIX. And be it enacted, That if any person or persons shall knowingly and wilfully pull down, deface, alter or remove any such monument so erected as aforesaid, in Upper-Canada, such person or persons shall be adjudged guilty of felony; and if any person or persons shall knowingly and wilfully deface, alter or remove any other landmark, post, or monument placed by any Land Surveyor, to mark any limit, boundary or angle of any Township, Concession, range, lot or parcel of land, in Upper or in Lower-Canada, such person or persons shall be deemed guilty of a misdemeanor, and being convicted thereof before any competent Court, shall be liable to be punished by fine or imprisonment, or both, at the discretion of such Court, such fine not to exceed Twenty-five pounds, and such imprisonment not to be for a longer period than Three months, without any prejudice to any civil remedy which any party may have against such offender or offenders in damages, by reason of such offence; Provided that nothing herein contained shall extend to prevent Land Surveyors, in their operations, from taking up posts or other boundary marks When necessary, after which they shall carefully replace them as they were before.

XXX. And be it enacted, That it shall not be necessary for the Commissioner of Crown Lands to proceed to carry the provisions of the Twenty-sixth, Twenty-seventh and Twenty-eighth Sections of this Act into execution, until an application for that purpose shall have been made to the Governor by the District Council of the District in Upper-Canada, in which the Township or Townships interested may be situate, who shall cause the sum requisite to defray the expenses to be incurred, or the proportion thereof payable by the inhabitants of any Township or Concession, to be levied on the said inhabitants, in the same manner as any sum required for any other local purpose authorized by law may be levied.

XXXI. And whereas in several of the Townships in Upper-Canada, some of the Concession lines, or parts of the Concession lines, have not been run in the original survey performed under competent authority, and the surveys of some Concession lines or parts of Concession lines have been obliterated, and owing to the want of such lines the inhabitants of such Concessions are subject to serious inconvenience: Be it therefore enacted, That it shall be lawful for the District Council of the District in which any Township in Upper-Canada may be situate, on application of one-half of the resident land-holders in any Concession, (or without such application if the said Council shall deem it necessary,) to make application to the Governor, requesting Him to cause

any such line to be surveyed, and marked by permanent stone boundaries under the direction and order of the Commissioner of Crown Lands, in the manner prescribed in this Act, at the cost of the proprietors of the lands in each Concession or part of a Concession interested; and it shall be lawful for such District Council to cause an estimate of the sum requisite to defray the expenses to be incurred to be laid before them, in order that the same may be levied on the said proprietors, in proportion to the quantity of land held by them respectively in such Concession or part of a Concession, in the same manner as any sum required for any other purposes authorized by law may be levied; and the lines or parts of lines so surveyed and marked as aforesaid, shall thereafter be taken and considered to be the permanent boundary lines of such Concessions or parts of Concessions to all intents and purposes of law whatsoever; and all expenses incurred in performing any survey or placing any monument or boundary under the provisions of this section or of the next preceding section, shall be paid by the District Treasurer to the person or persons employed in such services, on the certificate and order of the Commissioner of Crown Lands; Provided always, that the said lines shall be so drawn as to leave each of the adjacent Concessions of a depth proportionate to that intended in the original survey.

XXXII. And whereas it is necessary to make more definite provision than is now made by law, as to the mode in which the proper courses of boundary lines shall be ascertained in certain cases in Upper-Canada: Be it enacted, That in Upper-Canada all boundary lines of Townships, Cities, Towns, Villages, all Concession lines, governing points, and all boundary lines of Concessions, sections, blocks, gores, commons and all side-lines and limits of lots surveyed, and all posts or monuments, which have been placed or planted at the front angles of any lots or parcels of land, provided the same have been or shall be marked, placed or planted under the authority of the Executive Government of the late Province of Quebec or of Upper-Canada, or under the authority of the Executive Government of this Province, shall be and the same are hereby declared to be the true and unalterable boundaries of all and every of such Townships, Cities, Towns, Villages, Concessions, Sections, Blocks, Gores, Commons, and lots or parcels of land, respectively, whether the same shall upon admeasurement be found to contain the exact width, or more or less than the exact width expressed in any Letters Patent, Grant or other Instrument in respect of such Township, City, Town, Village, Concession, Section, Block, Gore, Common, lot or parcel of land, mentioned and expressed; and such township, city, town, village, concession, section, block, gore, common, lot or parcel of land, shall embrace the whole width, contained between the front posts, monuments or boundaries, planted or placed, at the front angles of any such township, city, town, village, concession, section, block, gore, common, lot or parcel of land as aforesaid, so marked, placed or planted as aforesaid, and no more nor less, any quantity or measure expressed in the original grant or patent thereof notwithstanding; and every patent, grant or instrument, purporting to be for any aliquot part of such township, city, town, village, concession, section, block, gore, common, lot or parcel of land, shall be construed to be a grant of such aliquot part of the quantity the same may contain, whether such quantity be more or less than that expressed in such patent, grant or instrument; any law, usage or custom to the contrary thereof in any wise notwithstanding.

XXXIII. And be it enacted, That in every City, Town or Village in Upper-Canada, which has been surveyed by the authority aforesaid, all allowances for road or roads, street or streets, lane or

lanes, common or commons, which have been laid out in the original survey of such City, Town or Village, shall be and the same are hereby declared to be public highways and commons; and all posts or monuments which have been placed or planted in the original survey of such City, Town or Village, to designate or define any allowance for roads or roads, street or streets, lane or lanes, lot or lots, common or commons, shall be and the same are hereby declared to be the true and unalterable boundaries of all such roads, streets, lanes, lots and commons; and all Land Surveyors, when employed to make surveys in such City, Town or Village are hereby required to follow and pursue the same rules and regulations in respect of such surveys as is by law required of them when employed to make surveys in Townships.

XXXIV. And whereas many Townships, tracts or blocks, of land in Upper-Canada were granted by the Crown to companies and individuals before any surveys were made therein, and such Townships, tracts or blocks of land were afterwards surveyed by the owners thereof: Be it therefore enacted, That all such surveys of such Townships, tracts or blocks of land in Upper-Canada, shall be and the same are hereby declared to be original surveys thereof, and to have the same force and effect as though the said original surveys and plans thereof had been made by the authority aforesaid; and all allowances for roads or commons which have been surveyed in such Townships, tracts or blocks of land, and laid down on the plans thereof, shall be and the same are hereby declared to be public highways and commons; and all lines which have been run and marked in such original surveys, and all posts or monuments which have been planted or placed in such Original surveys, to designate and define any allowances for road, concession or concessions, lot or lots of land, common or commons, shall be and the same are hereby declared to be the true and unalterable lines and boundaries of all such allowances for road, common or commons, lot or lots of land, and all land Surveyors, when employed to make surveys in such Townships, tracts or blocks of land, are hereby required to follow and pursue the same rules and regulations in respect of such Townships, tracts or blocks of land, and the original surveys thereof, as is by law required of them to follow and pursue in all Townships, tracts or blocks of land which have been surveyed by the authority aforesaid.

XXXV. And be it enacted, That the course of the boundary line of each and every concession, on that side from which the lots are numbered, shall be and the same is hereby declared to be the course of the division or sidelines throughout the several townships or concessions in Upper-Canada, respectively, provided always, that such division or side-lines were intended, in the original survey performed under such competent authority as aforesaid, to run parallel to the said boundary; and all Surveyors shall and are hereby required to run all division or side-lines, which they may be called upon by the owner or owners of any lands to survey, so as to correspond with and be parallel to that boundary line of the concession in which such lands are situate, from whence the lots are numbered as aforesaid, provided always, as aforesaid, that such division or side-lines were intended, in the original survey performed under such competent authority as aforesaid, to run parallel to the said boundary; Provided also, that when that end of a concession, from which the lots are numbered, is bounded by a lake or river, or other natural boundary, or when it has not been run in the original survey performed under such competent authority as aforesaid, or when the course of the division or side-lines of the lots therein was not intended in the original survey performed as aforesaid, to run parallel to such Boundary, the said division or

side lines shall run parallel to the boundary line at the other extremity of such concession, provided their course was intended, in the original survey performed as aforesaid, to be parallel thereto, and that such boundary line was run in the original survey; Provided further, that when in the original survey, performed under such competent authority as aforesaid, the course of the division or side-lines in any concession was not intended to be parallel to the boundary line at either end of such concession, they shall be run at such angle with the course of the boundary line at that end of the said concession from which the lots are numbered, as is stated in the plan and field-notes of the original survey, of record in the office of the Commissioner of Crown Lands of this Province, provided such line was run in the original survey as aforesaid, or with the course of the boundary line at the other extremity of the said concession, if the boundary at that end of the concession from which the lots are numbered was not run in the original survey as aforesaid; or if neither of the aforesaid boundaries of the concession were run in the original survey, or if it be bounded at each end by a lake or river or other natural boundary, then at such angle with the course of the line in front of the said concession, as is stated in the plan and field-notes as aforesaid; Provided nevertheless, that if any division or side-line between lots, or proof-line intended to be parallel to the division or side-lines between lots, shall have been drawn in any such concession in the original survey thereof, the division or side-lines between the lots therein shall be drawn parallel to such division or side-line or proof-line; and when two or more such division or side-lines or proof-lines have been drawn in the original survey of such concession, that division or side-line or proof-line which is nearest to the boundary of the concession from which the lots are numbered, and shall govern the course of the division or side-lines of all the lots in such concession between the boundary of the concession from which the lots are numbered and the next division or sideline or proof-line drawn in the original survey, which shall govern the course of the division or side-lines of all the lots up to the next division or side-line or proof-line drawn in the original survey; or to the boundary of the concession towards which the lots are numbered, as the case may be: Provided further, that in all those townships in Upper-Canada, which in the original survey have been divided into sections, agreeably to an Order in Council bearing date the twenty-seventh day of March, one thousand eight hundred and twenty-nine, the division or side-lines in all concessions in any section shall be governed by the boundary lines of such section, in like manner as the division or side-lines in townships originally surveyed before the said day are governed by the boundary lines of the concession in which the lots are situate.

XXXVI. And be it enacted, That the front of each concession in any Township in Upper-Canada, where only a single row of posts has been planted on the concession lines, and the lands have been described in whole lots, shall be considered to be, and the same is hereby declared to be that end or boundary of such concession which is nearest to the boundary of the township from which the several concessions thereof are numbered: Provided always, that in those townships in Upper-Canada which are bounded in front by a river or lake where no posts or other boundaries were planted in the original survey on the bank of such river or lake to regulate the width in front of the lots in the broken front concessions, the division or side-lines of the lots in such broken front concessions shall be drawn from the posts or other boundaries on the concession line in rear thereof, parallel to the governing line determined as aforesaid to the river or lake in front: Provided also, that when the line in front of any such concession has not been run in the original survey, the division or side lines of the lots in such concession shall be run from the

original posts or monuments placed or planted on the rear line thereof parallel to the governing line determined as aforesaid to the depth of the concession—that is, to the centre of the space contained between the lines in front of the adjacent concessions, if the concessions were intended in the original survey to be of an equal depth, or if they were not so intended, then to the proportionate depth intended in the original survey, as shewn on the plan and field-notes thereof of record in the Office of the Commissioner of Crown Lands of this Province, having due respect to any allowance for a road or roads made in the original survey; and that a straight line joining the extremities of the division or side-lines of any lot in such concession drawn as aforesaid, shall be; the true boundary of that end of the lot which has not been run in the original survey.

XXXVII. And be it enacted, That in those Townships in Upper-Canada in which the concessions have been surveyed with double fronts, that is, with posts or monuments planted on both sides of the allowances for roads between the concessions, and the lands shall have been described in half lots, the division or side-lines shall be drawn from the posts at both ends to the centre of the concession, and each end of such concession shall be and the same is hereby declared to be the front of its respective half of such concession, and that a straight line joining the extremities of the division or side-lines of any half lot in such concession, drawn as aforesaid, shall be the true boundary of that end of the half lot which has not been bounded in the original survey.

XXXVIII. And be it enacted, That in those Townships in Upper-Canada in which each alternate concession line only has been run in the original survey, but with double fronts as aforesaid, the division or side-lines shall be drawn from the posts or monuments on each side of such alternate concession lines to the depth of a concession, that is to the centre of the space contained between such alternate concession lines, if the concessions were intended in the original survey to be of an equal depth, or if they were not so intended, to the proportionate depth intended in the original survey, as shewn on the plan and field-notes thereof of record in the office of the Commissioner of Crown Lands of this Province; and each alternate concession line as aforesaid shall be and the same is hereby declared to be the front of each of the two concessions abutting thereon.

XXXIX. And be it enacted, That every Land Surveyor, when and as often as he is employed in Upper-Canada to run any division-line or side-line between lots, or any line required to run parallel to any division-line or side-line in the concession in which the land to be surveyed lies, shall, if it has not been done before, or if it has been done, but the course cannot at such time be ascertained, determine by astronomical observation, the true course of a straight line between the front and rear ends of the governing boundary line of the concession or section, and shall run such division-line or side-line as aforesaid, truly parallel to such straight line, if so intended in the original survey, or at such angle therewith as is stated in the plan and field notes as aforesaid, which shall be deemed to be the true course of the said governing or boundary line for all the purposes of this Act, although such governing or boundary line as marked in the field be curved or deviate otherwise from a straight course; and the same rule shall be observed, if a line is to be run at any angle with a front line or other line, which may not be straight.

XL. And be it enacted, That in all cases when any Land Surveyor shall be employed in Upper-Canada to run any side-line or limit between lots, and the original post or monument from which

such line should commence cannot be found, he shall in every such case, obtain the best evidence that the nature of the case will admit of, respecting such side-line, post or limit; but if the same cannot be satisfactorily ascertained, then the Surveyor shall measure the true distance between the nearest undisputed posts, limits or monuments, and divide such distance into such number of lots as the same contained in the original survey, assigning to each a breadth proportionate to that intended in such original survey, as shewn on the plan and field-notes thereof of record in the Office of the Commissioner of Crown Lands of this Province; and if any portion of the line in front of the concession in which such lots are situate, or boundary of the Township in which such concessions are situate, intended in the original survey to be straight, shall be obliterated or lost, then the Surveyor shall run a straight line between the two nearest points or places where such line can be clearly and satisfactorily ascertained, and shall plant all such intermediate posts or monuments as he may be required to plant, in the line so ascertained, having due respect to any allowance, for a road or roads, common or commons, set out in such original survey; and the limits of each lot so found shall be taken to be and are hereby declared to be, the true limits thereof; any law or usage to the contrary thereof in any wise notwithstanding.

XLI. And whereas many Towns and Villages in Upper-Canada have been surveyed and laid out by companies and individuals, and by different owners of the lands comprising the same, and lands have been sold therein according to the surveys and plans thereof: Be it therefore enacted, That all allowances for road, street or streets, common or commons, which have been surveyed in such Towns and Villages in Upper-Canada, and laid down on the plans thereof, and upon which lots of land fronting on or adjoining such allowances for road, street or streets, common or commons, have been sold to purchasers, shall be and the same are hereby declared to be public highways, streets and commons; and all lines which have been run, and the courses thereof given in the survey of such Towns and Villages, and laid down on the plans thereof, and all posts or monuments which have been placed or planted in the first survey of such Towns and Villages to designate or define any such allowances for road, street or streets, lot or lots, common or commons, shall be and the same are hereby declared to be the true and unalterable lines and boundaries of all such allowances for such road, street or streets, lot or lots, common or commons, in such Towns and Villages, respectively: Provided always, that no lot or lots of land in such Towns and Villages shall be so laid out as to interfere with, obstruct, shut up, or compose any part of any allowance for road, common or commons, which was surveyed and reserved in the original survey of the Township or Townships wherein such Towns or Villages are or may be situate: Provided also, that any owner or owners of any such Towns and Villages, or the owner or owners of any original division thereof, shall have lawful right to amend or alter the first survey and plan of any such Town or Village, or any original particular division thereof, provided no lots of land have been sold fronting on or adjoining any street or streets, common or commons where such alteration is required to be made: Provided also, that from and after the passing of this Act, no such private survey shall be valid, unless performed by a duly authorized Surveyor.

XLII. And be it enacted, That the original owner or owners of the lands forming the site of any Town or Village in Upper-Canada, mentioned in the next preceding Section of this Act, or the agent or agents, heirs or other legal representatives of the original owner or owners of any such Town or Village, or any original division thereof, shall, within one year from and after the passing

of this Act, make or cause to be made and deposited in the Registry Office of the County wherein such Town or Village is situate, a fair and correct plan or map of such Town or Village, or original division thereof, on a scale of not less than an inch to every four chains, and lay down thereon, or cause to be laid down thereon, all roads, streets, lots and commons within the same, with the courses and width of the roads, streets and commons, and the width and length of all lots, and the courses of all division-lines between the respective lots within the same, together with such information as shall show the lot or lots, concession or concessions, tract or tracts, block or blocks of land of the Township wherein such Town or Village shall be situate, and every such plan or map of every such Town or Village or original division thereof, shall be certified by some Land Surveyor, and also by the original owner or owners thereof, or the legal representative or representatives of such owner or owners, as being a correct plan or map of the same; and every copy of such plan or map obtained from such Registry Office, and certified as correct by the Registrar of such County, shall be taken as evidence of the original plan and survey of such Town or Village in all Courts of Record; and if any such owner or owners of any such Town or Village, or any original division thereof, or their agents, heirs, or other legal representatives, shall refuse or neglect to make or cause to be made, any such plan or map of any such Town or Village, or original division thereof, and deposit the same in a Registry Office of the County wherein the same is situate, within one year from and after the passing of this Act, he, she, or they shall forfeit and pay for such refusal or neglect, the sum of two pounds ten shillings, and a like sum for every year thereafter until such plan or map shall be made and deposited in the Registry Office of the County wherein the same is situate; and the payment of any such penalty or penalties shall not be held to free or discharge such owner or owners, their agents, heirs or other legal representatives, from any such penalties which may not have been paid at the time of such payment; and all such penalties, fines and forfeitures may and shall be collected in the same manner and applied to the same purposes as like penalties, fines and forfeitures are required to be collected and applied under and by authority of the sixth and seventh Sections of the Act passed in the eighth year of Her Majesty's Reign, and intituled, *An Act to declare certain Lands in Upper-Canada liable to Assessment, and to oblige the owners of such Lands to make Returns thereof to the District Treasurer.*

XLIII. And be it enacted, That whenever any such plan or map of any such Town or Village, in Upper-Canada, or original division thereof, shall be made and deposited in the Registry Office of the County wherein the same shall be situate, it shall be the duty of the Registrar of such County to make a record of the same, and enter the day and year on which the same shall be deposited in his office; and for such service the said Registrar shall be entitled to charge the same fees, and no more, than are by law established for making a record of any other document, which is by law required to be entered of record in such office; and such Registrar shall thereupon keep a separate book for the registering of title deeds of lands situate in such Town or Village, in the same manner as is by law required for registering of title deeds for lands situate in Townships.

XLIV. And for avoiding all doubt as to the application of the foregoing enactments in the cases hereinafter mentioned: Be it declared and enacted, That in all cases where any Letters Patent of grant, or other Instrument, has issued for several lots or parcels of land in Upper-Canada, in concessions adjoining each other, the side-lines or limits of the lots or parcels of land therein mentioned and expressed, shall commence at the front angles of such lots or parcels of land

respectively, and shall be run as hereinbefore provided, and shall not continue on in a straight line, through several concessions, unless the side-lines or limits, when run as aforesaid, shall intersect the corresponding post or monument in the front of the concession next in rear, that is to say, each such lot or parcel of land shall be surveyed and hounded according to the provisions of this Act, independently of the other lots or parcels mentioned in the same grant or instrument.

XLV. And be it enacted, That each and every Land Surveyor in Upper-Canada shall keep exact and regular journals and field-notes of all his surveys, and file them in the order of time in which the said surveys have been performed, and shall give copies thereof to the parties concerned when so required, for which he shall be allowed the sum of five shillings currency, for each copy, if the number of words therein do not exceed four hundred words, but if the number of words therein exceed four hundred, he shall be allowed six pence additional for every hundred words therein, over and above four hundred words.

XLVI. And be it enacted, That for better ascertaining the original limits of any lot concession, range, township or tract of land in Upper-Canada, every Land Surveyor acting in that portion of this Province, shall be and he is hereby authorized and required to administer an oath or oaths to each and every person whom he may examine at any time concerning any boundary, post or monument, or any original land mark, line, limit or angle of any township, concession, range, lot or tract of land which such Surveyor may be employed to survey.

XLVII. And be it enacted, That all evidence to be taken by any Surveyor as aforesaid, in Upper-Canada, shall be reduced to writing, and shall be read over to the person giving the same and signed by such person, or if he cannot write, he shall, acknowledge the same as correct before two witnesses, who shall sign the same with the Surveyor; and such evidence shall, and any document or plan prepared and sworn to as correct before a Justice of the Peace, by any Surveyor, with reference to any survey by him performed, may be filed and kept in the Registry Office of the County in which the lands to which it relates shall be situate, subject to be produced thereafter in evidence in any Court of Law or Equity within Upper-Canada; and for receiving and filing the same, the Registrar shall be entitled to one shilling and three pence currency; and the expense of filing the same shall be borne by the parties in the same manner as other expenses of the survey.

XLVIII. And be it enacted, That if any person shall, in any part of this Province, wilfully swear or affirm falsely concerning any matter with regard to which an oath may be required under this Act, such person shall be deemed guilty of wilful and corrupt perjury, and being thereof convicted before any competent Court shall be liable to be punished accordingly.

XLIX. And be it enacted, That if any action of ejectment shall be brought against any person or persons, who, after any line or limit shall have been established according to this Act, in Upper-Canada, shall be found, in consequence of unskilful survey, to have improved on lands not his, her or their own, it shall and may be lawful for the Judge of Assize, before whom such action shall have been tried, to direct the Jury to assess such damages for the defendant or defendants for any loss he, she or they may sustain in consequence of any improvement made before the commencement of such action, and also to assess the value of the land to be recovered; and if a

verdict shall be found for the Plaintiff or Plaintiffs, no Writ of Possession shall issue until such Plaintiff or Plaintiffs shall have tendered or paid the amount of such damages as aforesaid, or shall have offered to release the said land to the defendant, provided the said defendant should pay or tender to the Plaintiff the value of the land so assessed, before the fourth day of the ensuing term.

L. And be it enacted, That from and after the passing of this Act, in all cases in which the Jury before whom any action of ejectment shall be tried in Upper-Canada, shall assess damages for the defendant as provided in the next preceding section, for improvements made upon land not his own, in consequence of unskilful survey, and when it shall be satisfactorily made to appear that the defendant does not contest the Plaintiff's action for any other purpose than to obtain the value of the improvements made upon the land previous to the alteration and establishing of the lines according to law, it shall and may be lawful for the Judge before whom such action shall be tried, to certify such fact upon the record, and thereupon the defendant shall be entitled to the costs of the defence, in the same manner as if the Plaintiff had been non-suited on the trial, or a verdict rendered for the defendant; provided the defendant shall, at the time of entering into the consent rule, have given notice in writing to the lessor or lessors of the Plaintiff in such ejectment, or to his Attorney named on the Writ or declaration of the amount claimed for such improvements, on payment of which amount the defendant or person in possession will surrender the possession to such lessor or lessors, and that the said defendant does not intend at the trial to contest the title of the lessor or lessors of the Plaintiff; and if such notice shall on the trial be found not to have been given as aforesaid, or if the jury shall assess for the defendant a less amount than that claimed in the notice, or shall find that the defendant has refused to surrender possession of the land claimed, after tender shall have been made of the amount claimed, then in any of such cases the Judge shall not certify, and the defendant shall not be entitled to the costs of the defence, but shall pay costs to the Plaintiff; any thing herein contained to the contrary notwithstanding; Provided always, that upon the trial of any such cause no evidence shall be required to be produced in proof of the title of the lessor or lessors of the Plaintiff.

LI. And be it enacted, That the words "Governor of this Province" or "Governor" wherever they occur in this Act, shall be understood to include the Lieutenant-Governor or person Administering the Government of this Province; and the words "Upper-Canada" shall be understood to mean all that part of the Province which formerly constituted the Province of Upper-Canada; and the words "Lower-Canada" shall be understood to mean all that part of this Province which formerly constituted the Province of Lower-Canada; and the words "Commissioner of Crown Lands" shall be understood to mean the person discharging the duties of that officer; and words importing the singular number only shall be understood to include several persons, matters or things of the same kind, as well as one person, matter or thing, unless it be otherwise specially provided, or there be something in the subject or context repugnant to or inconsistent with such construction.

LII. And be it enacted, That a copy of this Act shall be sent to every Land Surveyor in this Province, in the same manner as the other Statutes are sent to the parties entitled to receive the same.

Schedule A.

Form of a Certificate of Admission as a Provincial Land Surveyor.

This is to certify to all whom it may concern, that A. B., of in the District of _____ hath duly passed his Examination before the Board of Examiners, and hath been found qualified to fill the office, and perform the duties of a Provincial Land Surveyor in and for Upper (or Lower) Canada, he having complied with all the requirements of the Law in that behalf. Wherefore the said A. B. is admitted to the said Office, and is by Law authorized to practise as a Land Surveyor in Upper (or Lower) Canada.

In witness whereof, We have signed this Certificate at _____ in the District of _____ Province of Canada, the _____ day of _____ one thousand eight hundred and _____

Signature of the President, C. D.
Signature of the Secretary, E. F.