

No. 134.

1st Session, 5th Parliament, 18 Victoria, 1854.

BILL.

To ascertain and determine the powers
of the Trustees of the Quebec Turn-
pike Roads, and for other purposes.

Received and Read, First Time, Monday, 16th
Oct., 1854.

Second Reading; Friday, 20th Oct., 1854.

MR. CAUCHON.

QUEBEC :

An Act to ascertain and determine the powers of the Trustees of the Quebec Turnpike Roads and for other purposes.

WHEREAS in and by virtue of the eighteenth section of the Ordinance passed in the fourth year of Her Majesty's Reign, chapter seventeen, intituled, "*An Ordinance to provide for the improvement of certain Roads in the neighbourhood of and leading to the City of Quebec, and to raise a fund for that purpose,*" it is declared and enacted that the roads mentioned in the said Ordinance should henceforth be and remain under the exclusive management, charge and control of the Trustees thereof; and all the powers, authorities, jurisdiction and control over the said roads heretofore vested in any Magistrates, Grand Voyer, Overseer of Roads or Road Surveyor, or other Road officer by the Act passed in the thirty-sixth year of the Reign of King George the Third, chapter nine, intituled "*An Act for making, repairing and altering the Highways and Bridges within this Province, and for other purposes,*" or by any Act or Ordinance or law whatever, or in any District Council, were declared to cease and determine from and after the time when the said Trustees should assume the management, charge and control of the said Roads; And whereas it is not expressly declared and enacted in the said Ordinance, but merely implied, that all the said powers, authorities, jurisdiction and control were thereby vested in the said Trustees, and it is desirable that all doubts in that respect should be removed; Be it therefore declared and enacted, &c., as follows:

Preamble.

Ordinance of Lower Canada 4 V. c. 17.

Act of Lower Canada, 36 G. 3, c. 9.

I. All the said powers, authorities, jurisdiction and control over or with regard to the said roads or any other roads under their management and control, at the time the same ceased and determined with respect to the said Magistrates, Grand Voyer, Overseer of Roads or other Road officer or District Council by the passing of the said Ordinance and upon the said Trustees assuming the management and control of the said Roads, were then and are still vested in the said Trustees of the Quebec Turnpike Roads as amply, fully and effectually as the same were vested in the said Magistrates, Grand Voyer, Overseer of Roads, or Road Surveyor, or other Road officer, or District Council, in virtue of the above cited or of any other Act, Ordinance or law whatever, and all the said powers extend to all others roads or by-roads now placed or hereafter to be placed under their jurisdiction and control.

Powers of Grand Voyer, &c., declared to be vested in the Trustees.

II. And in order to remove all doubts on the subject be it declared and enacted, that the said Trustees, whenever any road or by-road under their management and control shall not be of the width required by law, that is to say, for a road, thirty feet wide between two ditches each of three feet wide, french measure, and for a by-road, twenty feet wide between two ditches each three feet wide, french measure, have and shall have power and authority to cause the parties in possession of any such portion of a road or by-road to remove their fences or enclosures and all other impediments from the same, if it be not an orchard, house, barn, mill or

Trustees may &c. or take possession of any land forming part of a road by law, but encroached upon.

other building, at their own costs and charges, and without being allowed the right to claim any damage or indemnity therefor, whether the said part of a road or by-road be occupied as a kitchen garden or not; anything in the said above cited Act to the contrary notwithstanding, and the said parties shall be, as they have always been, debarred from the right of pleading prescription or possession. 5

Trustees may remove impediments, if the encroachers will not.

III. In the event of any party failing or refusing to give up the said possession, when thereunto required by the said Trustees, it shall be lawful for the said Trustees after three clear days notice, to remove the said fences or enclosures and all other impediments, as aforesaid, from the said road or by-road and to recover the expenses attending the said removal, from the said parties, before any Court of competent jurisdiction. 10

Section 14 of 4 V. c. 7, amended.

IV. And whereas in the fourteenth section of the above cited Act, it is among other things enacted, that should any road or by-road, on being widened, pass through an orchard, no part of the said orchard shall be taken possession of, for the purposes of the said road or by-road without the consent of the proprietor thereof; in amendment thereof be it enacted, that such consent shall not be required, when the fruit trees in the said orchard will suffer no damage by reason of the said Trustees taking possession of the land wanting to widen the said road or by-road. 20

How the land required for restoring the legal width of a road shall be taken.

V. Whenever any road or by-road requiring to be widened in order to its having the width required by law, shall pass in front of the land of a different proprietor on each side of the same, the quantity of land required for widening the said road or by-road shall be taken in equal proportions on each side of the said road or by-road, unless it be clearly proved to the satisfaction of the Trustees that the encroachment has been only on one side, in which case the land required to restore the road or by-road to its legal width shall be taken from that side. 25

Powers of Trustees as to winter roads under their control.

VI. And referring to the powers conferred on Overseers of Roads by the twenty-second section of the above cited Act and now vested in the said Trustees, of fixing and determining the site in winter of any road or by-road under their management and control, be it enacted, that the notices required by law to be given, the fixing of the site of the said road or by-road, as well as the removal of the fences, shall be done by and at the costs and charges of the said Trustees; and any parties who at any time may think themselves aggrieved by the Acts of the said Trustees, in respect of the site chosen for such winter roads, may appeal to the Justices of the Peace for the District of Quebec, at the then next Quarter Sessions, which Court is hereby authorized and empowered to hear and determine the subject of the complaint and to make such order in the matter as they may think proper. 35 40

Tolls on winter roads raised.

VII. And whereas in the schedule of Tolls annexed to a certain Act passed in the ninth year of Her Majesty's Reign, chapter sixty-eight, intituled "An Act to amend a certain Act intituled "An Act to amend a certain Ordinance therein mentioned relative to Turnpike Roads near Quebec," the rate of *two pence* currency, which is authorized to be levied for every Sleigh, Train, Drag, Berlin, or other winter vehicle drawn by one horse or other beast, is wholly insufficient to cover the expenses incurred by the Trustees in repairing and maintaining the winter roads, be it enacted that from and after the day of next, the said rate in lieu of being two pence, shall be three pence currency, and anything in the said schedule to the contrary notwithstanding. 45 50

VIII. And whereas the said Trustees, in order to give to the roads under their management and control, the width required by law, may have passed through lands, kitchen-gardens and orchards without first obtaining the consent of the proprietors thereof, be it enacted, that should it be satisfactorily proved by the said Trustees that the portion of land so taken possession of contained neither cultivated vegetables nor fruit trees, and that the said parties suffered no other damage than that of being deprived of the quantity of land allowed by law for the said roads; any Court of law before whom any such action or legal proceedings may be brought, or before whom such action or legal proceeding may now be pending, shall upon proof to their satisfaction that the said parties shall have suffered no other damage than as aforesaid, dismiss the said action or other legal proceeding, with costs against the Plaintiff or Complainant.

Recital.
 Damage not to be paid for when none has been really sustained.