

## No. XII.

PARISH ROADS.

An Act to provide for the making and repairing of Parish Roads in the Colony of New South Wales. [23rd September, 1840.]

Preamble.

4 Wm. IV. No. 11.

WHEREAS by an Act of the Governor and Legislative Council of the Colony of New South Wales passed in the fourth year of the reign of His late Majesty King William the Fourth intituled "*An Act for making altering and improving the Roads throughout the Colony of New South Wales and for opening and improving the Streets in the Towns thereof*" after reciting that it was expedient to define what roads should be maintained at the public expense and what at the expense of the parishes through which they pass so far as the said parishes could in the then state of the survey of the said Colony be determined it was amongst other things thereby enacted That all the roads in their whole length as set forth in a Schedule to the said recited Act annexed marked A should be deemed to be and should be called public roads and should be maintained repaired

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repaired or altered at the public cost and charge by payments from the Colonial Treasury whether toll should be collected on the said roads or otherwise and that all roads which should be thereafter made and declared to be public roads under the provisions of the said recited Act should in like manner be maintained at the public expense and whereas a certain other Act of the said Governor and Council was passed in the sixth year of the reign of His said late Majesty King William the Fourth intituled “ *An Act to provide for the repairing of* 6 Wm. IV. No. 11. “ *Parish Roads in the County of Cumberland in the Colony of New South Wales* ” which said last recited Act has been found insufficient for the purposes thereby intended and it is therefore expedient to repeal the same and that an Act should be passed for the making repairing and keeping in repair the several parish roads now established or hereafter to be established pursuant to the provisions of this present Act throughout the Colony of New South Wales 6 Wm. IV. No. 11. Be it therefore enacted by His Excellency the Governor of New South Wales with the advice of the Legislative Council thereof That from and after the passing of this Act the Act herein last recited shall be and the same is hereby repealed except as to any act matter or thing already Repealed. done or commenced to be done under and by virtue of the same.

2. And be it enacted That after the passing of this Act the proprietors of any lands through which any parish road or intended parish road passes or may pass or the proprietors of any lands situated within three miles of any part of and usually approached by such road or intended road may elect trustees for such road or intended road in the manner following that is to say that whenever a requisition signed by any number of the proprietors of the land through which any parish road or intended parish road passes or may pass in the proportion of not less than one-third of the whole number of the said proprietors and of the proprietors of any lands within three miles of and usually approached by such road shall be presented to the Magistrates in Petty Sessions assembled of any district through which such road passes or may pass requesting them to call a meeting of such proprietors for the purpose of electing trustees for the same it shall and may be lawful for such Magistrates or the major part of them to convene a public meeting of all the proprietors of the said lands and to name a proper time and place when and where such meeting shall be holden of which time and place not less than twenty-eight days’ previous notice shall be given in such manner as the said Magistrates shall deem advisable to ensure sufficient publicity thereof and such Magistrates shall also appoint a Magistrate to preside at such meeting together with two fit and proper persons to act as assessors to aid such presiding Magistrate in deciding and termining any questions that may arise at such meeting. Proprietors of lands through which any parish road passes or within three miles thereof may elect trustees for the same.

3. And be it enacted That at every such meeting so to be holden pursuant to such order of the said Magistrates the question to be proposed and submitted to the consideration of the proprietors present at such meeting shall be whether they the said proprietors deem it expedient or not that trustees should be appointed for such parish road or intended parish road under the provisions of this Act and in case such proprietors or the major part of them shall be of opinion that it is expedient that such trustees should be appointed the said presiding Magistrate and assessors or the major part of them shall certify the same to the said Magistrates in Petty Sessions and such Magistrates shall thereupon decide and determine the number of trustees which they or the major part of them shall or may think necessary to be appointed for such road and shall forthwith appoint another day not less than fifteen nor more than thirty days from the day of such first meeting for the election of such trustees and such meeting Manner of proceeding at the election of trustees.

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meeting shall be appointed to be holden at such place as the said Magistrates or the major part of them shall think expedient and such Magistrates shall give not less than fourteen days' notice in such manner as they shall deem advisable as aforesaid to the said proprietors of the time and place at which such second meeting shall be holden and of the number of trustees which the said Magistrates have thought it fit to be elected for such road at the meeting so to be holden and the Magistrate and assessors who presided at the first meeting shall preside at such second meeting unless some other person or persons shall be specially appointed so to preside or to act as assessor or assessors by the Magistrates in Petty Sessions as aforesaid.

Who shall be allowed to vote.

4. And be it enacted That at such second meeting so to be holden as last aforesaid for the election of trustees every person shall be admitted to vote through whose land such parish road passes or may pass as aforesaid or who within the limits aforesaid is the proprietor of any land of the value of two hundred pounds or upwards and shall have one vote for each trustee so to be elected.

Elections to be finished in one day.

5. And be it enacted That every such election of trustees so to be had as aforesaid shall be finished in one day without any adjournment whatever and in case any vote tendered on that day shall be objected to by any proprietor present at such meeting such vote shall be entered in a separate list to be called "List of tendered votes" and the said presiding Magistrate and assessors shall summarily inquire into the validity of the votes so objected to and within three days after the said meeting shall decide upon the validity of such votes which decision shall be final and conclusive thereon.

Votes objected to—how to be disposed of.

Persons elected to be trustees of any road to hold office for three years.

6. And be it enacted That within the fifth day after such election the said presiding Magistrate and assessors shall report to the said Magistrates in Petty Sessions the names of the persons so elected at the said meeting to be trustees as aforesaid and the said persons so elected and reported as aforesaid shall by the said Magistrates be thereupon declared to be the trustees of the said parish road or intended parish road and such trustees shall be and continue in office for the period of three years then next ensuing and at the expiration of such term of three years a new election shall be had in the manner aforesaid for the appointment of trustees for the said road for the succeeding three years and so from time to time at the expiration of every three years meetings shall be holden in manner aforesaid for the election of trustees for the said road for the succeeding term of three years.

If by death or absence the number of trustees be reduced below three—vacancies may be filled up.

7. And be it enacted That if at any time by reason of the death or absence from the Colony of one or more of the trustees so elected as aforesaid for any parish road or intended parish road the number of such trustees be reduced below three the Magistrates in Petty Sessions may cause any number of new trustees to be elected in manner aforesaid not exceeding the number of vacancies created by such death or absence Provided however that the new trustees so elected shall hold office only until the next general election of trustees for such road.

Trustees to account.

8. And be it enacted That the trustees so from time to time elected for the parish roads respectively throughout the Colony shall at the expiration of the respective terms of three years for which they shall be so elected as aforesaid or oftener if thereto required by a notice in writing signed by three or more of the said proprietors of lands qualified to vote at the election of such trustees give to the trustees elected for the succeeding three years or to the proprietors so requiring such account as aforesaid a full true and accurate account of all monies received by them as such trustees and of all monies paid and expended by them in performance of the trusts vested in them respectively and in case any balance of the said monies so received by them shall remain

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in their hands after taking credit for all sums of money lawfully expended and laid out in pursuance of such trusts the said trustees shall forthwith hand over and pay such balance so remaining due by them respectively to the trustees appointed for the ensuing three years to be laid out and applied by them for the trusts and the purposes of the trusts so vested in them as aforesaid.

9. And be it enacted That the respective trustees so elected for such parish roads shall and may for the purpose of making and repairing such roads and the bridges thereon order and direct rates to be levied on the lands through which such roads pass or may pass and on the lands situated within the distance from such respective parish roads limited as aforesaid and such rates shall be uniform acreable rates without regard to the value of the land or to whether it be cultivated or not and the times for levying as well as the amount of such rates shall be regulated as occasion may require by the trustees so elected for such parish roads respectively Provided always that the rate or rates levied on such lands in the course of any one year shall never exceed in the whole the sum of sixpence per acre Provided also that in all cases where more than one parish road shall pass through or be intended to pass through any lands or within the said limited distance of the same or where any such lands shall be usually approached as aforesaid by more than one parish road such lands shall be rated for the purposes of each of such roads in such proportion as the respective trustees thereof shall determine but no such rates shall singly or together exceed the amount hereinbefore limited Provided further that in all cases of dispute as to the distance of any lands from any parish road in which the decision of the surveyor for such road shall be given against the proprietor of such lands the expense of ascertaining and determining the same shall be borne and paid by such proprietor.

Rates may be levied by trustees but not to exceed in any one year sixpence per acre.

10. And be it enacted That it shall and may be lawful for any trustee or trustees elected under the provisions of this Act or for any surveyor or surveyors appointed by any such trustees as hereinafter mentioned from to time to time to enter upon all or any of the lands hereinbefore respectively described and defined in respect of any such parish road passing through or within the said limited distance of the same for which such trustees shall have been elected as aforesaid for the purpose of making and carrying on any survey or for estimating the number of acres liable to be rated for the purposes and under the provisions of this Act Provided always that in every case in which for the purpose of any such survey or estimate it shall be necessary for any such trustee or surveyor to enter any enclosed garden orchard nursery or pleasure ground where the owner or occupier thereof may have opposed or refused to allow such entry such trustee or surveyor shall give three days' notice to the owner or occupier of such garden orchard nursery or pleasure ground requiring to be permitted to enter the same and after the expiration of such notice it shall be lawful for such trustee or surveyor with necessary assistants at any reasonable time of the day to make such entry doing as little damage as may be in the execution of the powers to them respectively granted by this Act and making reasonable satisfaction if required to the owners of or other persons interested in any such lands gardens orchards nurseries or pleasure grounds which shall or may be in any way hurt or damaged in or by the execution of any of the powers of this Act and this Act shall be sufficient to indemnify such trustee or surveyor and all persons acting in aid or under the orders of any of them in the execution of this Act.

Trustees or others appointed by them may enter upon all lands for the purpose of making such valuation giving three days' notice in certain cases.

11. And be it enacted That all monies which shall be so rated and levied under and by virtue of this Act and paid into the hands of

Monies levied to be paid to the treasurer appointed by the

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trustees and to be applied to defray expenses incurred for making and repairing parish roads.

the treasurer appointed as hereinafter mentioned by the trustees of the parish road in respect of which the same shall have been so rated and levied shall form a fund for the purposes of such road and the said treasurer shall and he is hereby required to pay such monies to liquidate and defray all such expenses as shall have been incurred for the making and repairing of such road and the bridges thereon in such sums and to such persons as shall be mentioned in any order in writing signed by at least two of the said trustees.

Levy of rates.

12. And be it enacted That the money or monies to be collected and levied under the provisions of this Act shall be paid by the respective proprietors of the lands so to be rated as aforesaid to the collectors of the said rates to be appointed by the trustees of the parish road in respect of which the same shall be made as hereinafter mentioned and such collectors shall pay over the same to the treasurer appointed by the trustees of such road as aforesaid and if any such proprietor shall neglect or refuse to pay to any such collector the money so rated upon his her or their lands or his her or their proportion of such money for the space of fourteen days next after the same shall have been demanded by such collector either personally or by a written notice left at the last or usual place of abode of such proprietor as aforesaid if such place can be found but if not then on the lands so rated such money shall be levied on and recovered from every such proprietor so neglecting or refusing to pay the same by distress and sale of the goods and chattels and lands and tenements of such proprietor so in default by warrant under the hand and seal of any Justice of the Peace on proof upon oath of such collector of such neglect or refusal and the surplus if any of the monies raised by such distress and sale shall be paid on demand to the owner of the goods and chattels and lands and tenements so distrained and sold after deducting all costs charges and expenses attending or preparatory to such distress and sale the same to be ascertained by such Justice and in default of such distress it shall be lawful for such Justice to commit such defaulter to any house of correction within the said Colony there to remain without bail or mainprize for any time not exceeding three calendar months unless payment of such sum or sums of money as shall have been found to be due and in arrear upon such rate or rates as aforesaid together with all costs charges and expenses to be ascertained by such Justice shall be sooner made.

Rates to be paid to collectors and by them to treasurer.

Rates not paid for the space of fourteen days after demand to be recovered by distress and sale of goods.

Surplus of sale to be paid over to proprietor &c.

In default of sufficient distress defaulter to be committed to house of correction.

Distress not to be unlawful for want of form.

13. And be it enacted That when any distress shall be made for any money to be levied or raised by virtue of this Act the distress itself shall not be deemed unlawful nor the making the same to be deemed a trespasser on account of any defect or want of form in any proceeding relating thereto nor shall the party distraining be deemed a trespasser *ab initio* on account of any irregularity which may be afterwards done by the party distraining but the person aggrieved by such irregularity may maintain an action on the case for the special and actual damage (if any) sustained thereby but not otherwise.

Persons aggrieved to appeal to General or Quarter Sessions to be holden within the district.

14. Provided always and be it enacted That it shall be lawful for any person or persons who shall feel himself herself or themselves aggrieved by the assessment of any such rate as aforesaid to appeal against the same to any Court of General or Quarter Sessions of the Peace to be holden within or nearest to the district in which the lands in respect of which such rate shall have been so assessed shall be situated within six months next after such rate shall have been so assessed and such Court of General or Quarter Sessions of the Peace shall in its discretion amend alter or confirm such rate and give such relief as the case may require and the determination of such Court shall be final and on the hearing of such appeal the said Court may make such order as to costs as shall appear to such Court to be just and reasonable.

Court to make order as to costs.

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15. And be it enacted That every person intending so to appeal as aforesaid shall not less than twenty-eight days before such Court of General or Quarter Sessions of the Peace shall be holden deliver or cause to be delivered to the trustees who shall have assessed the rate against which such person shall intend so to appeal a notice in writing of such appeal and the grounds of objection to the assessment of such rate and upon the hearing of such appeal the said Court shall not examine or inquire into any causes of appeal which are not specified in such notice.

Notice of appeal to be delivered in writing to trustees twenty-eight days previous to sitting of Court.

16. And be it enacted That no person shall be disqualified from being a witness or from giving evidence in any action prosecution appeal cause or proceeding whatsoever authorized by or relating to the execution of this Act by reason of liability to pay any rate to be assessed under the provisions of this Act.

Witnesses not disqualified by reason of non-payment of rates.

17. And be it enacted That it shall and may be lawful for the said trustees respectively and they are hereby authorized and empowered from time to time during the period of their continuing in office as aforesaid to purchase sell or exchange any lands within the limits aforesaid for the purpose of enabling them to improve or repair the respective parish roads for which they shall so be trustees.

Trustees may buy sell or exchange lands.

18. And be it enacted That the said trustees respectively shall and may and they are hereby authorized and empowered to appoint fit and proper persons to act as surveyors of such parish roads respectively and also as many fit and proper persons as may be necessary to act as treasurers collectors clerks or other necessary officers at such moderate salaries as they may think fit and from time to time to remove them or any of them and to appoint others or another in their or his stead.

Trustees may appoint surveyor and other officers.

19. And be it enacted That the surveyors so from time to time appointed for such parish roads shall have possess and enjoy within the limits aforesaid all every and the like powers and authority and receive and enjoy the like immunities advantages and protection as are given to enjoyed by and vested in the Surveyor General of New South Wales and his assistants by and under the provisions of the hereinbefore first recited Act.

Powers of the surveyors.

4 Wm. IV. No. 11.

20. And be it enacted That whenever trustees shall be appointed for a parish road intended to be made through a part of any district of the said Colony where no parish road had theretofore been made or formed the surveyor appointed as aforesaid for such intended road shall survey and mark out the most fit and advantageous line for such intended road and submit the same to the said trustees for their approval and if the same shall be approved by them the said surveyor shall immediately transmit a plan and description of such intended road to the said Surveyor General for his information and if such Surveyor General shall be satisfied that the said intended parish road will in no way interfere with any public road or intended public road made or to be made and supported at the public expense or with any other parish road in the said district and shall certify the same to the said trustees such trustees may thereupon forthwith form make and fence in such intended parish road and from time to time repair and improve the same under and in pursuance of the provisions of this Act Provided however that nothing herein contained shall prevent the opening of parish roads by order of the Governor by and with the advice of the Executive Council in the manner set forth in the said hereinbefore first recited Act or shall prevent any person from claiming compensation under the provisions of the said Act whether such roads be opened or altered by order of the Governor and Executive Council or by order of trustees elected under the provisions of this

Duties of surveyors.

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Act Provided further that any compensation which may be awarded on any such claim shall be paid by the trustees of the parish road in respect of which such compensation shall have been so awarded and thereupon all right or property in the land for which or in respect of which such compensation shall be so paid shall become vested in the trustees and succeeding trustees for the time being of such road Provided also that in awarding compensation for any land taken for the purpose of opening or improving any parish road the jury or valuers shall always take into consideration the benefit which the individual claiming compensation will derive from the opening or improving of such road as well as the detriment which he may sustain thereby.

Tolls may be established.

21. And be it enacted That when and so often as the trustees of any parish road shall certify that such road is in a state to permit and allow the safe and uninterrupted passage of the public with their carriages and other vehicles and horses and other cattle and stock it shall and may be lawful for the Governor of the said Colony for the time being by a Proclamation to be published in the *New South Wales Government Gazette* to appoint and direct tolls to be demanded levied and taken upon such roads and in such Proclamation shall be notified the rates of such tolls and the manner of collecting and levying the same shall be such as are set forth and described respectively in and by an Act of the said Governor and Legislative Council passed in the second year of the reign of His late Majesty King William the Fourth intituled “ *An Act for repealing so much of an Act intituled ‘ An Act to continue until further provision shall be made certain Duties Tolls Rates Fees and other sums of money imposed by the Governors of New South Wales and for other purposes as relates to the levying Tolls in New South Wales and for raising a fund towards making repairing and upholding Public Roads Bridges and Ferries and for regulating the collection of the Tolls thereon’* ” and it shall and may be lawful for the Governor of the said Colony for the time being by any writing under his hand to assign and direct the tolls so to be collected or levied upon such parish road to be paid to the trustees thereof to be by them laid out employed and expended in the making fencing repairing and keeping in repair such road and the bridges thereon and in keeping in proper repair the toll houses and bars and in the payment of the collector or collectors of such tolls and of other necessary expenses Provided however that no turnpike shall or may be erected or established on such parish road or any toll collected or levied thereon until it shall be made to appear to the satisfaction of the said Governor and Executive Council that a sum of money not less than fifty pounds sterling for each and every mile of the whole length of such road if not exceeding seven miles or if exceeding seven miles that at least three hundred and fifty pounds shall have been expended on such road or that a sum of money equal at least to that amount shall have been raised and deposited in the hands of some one or more of the trustees of such road or their treasurer ready to be expended in the making and repairing of the same.

Tolls may be let on lease.

22. And be it enacted That it shall and may be lawful for the said Governor by an order under his hand to authorize the trustees of such parish road to grant a lease or leases of the tolls to be collected or levied thereon for any period of time not exceeding one year and from time to time to renew such lease or leases at the highest or best rent or value to be obtained for the same either by public auction or otherwise and in every such lease shall be inserted the usual and ordinary covenants to be entered into by the lessee or lessees respectively of the said tolls.

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23. And be it enacted That in case any such toll as aforesaid shall with the approval of the said Governor notified as aforesaid be directed to be collected and levied on any such parish road as aforesaid it shall be lawful for the trustees for such road to cause a toll-bar or toll-bars to be erected on such part or parts thereof as the said Governor shall approve and to appoint some fit and proper person or persons to attend the said toll-bar or toll-bars to collect and receive the tolls thereat and to make to the person or persons so appointed a reasonable allowance for his or their trouble in collecting the same and from time to time as to such trustees shall seem meet and proper to remove such person or persons from the collection of the said tolls and to appoint another or others in his or their stead.

Trustees may erect toll-bars and appoint collectors.

24. And be it enacted That when and so soon as any such toll-bar or toll-bars shall be erected as aforesaid the trustees of the parish road on which the same shall have been erected shall cause to be put up and continued in some conspicuous place at or near such toll-bar or toll-bars a table painted in distinct and legible black letters on a board with a white ground containing at the top thereof the name of the gate or toll-bar where the same shall be put up and also a list of all the tolls and dues payable thereat distinguishing severally the amount of the tolls and the different sorts of cattle or other beasts carriages and other vehicles for which they are severally to be paid and the said trustees shall cause to be put up on some conspicuous place on or near to each of the said toll-bars the christian and surname of the collector for the time being of the tolls thereat and shall cause the same to be kept up during the whole time such collector shall be on duty at such toll-bar and such collector shall provide tickets denoting the payment of toll and on every such ticket shall be specified the date the name of the gate at which the same shall be issued and also the names of the gates (if any) freed by payment of such toll.

Table of tolls to be put up.

25. And be it enacted That the trustees of such parish road shall and may with the consent and approbation of the said Governor notified as aforesaid and they are hereby authorized and empowered from time to time to raise any sum or sums of money that shall or may be required for the making and repairing of the said roads and the bridges thereon by one or more mortgage or mortgages of the tolls to be collected or levied on such road and of the assessments on such land Provided however that the money so raised and procured by such mortgage or mortgages shall be duly expended in the making or repairing of the said road and the bridges thereon and shall be accounted for by the trustees thereof as other monies collected levied or raised by them under and by virtue of this Act are directed to be accounted for.

Trustees may borrow money.

26. And be it enacted That the several sums of money received by such collector or collectors upon any such parish road as aforesaid for or on account of the tolls demandable thereon shall be by him or them accounted for and paid over to the trustees of such road or their treasurer and such trustees after paying or allowing thereout the necessary expenses for the collecting of such tolls shall cause the net proceeds thereof to be expended and applied in the payment of the salary of any surveyor and other officer or officers appointed by such trustees as aforesaid and in the payment of the principal sum or interest of any money borrowed as hereinbefore authorized (if any such shall have been so borrowed) and in keeping the said road and the bridges thereon in good and sufficient repair.

Appropriation of tolls.

27. And be it enacted That the trustees of such parish roads respectively shall cause books of account to be kept of the amount of toll received on such parish roads respectively and of the money paid

Toll books to be kept and be open to the inspection of the public.



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and expended in the collection of such tolls and in the payment of the salaries of the respective surveyors and other officers appointed as aforesaid and in the payment of the principal sum or interest of any money so borrowed as aforesaid by such trustees and in the necessary repairs of such roads and the bridges thereon and such books of account shall be kept in such convenient places as such respective trustees shall appoint and the same shall be open for the inspection at all reasonable times of all persons interested therein.

Fines and penalties  
to be levied and paid  
to trustees.

28. And be it enacted That all fines penalties and forfeitures imposed by the Act hereinbefore last recited passed in the second year of the reign of His said late Majesty to which persons are by the said Act declared to be liable for refusing to pay toll or for any other offence therein mentioned as well as for any offences committed by the collectors of tolls under the said Act are hereby declared to be applicable and the same shall be applied to any like offences at any time committed upon any parish road made or intended to be made under and in pursuance of the provisions of this Act so far as the same are applicable and can be applied in such cases and it shall and may be lawful for any one or more Justice or Justices of the Peace to hear and determine in a summary way all such offences as aforesaid in the manner directed by the said Act and impose such fines penalties and forfeitures against any party or parties so offending as in the said Act are directed and awarded against any person or persons offending as therein mentioned and to enforce and cause such fines penalties and forfeitures to be levied and paid as in and by the said Act is directed as fully and to the same effect as if the same were herein repeated and enacted Provided only that such fines penalties and forfeitures shall be paid to the trustees of the parish road in respect of which the same shall have been so levied and shall be by them applied towards the purposes of their respective trusts.

Appeal against conviction.

29. And be it enacted That any party or parties convicted under this Act of any such offence or offences as is and are particularly set forth in the said Act hereinbefore last recited before any one or more Justice or Justices of the Peace shall have and be entitled to the like appeal from the decision of such Justice or Justices as in and by the said last mentioned Act is given to any person or persons convicted of any offence or offences against the said Act.

2 Wm. IV. No. 12.