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No. 165.

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4th Session, 8th Parliament, 29th Victoria, 1865.

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**BILL.**

An Act to establish certain Road Allowances  
and Highways in the Township of Ham-  
ilton.

*(PRIVATE BILL.)*

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Received and read, first time, Wednesday,  
23rd August, 1865.

Second reading, Thursday, 24th August,  
1865.

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Hon. Mr. COCKBURN.

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**QUEBEC:**

PRINTED BY HUNTER, ROSE & CO.,  
ST. URSULE STREET.

An Act to establish certain Road Allowances and Highways in  
the Township of Hamilton.

**WHEREAS** certain inhabitants of the Township of Hamilton in the County of Northumberland, have petitioned to have certain road allowances and highways, within the said township, established by law, irrespective of the original survey, and it is deemed advisable to grant the said petition : Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :—

Preamble.

1. It shall be lawful to and for the Corporation of the Township of Hamilton, within six months after the passing of this Act, to direct a survey of Concessions A and B, and the first, second and third Concessions of the said Township of Hamilton to be made according to law by Edward C. Caddy, of the Town of Cobourg, Provincial Land Surveyor, and in case of his death or inability to make the same, by some other competent Provincial Land Surveyor, for the purpose of ascertaining the true courses and positions of such of the allowances for roads in the said concessions, over which the said Corporation has jurisdiction and control, and of the division lines between the several lots in said concessions.

Municipal Council to cause a survey to be made.

2. The several road allowances in the said concessions (except those within the limits of the Town of Cobourg) as travelled in January, one thousand eight hundred and sixty-three, and improved by labor or otherwise, shall be marked with proper cut-stone monuments at the front and rear angles thereof, by the said Caddy, and in case of his inability or death as aforesaid, by some other competent Surveyor, and shall thereafter be taken to be and to have been the true and unalterable Government allowances and public highways, and shall be marked, if they are not now, one chain in width between the several lots, whether the same are or not parallel to the governing line of the several concessions.

Road allowances travelled in Jan., 1863, to be deemed to be the true allowances.

3. The true position of the allowances for roads in the said concessions (except as aforesaid) not now opened throughout and travelled upon shall be likewise ascertained and marked by the said Caddy, with proper cut-stone monuments placed as aforesaid, as also the true and correct position of the division lines between the said lots, and the same shall thereafter be taken to be and to have been the true and unalterable allowances and lines and boundaries of said lots, notwithstanding any occupation or possession thereof, or any part thereof, by any person or persons, any law, usage, or custom to the contrary ; Provided always, that the allowance or allowances for roads which are now partly opened may, if all parties interested consent, be marked and established throughout by said Surveyor, on the same course and bearing as the part opened, in which event they shall be taken to be and to have been the true and unalterable allowance or allowances.

True position of allowances not now opened to be ascertained.

Provido.

4. After the completion of the said survey the said Caddy, or such other competent person, shall make reports and maps thereof, one of which shall be filed in the office of the Commissioner of Crown Lands and the other in the Registry Office of the United Counties of Northumberland and Durham.

5. Should it appear, upon such survey made as aforesaid, that the now-travelled and improved roads and which are not to be interfered with, except to be made one chain in width if not so now, or the course thereof altered, are not upon the true line of the original allowance for roads in the said concessions or either of them, but wholly or in part upon some one lot or lots, the strip of land between the said travelled roads and the true allowances, together with that part of the true allowance not used for a road, shall be ascertained and the value thereof assessed by the said Caddy, which shall be paid to the party or parties injured or prejudiced by the said travelled roads, by the owner or owners of the lot or lots adjoining (to which the said strip and road are hereby declared to belong and to be a part thereof) within two years from the date of the notice to be given by the said Caddy, as in this section hereinafter mentioned, with interest thereon after the rate of six per cent. per annum; Provided always, that the said Caddy, or such other competent Surveyor, before he shall assess the value as aforesaid, shall give notice in writing of the time and place when the said assessment shall take place, ten days prior thereto, to the owner or owners of the said lots adjoining the said travelled road or to his or their personal representative or representatives, either by causing the same to be served personally upon him, her or them, or left at his, her or their last or most usual place of abode in this Province.

6. In case the said party or parties, or his, her or their representatives as aforesaid, shall not object to the assessment as aforesaid of the said Caddy, by notice in writing to be served upon him or left at his usual place of abode, within four days after the service upon him, her or them, of his intention to proceed with such assessment, it shall and may be lawful for the said Caddy to proceed therewith, and his decision and assessment in writing to be served upon each of the said parties as aforesaid, or his, her or their said representatives, shall be final and binding upon all parties concerned, and the amount of the said assessment shall and may be recovered as a debt after the time of payment thereof, as above mentioned, has elapsed (if unpaid) in any court having competent jurisdiction, against the party or parties adjudged by him to pay the same, upon evidence only that the paper containing said value and assessment was signed by the said Caddy and served as aforesaid, and until payment thereof, the said assessment, which or a copy thereof may be filed in the Registry Office of the West Riding of the County of Northumberland, shall be a charge and lien on the said strip and road.

7. If either or both of the said parties, his, her or their representative or representatives as aforesaid, shall object in writing within the said four days, to the assessment being made by the said Caddy alone, and shall appoint and name an arbitrator or assessor to act for him, her or them, and give notice thereof in writing to the said Caddy or such other competent Surveyor, in the form mentioned in the Schedule A, to this Act annexed, marked number one, within the said four days, the said Caddy or such other person who is hereby appointed one of the arbitrators or assessors to act with the other or others, shall within a week after service upon him as aforesaid, of the said notice or notices or the last of them, appoint in writing a time and place (of which each of the said parties or his, her or their representative or representatives

as aforesaid, shall have four days' notice) to proceed with the assessment or arbitration, at which time the same shall be proceeded with, unless upon good cause the said Caddy, or such other competent person, sees fit to put off the same, which he is hereby empowered to do from time to time, and upon such terms as to him shall seem just, and the award or assessment in writing of the said arbitrators or assessors or any two of them, shall be final and binding upon all parties concerned, and the amount thereof, together with such costs to be specified therein as the said arbitrators or any two or them may allow, shall be paid by the party or parties adjudged to pay the same, within the time mentioned in section five of this Act, and if not then paid the same may be recovered as aforesaid, upon proof only of the execution of the said award or assessment by the said arbitrators or assessors or any two of them, and until paid, the amounts mentioned therein shall be a charge or lien upon the said strips, if filed in the said Registry Office as aforesaid.

8. The said Caddy or such other competent Surveyor, upon tender by either of the said parties, his, her or their representative or representatives, of the costs and expenses attending the obtaining of the same, is hereby empowered to cause a subpoena or subpoenas *ad testificandum* or *duces tecum* to be issued out of either of the Superior Courts of Common Law at Toronto, requiring the witnesses to be named therein to appear before him at such time and place as shall be mentioned therein and any witness or witnesses served therewith as in ordinary cases, and disobeying the same, shall be guilty of contempt of the Court out of which the said subpoena or subpoenas may issue, and may be examined under oath, which the said Caddy or such other competent person, is hereby authorized to administer; Provided always, that any person whose attendance shall be required, shall be entitled to the like conduct money and payment for expenses and loss of time as for and upon attendance at any trial of a cause in the said courts.

Mode of summoning witnesses.

9. The Corporation of the said Township shall impose and levy a rate upon the freeholders of the said concessions in proportion to the quantity of land held by them in such concessions, in the same manner as a rate for any sum required for any other local purpose authorized by law, may be imposed and levied for the purpose of defraying the expense of such survey, maps, reports and monuments.

Corporation to levy a rate to defray expense of survey.

10. The several allowances for roads and division lines between lots, when the monuments aforesaid shall have been placed as directed by this Act, shall be taken to be and to have been the original boundaries of the lots in each of the said concessions, whether the same, 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 the said lots or any or either of them, and every patent, grant or instrument, purporting to be for any aliquot part of the said lots or any of them 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, in any wise, notwithstanding.

Boundaries under this Act to be taken to be the original boundaries.

11. The assessment or award mentioned in the preceding sections of this Act, shall be made within three months from the date of the notice mentioned in the Proviso to the fifth section of this Act.

Assessment to be made within three months of date of notice.

12. This shall be a Public Act.

## SCHEDULE A.

No. 1.

To E. C. Caddy, Esq.,  
P. L. S.

Take notice that I object to your assessing the value of the land mentioned in your notice served upon me on the \_\_\_\_\_ day of \_\_\_\_\_

I hereby appoint \_\_\_\_\_, of \_\_\_\_\_, my arbitrator or assessor, and agree to abide by and keep the assessment or award in reference to the said lands to be made in pursuance of "An Act to establish and confirm the side-line road allowances between lots in Concessions A and B, and in the first, second, and third Concessions of the Township of Hamilton, as they were opened up and travelled on the first day of January, one thousand eight hundred and sixty-three."

(Signed)

Dated: