AN ACT

To Provide for the Repair, Improvement and Regulation of Roads in Vancouver Island and its Dependencies.

WHEREAS, it is necessary to provide means for the Repair, Improvement and Regulation of Roads;

Be it enacted by the Governor, on Her Majesty's behalf, by and with the advice and consent of the Legislative Council and Assembly of Vancouver Island and its dependencies, as follows:

I. That the Metchosin, Sooke and Esquimalt Districts, other than the Electoral District of Esquimalt Town, shall, for the purposes ot this Act, be a "Road District" under the name of Esquimalt Road District.

II. That Victoria, Lake and Saanich Districts, (other than the Electoral District of Victoria Town,) shall, for the purposes of this Act, be a Road District, under the name of Victoria Road District.

III. That the Electoral District of the Town of Esquimalt shall, for the purposes of this Act, be a Road District in itself, under the name of Esquimalt Town.

IV. That the Districts of Cowichan, Chemanis and Nanaimo, shall, for the purposes of this Act, be each Road Districts in themselves, and be known by their present names.

V. That when any other District shall contain twenty-four landholders, or more, it shall be a Road District for the purposes of this Act, by the name of the District. The provisions of this Act shall not be enforced in any Road Districts, until there be twenty-four holders of land therein.

VI. Every male person above eighteen years of age, permanently resident, and every male or female being entitled to any interest in any real estate in any of the said Road Districts, shall perform six days labor upon the public highway of the District in which he or she shall reside, or have such interest as aforesaid, and if entitled to any interest aforesaid in more than one hundred acres, for every additional one hundred acres, or part of one hundred acres, in which he or she shall have such interest as aforesaid, two extra days labor for each additional one hundred acres, or portion of one hundred acres; and where any person, resident within a Road District as aforesaid, shall possess a pair of working horses or oxen, and a cart, wagon or plough, he shall supply the same, together with a driver thereof, when and if required to be employed in making or improving any roads within the said Road District wherein he is so resident, for two days in every year; the services of such pair of horses, or oxen, and driver, with a cart, or wagon, or plough, to be considered as equivalent to the labor of three men on the road.

VII. All roads situate within any Road District, shall be under the control of Commissioners for such Road District.

VIII. There shall be Commissioners for each Road District appointed by the Governor, resident and property holders in the Road District for which they shall be appointed. The said Commissioners shall be named Road Commissioners, and shall take no fee or reward for their services, nor shall be interested, either directly or indirectly, in any contract in anywise connected with the making or repairing of roads; and shall be appointed by the Governor immediately after the passage of this Act; and shall hold office for two years. And the Governor shall from time to time re-appoint the same, or some other person or persons.

IX. Any person appointed as aforesaid may, within seven days from the receipt of the notification of his appointment, decline the same, and another may be appointed in his place, and so on as occasion may require.

X. All fines and penalties recovered under this Act, shall be paid into the "Road District Treasury," and be applied for the same purposes as the composition moneys payable hereunder.

XI. All members of the clerical, legal or medical professions, shall be exempted from being Road Commissioners.

XII. Any Commissioner receiving any fee or

reward, or being interested, either directly or indirectly, in any contract connected with making or improving roads as aforesaid, shall be guilty of a misdemeanor.

XIII. The Road Commissioners shall meet on a day to be fixed by the Governor, and shall thereafter hold not less than four quarterly meetings in every year, on such four days as shall be named at such first meeting; and shall cause notices to be published in several conspicuous places in their respective Road Districts, of the time and place of their said meetings; they shall cause to be kept a record of their proceedings; may adjourn from time to time; and may, out of the Road Funds, rent or hire a suitable place of meeting in their respective Districts.

XIV. The Commissioners shall choose from among themselves a Chairman, who shall have a casting vote in addition to his own, in case of the number of votes being equal. Two Commissioners shall form a quorum for the dispatch of business.

XV. The Commissioners shall appoint an Assessor and an Overseer, or Overseers, of Roads, for portions or the whole of their respective counties as convenient; and may require security from such persons before entering upon their respective duties, to the amount of not more than £100; and may require such persons to make oath faithfully to perform their respective duties without fear or favor.

XVI. The aforesaid Commissioners shall, for the purposes of this Act, and no further, possess the power and jurisdiction of Justices of the Peace.

XVII. The Chairman shall act as Treasurer of all monies received, and shall also keep all papers and documents connected with the Commission.

XVIII. The Commissioners aforesaid shall cause a copy of their accounts to be transmitted annually on the first day of June, to the Colonial Secretary, together with a statement of the work performed upon the roads; the amount paid to the various officers; the duties performed by them, and the balance of account.

XIX. The Assessor shall annually, and at such time as may be appointed by the said Commissioners, make out lists of all persons in the Road District for which he is appointed, liable to perform labor or furnish animals, or implements, stating the name, place of residence (if any), and the interest in land (specifying the quantity), of every person liable as aforesaid; together with the District or or Districts in which he resides, or in which such land is situate; the number of days labor, and other requirements (if any) assessed to each individual; and the District or Districts in which the labor is to be performed. Such lists shall be published by the Assessor in the Road District to which they relate, in such places, at such times, and for such periods, as the Commissioners shall appoint. The Assessor shall further supply copies of such lists to the Commissioners.

XX. In case the owner of any land or property shall not be known, the description of the land shall be sufficient for the Assessment Roll.

XXI. Any person on the Assessment Roll complaining either that he or any other person has been incorrectly assessed or omitted, may on some day, to be publicly notified by the Commissioners, make complaint in that behalf, and the Commissioners may correct the Assessment Roll according to circumstances, either at the requisition of any party, or of their own motion; provided that any person complaining against the assessment or non-assessment of any other party, shall give at least three days notice in writing to such party, either personally or by leaving the same notice at his usual or last known place of abode. Notice shall not be required where the party is not resident in the Colony. The lists so corrected, shall, for the year in which they are made out, be final; and the persons therein mentioned as liable, shall perform the labor, and furnish the animals and implements, at the time and place appointed by the Overseer.

XXII. Any person may appear before the Commissioners and compound by paying in cash, for a day's labor by a man, six shillings and three pence; a day's labor by a pair of horses or oxen, with a cart or wagon to each pair, twelve shillings and six pence; and such composition shall be recorded on the Assessment List.

XXIII. Any person may provide an able-bodied laborer, to be approved by the Overseer, as a substitute in his place.

XXIV. All persons supported at the public charge, and all persons incapacitated by age or infirmity, who are not possessed of sufficient means to compound, or to provide a substitute, shall be exempted from the labor required by this Act.

XXV. No obstruction shall be permitted on any highway, excepting such as shall be expressly allowed by an Act of the Legislature.

XXVI. The Overseer shall, when required by the Commissioners, examine and report to the Commissioners upon the condition of the public highways, in the District or Districts for which he is appointed; and on receiving instructions from the Commissioners, shall give three days notice to the persons on the Roll, specifying where and when they shall fulfill the requirements aforesaid; and he shall likewise see that the same are fulfilled; shall cause all obstructions as aforesaid to be removed, and report specifically on the subjects aforesaid, at a meeting of the Commissioners, to be by them appointed.

XXVII. Any person obstructing the Overseer in the execution of his duty, shall be guilty of a misdemeanor.

XXVIII. Every person notified as aforesaid, shall appear at the place appointed at 7 o'clock in the morning, to begin his labor, provided with the tools and implements specified in the Overseer's notice; and shall labor from the said hour of 7 o'clock, A. M., until 5 o'clock in the evening, doing such work as shall be directed by the Overseer or his agent, in a proper and workmanlike manner. One hour shall be allowed at mid-day for refreshment.

XXIX. If any person liable to fulfil the requirements aforesaid, shall, after having received due notice as aforesaid, fail, refuse or neglect to perform the said labor, at the time and place appointed, with the tools and implements required, or if when

present, shall decline, neglect or refuse, to labor in a proper and workmanlike manner, or to do such part as he is directed to do by the Overseer, he shall be liable to forfeit for each day's default or neglect, double the amount of labor required of him, in money, to be calculated after the rate aforesaid, as well as the expense of prosecution, to be recovered by summary process before the Commissioners; and if any person shall obstruct, or cause to be obstructed, others in the performance of their duties; or shall make remarks, or commit actions calculated to prevent or obstruct the due performance of the labor; or if any person shall appear at the place of labor intoxicated, or attempt to intoxicate others, he shall be deemed guilty of a misdemeanor, and upon conviction, which may be made in a summary way, shall be fined not more than £5, together with the costs of prosecution; or in default of payment, shall be imprisoned, with or without hard labor, for a period not exceeding fourteen days, at the discretion of the Commissioners. The Overseer of Roads being hereby empowered and required to prosecute in such cases.

XXX. When the land, in respect of which labor has to be performed, or animals or implements supplied, shall belong to a person absent from the Colony, or whose name is unknown, the land shall be primarily liable for the labor to be performed, and animals or implements supplied after the rate aforesaid; and in case of default, with interest and expenses as hereinafter mentioned. Any person purchasing such land, shall be liable to pay all such charges. In such cases, the Commissioners shall advertise the names of such defaulters three consecutive times, in three consecutive calendar months, in one or more of the newspapers circulating within the Colony: and such advertisements shall be sufficient notice, and render any person purchasing the said land liable for the amount due thereon, with the addition of fifteen per cent. annually, and the cost of advertising.

XXXI. If the name of the owner shall not be known, it shall be sufficient to describe the land by stating the number of the Section and the District in which it is situated, with a reference to the name of the original purchaser of such land from the Crown.

XXXII. If the land shall be occupied, rented or leased, the occupier or tenant shall perform, or cause to be performed, or pay for the assessed labor on behalf of the owner thereof, and deduct the same from the rent to be paid to the owner; or be entitled to recover the same from the person on whose behalf such labor shall have been performed, or money paid, together with interest after the rate of £15 per centum per annum, as and for "money paid," or "work and labor done."

XXXIII. The Commissioners may, at the expiration of three years from the date of the first assessment, cause sufficient of the said land to be sold to defray the liabilities incurred under this Act, existing thereon, together with the fifteen per cent. per annum additional, the cost of advertising, and the expenses attending the sale.

XXXIV. The purchaser shall receive from the Commissioners a conveyance which shall vest in such purchaser an absolute legal estate in fee-simple in possession.

XXXV. The Commissioners may enter into contracts for the performance of labor, or the supply of materials in the repair of roads in their several Districts, and shall incur no liability beyond the amount payable for the current year, and no personal liability whatever, in the *bona fide* execution of their office under this Act.

XXXVI. If any provision shall be hereafter passed for the registration of the title to real estate, all charges hereunder shall, in lieu of being advertised, be registered by the Commissioners, if the same charges are capable of registration.

XXXVII. Any Overseer of Roads, upon giving one week's notice of his intention to the owner or occupier, may enter upon any unenclosed lands near the public roads, and by himself or his agents, gather, dig, or carry away any stone, gravel or sand, and cut down any trees (not being fruit trees, or reserved for ornament), or wood, which he may deem necessary for the repairing any public road; and may enter upon any lands lying near any public road in the county, and cut open or construct, or cause to be cut open or constructed, such drains and ditches as he shall deem necessary for the repairing or preservation of such road; doing as little injury by any of the means aforesaid, as possible. If any person shall feel aggrieved by the proposed action of the Overseers, he may make a complaint to any one of the Commissioners, who may, if satisfied, order the Overseer to desist therefrom. Any person stopping or obstructing, or endeavoring to stop or obstruct such Overseer or his agents, or such drains and ditches, shall forfeit the sum of £5 for each offence, to be recoverable in a summary manner before the Commissioners, at any meeting within twelve months after the act is committed.

XXXVIII. Whenever any public road or bridge shall become obstructed, or impassible, or dangerous for passage, the Overseer of Roads, on being notified thereof, shall forthwith cause the same to be remedied, and for that purpose order out such permanently resident inhabitants of his District as he may deem necessary; and all persons so ordered out shall, in default of obedience to the order and directions of the Overseer aforesaid, after having received twenty-four hours previous notice, be liable to the same penalties as if ordered out at regular seasons, and in this case all persons may compound with the Overseer for such labor at the rates aforesaid; and the labor so performed or compounded for, shall be allowed in calculating the future assessment of labor to be performed by the person performing or compounding.

XXXIX. Every Overseer shall keep an account of the number of days work performed on the public roads in his County or District, and of the persons performing the same; and also an account of his expenditure as Overseer; and such Overseer shall present his account to the Commissioners whenever called upon so to do by any of them; and any Commissioner of a County is hereby empowered to sue

in the name of the Commissioners of said County, for any monies unaccounted for by the Overseer.

XL. Any Overseer who shall neglect or refuse to perform the several duties enjoined upon him by this Act, or who shall, under any pretence whatever, give or sign any receipt or certificate for money paid or labor performed, unless the money shall have been paid or labor performed prior to the giving or signing such receipt or certificate, shall forfeit for every offence not less than £5, nor more than £10, to be recovered before any Justice of the Peace in the name of the Commissioners, in a summary way; and the said Commissioners are hereby required to sue for the same; provided that there shall be an appeal from the decision of the Justice of the Peace to the Court of Quarter Sessions.

XLI. Ten shillings a day shall be paid out of the funds of the Commissioners to every Overseer employed in the performance of his duties, whilst so employed.

XLII. Twelve shillings and sixpence a day shall be paid out of the funds last aforesaid, to the Assessor, for every day necessarily employed in the duties of his office

XLIII. The Commissioners may employ a Clerk, and pay him out of the Commission funds twelve shillings and six pence for each meeting of the Commission at which he shall attend.

XLIV. All compositions, fines, penalties and forfeitures, payable under this Act, shall be paid into the Road District Treasury, and may be used for such of the purposes of this Act as may be deemed most requisite by the Commissioners. All labor to be performed under this Act shall be employed in the District wherein the same is assessed.

XLV. In case it shall appear to the Commissioners that certain small deviations from the present line of road would improve and render more convenient any highway, the Commissioners may order the necessary deviation; or if any person wishes the road, passing through or near his property, to be diverted, the party so wishing may apply to the Commissioners for liberty to change the route; and if it shall appear to the Commissioners that the road will not be the worse therefor, the distance not increased, and the public or private welfare not injured thereby, they may permit the party or parties at their own expense to make such deviations; provided always, that the road supplied shall be better in every respect than the old one. Any person considering any proposed deviation detrimental to himself, or to the public generally, may show cause in that behalf at the meeting of the Commissioners; but no application for a deviation in the present line of road, shall be considered by the Commissioners, excepting notice thereof shall have been published not less than ten days previously, in at least six separate and conspicuous situations in the District, and near to the spot where the alteration is proposed.

XLVI. Any person whose land may be so situated that it has no connection with any public road, may make application to the Commissioners of his County at one of their regular meetings, for a private road leading from his premises to some convenient public road, and thereupon the said Commissioners shall appoint three disinterested resident landholders of the County, and shall issue an order directing them to meet on a day named in such order, to view and locate a private road according to the application, and to assess the damages to be sustained thereby, and after being duly sworn or affirmed faithfully to perform the duties of their appointment, and after at least three days notice given to all persons through whose lands such private road is to be located, such viewers shall proceed to locate and mark a private road, thirty feet in width, from some certain point on the premises of the applicant, to some certain point on the public road, so as to do the least possible damage to the lands through which such private road is located; and they shall also assess at the same time the damages suffered by the person or persons owning such lands; always provided that damages shall only be awarded for improvements upon the land, and not for the land itself; provided, that no such road shall, without the consent of the owner of the premises proposed to be intersected thereby, be carried within fifty yards of any dwelling house, or through any orchard or ornamental ground.

XLVII. The Commissioners may, upon the favorable report of the viewer, if the damages and costs of location shall have been paid, declare such road to be a private road, and the same shall be a private road from thenceforth, and any person aggrieved by the assessment of damages, may appeal within three months after such declaration to the Supreme Court of Civil Justice, which is hereby declared to have jurisdiction to hear and deal with such appeal; and to make rules for the mode in which such appeals shall be made and heard, as is usual in other cases.

XLVIII. In case it shall be necessary to construct roads leading through different counties, the Commissioners of those respective counties shall meet together at some time and place agreed to among themselves, and shall then and there confer and decide at what point the said road shall cross the line dividing the different counties, and may at such meetings decide any other points of importance relating to the roads connecting different counties.

XLIX. This Act shall not be applicable in any Road District where Commissioners cannot be found willing to undertake the duties of the Commission.

L. This act may be cited for all purposes as the "Road Act, 1860."

Passed the House of Assembly, 19th November, 1860, as amended by the Honorable Council.

Passed the Council this 21st November, 1860.

Received my assent, this 24th day of November, 1860.

(Signed), JAMES DOUGLAS.