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No. 323.

3rd Session, 5th Parliament, 20 Victoria, 1857.

B I L L .

An Act to authorize the establishment of
Boards of Boundary Commissioners in
Upper Canada.

Received and read first time, Tuesday, 5th
May, 1857.

Second reading, Wednesday, 6th May, 1857.

Mr. Sol. Genl. SMITH.

S. Derbshire & G. Desjarats, Queen's Printer.

An Act to authorize the establishment of Boards of
Boundary Commissioners in Upper Canada.

WHEREAS the errors or defects in Surveys heretofore made within Upper Canada, occasion disputes and differences, touching the boundaries of Townships, Concessions and Lots, and involve parties in expensive litigation; And whereas it is expedient to provide a remedy for these evils, by the appointment of Commissioners in every County, with the powers and under the restrictions hereinafter expressed: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

- 10 I. From and after the passing of this Act, it shall and may be lawful for the Governor to appoint, during pleasure, three fit and proper persons in every County in Upper Canada, (one of whom shall be the Judge of the County Court,) to form a Board, to be known by the style and title of "The Boundary Commissioners" of the County for which they shall be so respectively appointed; and the said Commissioners for the time being are hereby empowered and required to hear and determine all matters of dispute touching any line or lines, boundary or boundaries, of any City, Town, Village, Township, Concession or Lot, and of any part or parts thereof within their respective Counties, and to ascertain, fix and determine, such lines, boundaries or divisions, as they shall find to be right according to the Laws of Upper Canada, and to give and pronounce such judgment and decree therein, and to award execution thereupon for such costs as shall, by the said Commissioners, be ascertained to have been reasonably incurred in the case, against the goods and chattels of all and every the person and persons whom they shall decree to pay the same, the whole as to them or any two of them shall seem just; and the acts, orders, judgments and decrees, of the said Commissioners, or any two of them, shall be final and conclusive between the parties, their heirs and assigns, except in cases of appeal, to be brought within the time and in the manner hereinafter mentioned.

Board of three Commissioners to be constituted.

Their general powers.

Decision of two Commissioners to be valid.

- II. The Governor may from time to time appoint a fit and proper person to be Clerk of each Board of Commissioners, who shall attend the sittings thereof and keep minutes of its proceedings, of which he shall have the custody, and countersign all orders, judgments and decisions of the Board, and perform all other acts and duties appertaining to his office.

Clerk of the Board and his duties.

- III. It shall not be lawful for any such Commissioner to act in any case that shall be heard and determined under the provisions

Provision for supplying the

place of a
Commissioner
interested or
absent.

of this Act, wherein such Commissioner, his father or mother, brother or sister, or child, or any relation of his wife in the same degree of consanguinity, shall be directly or indirectly interested; but if any Commissioner shall be sick or absent from the Province or otherwise unable to attend, in such case, the place of 5 such Commissioner so interested, by himself or his relatives as aforesaid, shall be supplied by a Commissioner to be selected by the other Commissioner or Commissioners of the County wherein such case shall arise, and who shall not be interested therein, from among the Commissioners appointed for 10 a County adjoining thereto; and such last mentioned Commissioner being notified of such election, shall be bound to attend the sittings of the Board for the County wherein such case shall have arisen, and shall have the same powers, in all respects touching such case, as if he had originally been appointed a 15 Commissioner for such County.

Case in which
two or more
Counties shall
be interested
in any bound-
ary line, pro-
vided for.

IV. In all cases which shall arise touching the boundary line between any two or more Counties, the Commissioners appointed for each of such Counties, shall hear and determine the same; and no decision shall be binding on any County interested 20 therein, unless a majority of the Commissioners to be appointed for each such County shall have been present at every sitting to be holden for the purpose of hearing and determining such case; and the acts, orders, judgments and decrees, of such united Boards of Commissioners, or the majority of the Commissioners 25 present at such sitting, shall be final and conclusive between the Counties interested, except in cases of appeal, to be brought within the time and manner hereinafter mentioned.

Parties re-
quiring sur-
veys of bound-
aries to apply
to Commis-
sioners.

V. The owner of any lands, either in fee or for any less estate of freehold, who shall require redress touching the 30 boundary or boundaries thereof, or a survey of the said boundary or boundaries, or any part thereof, shall give notice in writing to any one or more of the Boundary Commissioners of the County, requiring them to hear and determine the questions affecting the same; and the said Commissioners or any one 35 or more of them, shall, within ten days from the receipt of such notice, issue a precept to the person or persons interested in the matter, to attend the said Board, at some place and on some day in the said precept to be named, not exceeding twenty-one days from the receipt of the said notice, and which 40 said precept shall be in the words or to the form and effect set forth in the Schedule to this Act annexed.

Precept to
parties con-
cerned.

Place of sit-
ting.

VI. The said Commissioners shall, in all cases, hold their sittings at the most convenient spot near to the disputed bound-
ary or boundaries, not in any case exceeding the distance of ten 45 miles from the same.

Power to ad-
journa sittings.

VII. Whenever any party interested shall apply for any ad-
journment, it shall be lawful for the Commissioners, on suffi-

cient reason being shewn to them, upon oath, and upon payment of reasonable costs by the party applying for such adjournment, or if the Commissioners shall deem it proper to make any other person a party to the proceedings (in which case they may address their precept to such parties, varying the wording to suit the case), to adjourn the sitting of the Board from time to time, and to any day not exceeding twenty days from the day of sitting: Provided always, that every case shall be finally decided by the Commissioners within six months from the issuing of the original warrant or precept for hearing the same. Proviso.

VIII. Before hearing any case under the provisions of this Act, the Commissioners shall, if required by any of the parties interested, proceed to and view the boundary or boundaries in question in their own proper persons; and it shall be lawful for them, and they are hereby required, to employ a competent Surveyor to make a survey and map, and a report of survey thereof, which map and report shall be annexed to and filed with their judgment and decision, as hereinafter provided. Provision for a view, or survey, if found requisite.

IX. It shall be lawful for the Commissioners, or any one, or more of them, to summon any person resident in the County, or in a County immediately adjoining thereto, to give evidence touching any matter upon which they shall be required to adjudge and determine under the provisions of this Act, and to produce any papers or documents in his possession relative thereto; and the said Commissioners assembled as a Board, are hereby authorized and empowered, to administer or cause to be administered, an oath, as well to the party complaining as to the party answering, or any person made a party by the Commissioners, and to such witness or witnesses, as shall be examined or produced by either party, and also, to all or any of the persons who shall be employed under the Board, and to all other persons whomsoever, for or concerning any business relative thereto: Provided, that the said Commissioners shall in no case give judgment solely on the oath or affirmation alone of any party interested in any matter to be heard by the said Board, nor unless there shall be other sufficient evidence to warrant such judgment, independent of such oath or affirmation. Power to summon witnesses, &c.

And administer oaths, to parties or witnesses.

Proviso.

X. All evidence to be taken before the Commissioners shall be reduced to writing, and be read over and signed by the persons giving the same, and shall be given upon oath or affirmation as aforesaid, and such evidence shall be kept by the Commissioners, ready to be produced on any appeal to be brought from their judgment or decision, as hereinafter provided. How the evidence shall be taken and recorded.

XI. All copies of plans, descriptions, instructions, field-notes or other evidences of survey, and all other documents of a public character, certified by the Commissioner of Crown Lands, or person in charge of the Crown Lands Department for the time Certain documents to be *prima facie* evidence before Commissioner

De-
mis-

being, or by the person in charge for the time being of any other Public Office, in which any such documents may be deposited, shall be admissible in evidence before such Commissioners, or upon any other Judicial proceedings under this Act, in the same manner, and no other, as if the same were proved by evidence 5 given *vivá voce*; Provided always, that it shall be the duty of any person employed in any Public Office in this Province to answer upon oath, to be administered before any Commissioner for taking affidavits in the Court of Queen's Bench or Common Pleas, any questions which the Commissioners to be appointed 10 under this Act shall in writing require to be answered; and that the evidence obtained in such manner shall be received as if given *vivá voce* before the Commissioners; Provided it be made appear to their satisfaction, that the parties interested have had a reasonable opportunity afforded to them of proposing 15 questions by way of cross-examination.

Public Officers may be examined, and how.

Proviso.

False swearing to be perjury.

XII. If any person shall wilfully and corruptly swear falsely in any case under this Act, either *vivá voce* or by way of answer in any written deposition, such false swearing shall be deemed to be wilful and corrupt perjury. 20

Provision if a case which ought to have come before the Commissioners shall be brought in a Superior Court.

XIII. In case any action or suit shall hereafter be brought in any of the Superior Courts, touching any question which might have been tried and decided before the said Commissioners, it shall and may be lawful for the defendant in such action to apply to the said Court, or to a Judge thereof in vacation, who 25 shall upon proof of the facts, upon affidavit to be duly sworn and laid before the said Court, or before such Judge as aforesaid, grant a rule of the said Court for the stay of all proceedings in such action, and for payment of the costs of and attending such rule by the plaintiff in such action or suit, unless it 30 shall appear to the Court or Judge, upon hearing the parties, their Counsel or Attorney in reply, that from the nature and circumstances of the question in dispute, it was a proper case to have been instituted in the first instance in such Superior Court.

Provision if the party obtaining the precept shall make default.

XIV. If the party at whose instance a precept shall have 35 been issued by Commissioners under this Act, shall neglect or fail to appear either in person or by his Counsel at the sitting thereby appointed to be held as aforesaid, or at any other sitting to be holden under the provisions of this Act, at which his presence shall be required, or shall otherwise make default 40 therein, then the said Commissioners are authorized and empowered, to ascertain the costs incurred therein, as well by such party as by the respondent; and such costs shall be recoverable from the party making such default, in the manner hereinbefore directed with respect to costs on judgment or 45 decree.

Provision if the party res-

XV. If the party respondent shall, in like manner, make default in appearing, either in person or by Counsel, after

he shall have been served with such precept as aforesaid, the same having been served at least four days previous to the day or sitting, and due proof upon oath having been made of such service, it shall be lawful to and for the said Commissioners to proceed to judgment and decree in the manner in dispute, in such and the same manner in all respects as if the respondent were personally present.

pondent shall
make default.

Judgment.

XVI. The Boards of Commissioners shall have the power of issuing injunctions to the parties interested, to stay cutting timber or committing any waste upon lands the boundaries of which they have been legally required to establish until they shall have fully determined the said boundaries, and any contravention of such injunction shall be a misdemeanor.

Commissioners may grant
injunctions
against waste.

XVII. No Provincial Land Surveyer being a boundary Commissioner, shall be employed as a Surveyor under the authority of the Board of which he is a member.

Commissioners not to be
employed as
Surveyors under
this Act.

XVIII. All the provisions of the Acts of 1849, chapter thirty-five, and of 1855, chapter eighty-three, and of any other Act relating to the survey of lands now or hereafter to be in force in Upper Canada, shall be binding on the respective Boards of Boundary Commissioners, and shall govern their acts and decisions.

Certain Laws
to govern Com-
missioners.

XIX. If any party shall be dissatisfied with the judgment of the said Commissioners, such party may at any time within two months from the date of such judgment, (upon giving fourteen days' notice in writing of his intention to the party in whose favour such judgment shall have been given, and to the Commissioners, who shall thereupon transmit to the proper Officer of the Court, for the use thereof, a copy of their judgment, together with any plan or Report of Survey made or filed in the case, and the evidence taken before them the said Commissioners) to appeal therefrom to the Court of Queen's Bench or Common Pleas for Upper Canada, in the option of the parties; and the Court appealed to is hereby authorized and empowered to revise, alter, affirm or annul, the judgment of the Commissioners, or to order such farther enquiry to be made, or if it shall see fit to direct an issue to be tried at law, touching the matter in dispute, and to make such orders and directions therein for payment of costs and other matters respecting the same, as to such Court shall seem just and reasonable; and the judgment of the said Court, to be given on such appeal, shall be binding and conclusive not only on the parties to the case, their heirs, assigns, or all persons claiming under them, but also on all persons, Municipalities or other parties whomsoever.

Appeal from
decision of
Commissioners
to Court of
Q. B. or C. P.

Powers of the
Court appeal-
ed to.

XX. Provided always, that if any appeal appear to the Court so appealed to be frivolous or vexatious, such Court may

Frivolous ap-
peals may be
dismissed.

award such extra costs, to be paid by the Appellant, as it may deem reasonable.

Judgment of Commissioners to be filed with County Registrar, and when.

XXI. One copy of every judgment of any Board of the said Commissioners, together with any map and report of survey, made or filed in the case, shall, if there be no appeal against the judgment, be filed with the Registrar of Deeds for the County wherein the boundary decided shall be situate, or of which it shall be a boundary, and one copy in the office of the Commissioner of Crown Lands, within calendar month from the expiration of the time allowed for appealing against the judgment, and in case there shall be an appeal from the judgment of the said Commissioners as aforesaid, one copy of the judgment; and of all orders of the Court of Queen's Bench or Common Pleas establishing any line or lines of boundary upon such appeal, shall also, together with the said map and report of survey, (if any,) be filed with the Registrar of the County wherein such boundary shall be situate, or of which it shall be a boundary line, and one copy in the office of the Commissioner of Crown Lands, within month after the final judgment in appeal; and the said Registrar shall be entitled to a fee of five shillings, and no more, for entering the same of record. 5 10 15 20

Applications for surveys under 12 V. c. 7b, and 18 V. c. 83, to be to the Commissioners under this Act.

XXII. Applications for surveys under the provisions of the twenty-sixth, twenty-seventh, twenty-eighth, thirtieth and thirty-first Sections of the Act passed in the twelfth year of Her Majesty's Reign, intituled, *An Act to repeal certain Acts therein mentioned, and to make better provision respecting the admission of Lund Surveyors and the Survey of Lands in this Province*, and of the eighth Section of the Act passed in the eighteenth year of Her Majesty's Reign, intituled, *An Act to amend the Acts relating to Land Surveyors*, shall not hereafter be made to the Governor, but shall be made to the Boards of Boundary Commissioners of the Counties in which the lands to be surveyed are situate, who shall also perform all the duties imposed upon the Commissioner of Crown Lands, by the before mentioned Sections of the aforesaid Acts. 25 30 35

Courses of lines how to be described.

XXIII. The said Commissioners, in their judgments and in all Surveys made under their direction, shall express the courses of lines according to their magnetic and meridional bearing thereof. 40

Stone boundaries to be placed on lines settled by Commissioners. Expenses how paid.

XXIV. As often as any lines or boundaries shall be finally established by the Commissioners under this Act, it shall be their duty to cause sufficient Stone Monuments to be placed to mark such boundaries; and to award the expense thereof to be paid by the parties, or either of them, as they may think just, and to enforce the payment thereof in the same manner as of other costs and expenses in the case. 45

XXV. The said Commissioners shall be entitled to receive the sum of thirty shillings each, and no more, for every day they shall be occupied in travelling to, or returning from, and sitting at any place, for the purpose of hearing and determining any matter under the provisions of this Act; and every Surveyor who shall be employed by the said Commissioners, shall be entitled to receive the sum of twenty shillings for every day he shall be necessarily employed as aforesaid; and the Clerk to the Commissioners shall be entitled to receive for every day he shall be necessarily employed, and documents which he shall as such Clerk be called upon to make and deliver to any person.

Allowance to Commissioners.

And to Surveyors.

XXVI. When the owner of any lands who is interested in any boundary to be established by any Board of Commissioners, shall reside in another County than that for which they are appointed, or shall be absent from the Province, the precept shall be delivered to the occupant of such lands, or if the lands be not occupied, to the known agent of such owner in the County, or if no such agent can be found within the County, then a letter addressed by one of the Commissioners to the owner if he reside within the Province, and transmitted by Post, shall have as full force and effect as if the same had been delivered to the said owner personally; and all lands shall in every case be held liable for their owner's proportion of all costs incurred under this Act, in establishing the boundaries thereof; and in case of charges against the lands of absentees from the Province, or minors for unoccupied lands, the Commissioners having ascertained the fair proportion of the costs incurred in respect thereto, shall be entitled to receive the amount from the County Treasurer, who shall charge the same amount against the lands, and levied with interest in the same manner as taxes, and with the like percentage of addition and for fees, and being so levied shall be paid over with such percentage to the party entitled to receive the same; and lessees shall be entitled to charge the proportion of the costs of any survey as aforesaid, of the lands held by them which they shall pay, as a sett-off against the rent of the said lands.

Service of the precept when the party to whom it is addressed is absent.

Costs to be a charge on the lands.

Charge on lands of absentees.

XXVII. Neither any appeal nor any thing in this Act contained shall extend or be construed to extend to prevent the Commissioners from collecting costs in every case immediately after the final decision thereof by them; and they shall not be compelled to act upon the requisition of any person unless security be given for the costs to be incurred, should they deem it necessary.

Rights of Commissioners as to costs. Security for costs.

XXVIII. The costs, charges and expenses, attending the settling any boundary line in a case to which any Municipality shall be the party adjudged to pay the same, shall be borne and paid out of the Funds of such Municipality: Provided that no

As to costs against any Municipality. Proviso.

Municipality shall be liable to the costs of any proceeding or appeal which shall not have been instituted at the instance of the Municipal Council thereof, and such Municipal Council may in its discretion appoint a proper person to act in behalf of the Municipality before any Board of Commissioners, and the Municipality which such person shall, so represent shall be bound by his acts, deeds and defaults. 5

Costs against a Municipality may be levied by assessment. XXIX. It shall be lawful for any such Municipal Council to levy by assessment, to be made in the same manner and form as by Law any assessment now or hereafter may be levied, such sum and sums of money as shall be requisite to pay the costs and charges under this Act for which such municipality shall be liable. 10

Commissioners to be sworn. XXX. Before entering upon their duties under this Act, the said Commissioners, and each of them, shall take and subscribe the following oath, which any Justice of the Peace is hereby authorized and required to administer: 15

The oath. " I, A. B., do hereby swear, that I will faithfully and to the best of my skill and understanding, discharge the duties of one of the Boundary Commissioners of the County of according to the Statute in such case made and provided." 20

Annexed forms sufficient. XXXI. In the proceedings of the said Commissioners, the annexed forms, or others to the like effect, may be used, and shall be sufficient.

Form of Precept—Boundary Commissioners.

County of , } You are hereby summoned and required to be
 } and appear before the Boundary Commissioners
for the County of , at a Board to be held at , in the
Township (*or as the case may be*) of , by of the clock in
the forenoon of the day of , (to answer the
claim of , touching the line of boundary between lots
and , belonging to you and the said *or as the case may
be.*) Herein fail not, as judgment may be given in your
absence If you fail to attend.

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

A. B.
Commissioner.
C. D.
Secretary.

To Mr. .

Form of Subpœna—Boundary Commissioners.

County of _____, } You are hereby summoned and required to
 _____, } be and appear before the Boundary Com-
 missioners of the County of _____, at a Board to be held at _____,
 in the Township of _____, on the _____ day of _____, at
 _____ of the clock in the forenoon, to testify the truth according to
 your knowledge, in a certain boundary case then and there
 to be tried touching the Boundary Line between (*as the case
 may be.*)

Herein fail not at your peril. Witness my hand, this
 day of _____, eighteen hundred and _____

A. B.
 Commissioner.
 C. D.
 Secretary.

To Mr. _____,

Form of Warrant to Levy—Boundary Commissioners.

County of _____, } You are hereby authorized and required to
 _____, } make of the goods and chattels of _____, in
 the said County, the sum of _____, currency, to satisfy the costs
 of a Judgment given by the said Commissioners, at a Board
 held on the _____ day of _____ in the matter of the Boundary Line
 between (*as the case may be*); and should there be any overplus,
 after deducting the legal expense of the seizure and sale, you
 are to return the same to the said _____, and you are to certify
 to the said Commissioners, on the _____ day of _____, what you
 shall have done in the execution thereof. Herein fail not.

Witness A. B. }
 G. H. } Commissioners.
 J. K. }

To
 Bailiff.

Costs,£
 Bailiff's fees,

Form of Oath to be Administered.

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