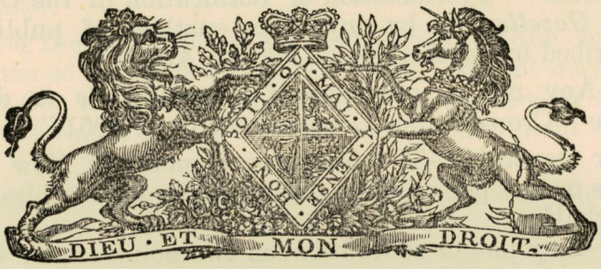

This Public Bill *originated in the* Legislative Assembly, *and, having this day passed, is now ready for presentation to the* Legislative Council *for its concurrence.*

Legislative Assembly Chamber,
Sydney, 8 *February,* 1871.

STEPHEN W. JONES,
Clerk of Legislative Assembly.

New South Wales.

ANNO TRICESIMO QUARTO

VICTORIÆ REGINÆ.

* *

No. .

An Act to provide for and regulate Roads.

Preamble.

WHEREAS it is expedient to make better provision for opening widening altering and improving Roads Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:—

Repeal of 4 Wm. IV No. 11 except sects. 21 and 22.

1. The Act fourth William the Fourth number eleven except clauses twenty-one and twenty-two is hereby repealed Provided nevertheless that all proceedings matters or things commenced thereunder shall not by the repeal thereof be invalidated but may be continued and completed as if the same had been commenced under this Act Provided also that wherever reference is made to the said repealed Act in any of the Acts specified in Schedule A hereto the provisions of this Act shall so far as applicable be substituted in lieu of the said repealed Act.

Interpretation.

2. The following terms in inverted commas shall unless the context otherwise indicate bear for the purposes of this Act the meanings set against them respectively—

158—A "Arbitration"—

"Arbitration"—Arbitration as prescribed by this Act

"Government"—Governor with the advice of the Executive Council

"Justice"—Any Justice of the Peace

5 "Laid before Parliament"—Laid before both Houses of Parliament if sitting and if not then within fourteen days after the commencement of the next following Session

"Minister"—The Minister for the time-being in charge of the Lands Department

10 "Occupant"—Any person in legal possession of land and not being owner thereof as herein defined

"Owner"—Any person in possession of land and having an estate or interest equal to an estate of freehold therein

"Proclaimed" or "Proclamation"—Proclaimed or proclamation
15 by public notice

"Public notice"—Proclamation or notification in the *Government Gazette* and by any other method of publication prescribed by regulations under this Act

"Run"—Any run or old runs of Crown Lands as defined
20 by the "Crown Lands Occupation Act of 1861"

"Surveyor General"—The Surveyor General of New South Wales or any person duly authorized to act for him or on his behalf

"Track"—Any line or route between two points upon Crown
25 Lands proclaimed as such by the Government by public notice

"Cattle"—Horned cattle horses sheep and goats

Act not to affect 21 Vict. No. 8.

3. This Act shall not affect any road described or specified as a main road in the Act of Parliament of this Colony twenty-first Victoria
30 number eight known as the "Main Roads Management Act" or in the Schedule thereto nor any road that may hereafter be legally proclaimed a main road.

Authorized officer to form roads.

4. Any duly authorized officer of the Government may subject to this Act construct improve or maintain any public road now or
35 hereafter to be made or any part thereof or any bridge or other work forming part or necessary to the construction improvement or maintenance of any public road.

Preliminary notice.

5. Whenever it shall be deemed expedient by the Minister to open or make a new road or to amend any existing road by
40 increasing the width or altering the boundaries or direction thereof he shall cause a plan of such new or amended road to be exhibited in the Surveyor General's office in Sydney showing the exact course bearings and measurements of such road required for the same the lands through which it is proposed that such road shall pass and the
45 names of the owners or occupants thereof so far as known And he shall also cause to be published in the *Government Gazette* and some newspaper circulating in or near the district or locality through which the proposed road passes or is intended to pass a notice describing generally the road and referring to the said plan and
50 calling upon all persons affected thereby to state in writing addressed to the Minister within two calendar months from the date of the first publication of such notice any objections they may have to the adoption of such new or amended road or to any part thereof. Provided that no such plan of any proposed new or amended road shall
55 include any land enclosed by a stone or brick wall or in actual use as a garden or cemetery or as an avenue planted walk or lawn or as a yard garden or orchard or enclosed or planted as an ornament or shelter to

a house or planted and set apart as a nursery for trees or situated within two hundred yards of any mansion house being the principal house on such land or enclosed for the purpose of carrying on any manufactory.

Copies of plan to be exhibited.

6. Copies of such plan shall be kept for examination and shall be exhibited without charge during the like period of two calendar months at every Court House of Petty Sessions within five miles of the proposed road and if there be none within that distance then at the Court House nearest thereto or at any other place prescribed by regulations under this Act and where any such proposed road or any part thereof is within a Municipality a copy of the plan shall be forwarded to the proper officer of such Municipality.

Amendment of plan.

7. Before the expiration of the said period the Minister may cause the plan to be amended and the description of lands and names of owners or occupants Provided that every such amendment shall be notified and exhibited as hereinbefore provided in case of any new or amended road.

Government may alter or confirm line of road.

8. After the expiration of the said period and due consideration of all objections so stated as aforesaid the Government may by notification in the *Gazette* confirm the making or amendment of the road according to the said plan and description or amendment of the same as aforesaid.

After confirmation Surveyor General may enter and make road.

9. Upon the notification of such confirmation the Surveyor General may enter upon and appropriate for public use and for the purposes of this Act the land required for the purpose of making or amending the road so notified and confirmed and thereupon the land so appropriated shall be a public road.

Right of compensation.

10. Every owner or occupant of land entered upon or appropriated under this Act shall be entitled according to the nature of his estate or interest therein to compensation therefor as hereinafter provided and also for any loss or damage he may sustain by reason of such entry and appropriation Provided that the value of any adjacent land vested as hereinafter provided in such owner or occupant in lieu of any land so appropriated of which he was owner or occupant shall be deducted from such compensation Provided also that every such claim for compensation shall be made in writing within twelve months after such entry and appropriation or the occurrence of such loss or damage as aforesaid And provided also that where the Crown has reserved a right-of-way or ways a right to such compensation shall not be created by this Act.

Road in lieu of land taken.

11. Whenever in lieu of any road or portion of a road any adjacent land shall be taken from any owner or occupant for the purposes of this Act the Minister may notify in the *Gazette* the road or portion thereof in lieu of which the said adjacent land has been so taken and may declare such road or portion thereof to be vested in such owner for such estate or interest as he possessed in the land so appropriated and thereupon the road or portion thereof so notified and declared shall be vested in such owner and shall cease thereafter to be a public road.

Temporary road over uncultivated land.

12. Any duly authorized officer of the Government may stop all traffic on any road in process of formation or repair and may make use of any adjacent uncultivated land for the purpose of constructing a temporary road for public use until the permanent road shall be completed or repaired And such temporary road shall be fenced in or otherwise so secured as to afford to the person through whose land it may pass as sufficient a protection against trespass as he possessed before the construction of such temporary road.

13. The Surveyor General while engaged in surveying defining or marking out any road or the site for and approaches to any bridge or other work forming part thereof may occupy any adjacent uncultivated land not attached to an occupied house and not more than half a mile distant therefrom required for the purposes of this Act and may graze cattle thereon Provided that no such occupation or grazing shall continue for a longer period than one week upon any land or be repeated at a less distance than two miles therefrom. Power to occupy and to graze cattle on land.

14. Any duly authorized officer of the Government while engaged in making amending or repairing any roads or bridges under this Act may occupy any adjacent uncultivated land as aforesaid not exceeding one acre in area in order to deposit thereon the materials required for the purposes of this Act. Power to occupy and deposit materials on land.

15. The owner or occupant of any land through which any road or portion of a road heretofore or at any time hereafter dedicated to or lawfully used by the public may pass may place a gate or gates across such road where the same passes through his land upon obtaining permission to do so from the Minister Provided that notice of such permission shall be published in the *Gazette* and that the form and position of such gates be approved by the Minister. Permission to erect public gates in certain cases.

16. The Minister after twelve months' notice in the *Gazette* of his intention so to do may revoke and cancel wholly or in part any such permission for the erection of gates and thereafter the continuance of any such gate shall be illegal. Revocation of permission.

17. Whosoever after having opened or passed through any such gate as aforesaid on which the words "public gate" are conspicuously placed shall fail to close the same shall on conviction thereof before any Justice forfeit and pay over and above the amount of the injury occasioned by such neglect such sum of money not exceeding five pounds as to the Justice shall seem meet And in default of payment thereof together with the costs if ordered shall be imprisoned for a period not exceeding two months And if it be proved that such gate was wilfully left open the offender shall on conviction thereof before any two Justices forfeit and pay over and above the amount of the injury occasioned by such misconduct such sum of money not exceeding fifty pounds as to the Justices shall seem meet and in default of payment thereof together with the costs (if ordered) shall be imprisoned for a period not exceeding six months unless payment be sooner made. Penalty for leaving public gates open.

18. In all cases when it shall be deemed expedient to make repair or amend any street lane passage square market market-place quay or wharf in any city town or Municipality the like proceedings shall be adopted applicable thereto as are hereinbefore provided for the making repairing or amending of roads and the Government may after notice and exhibition as hereinbefore directed confirm the same and the owner or occupant of land required for any of the purposes aforesaid shall be entitled to compensation for any damages or losses he may sustain in respect thereof as hereinafter provided And the Surveyor General arbitrators or umpire appointed as hereinafter provided may enter into and examine all such houses buildings or erections as it may be found necessary to remove and after arbitration and payment of the compensation in accordance therewith may take down and remove such houses buildings or erections. Procedure for opening &c. streets &c. in town.

19. Any duly authorized officer of the Government may enter upon and search for dig take and carry away from any land any stone gravel sand or other material which may be required for the formation construction and repair of any road or bridge Provided that in cases where the Crown has not reserved a right thereto the owner Power to take material from adjoining land.

owner or occupant of the land from which any such materials shall have been so taken shall be entitled to compensation therefor as hereinafter provided.

Other powers of authorized officer.

20. Any duly authorized officer of the Government may cut though any land such drains or ditches remove all such obstructions to the free passage of water off any road erect such causeways bridges archways and sewers as may be requisite for the purposes of this Act without being deemed a trespasser Provided that in cases where the Crown has not reserved a right thereto the owner or occupant of such land shall be entitled to compensation as hereinafter provided for any loss or damage that he may sustain in consequence of the exercise of any of the powers herein conferred.

Trees may be lopped.

21. Any duly authorized officer of the Government may cut down or lop any brushwood or trees not being shrubs or trees planted or kept for ornament or shelter shrubs or trees along the line of any road made or amended under this Act within the distance of twenty yards from either side of such road Provided that in cases where the Crown has not reserved a right thereto the owner or occupant of the land upon which such brushwood or trees shall have been so cut down or lopped shall be entitled to compensation as hereinafter provided for any loss or damage caused by such cutting down lopping or removal And if such owner or occupant shall not remove the brushwood or trees so cut down or lopped within fourteen days from the time of their being so cut down or lopped such authorized officer may remove or burn the same.

Power to remove buildings obstructing road.

22. Any person who shall knowingly erect any building or fence on any public road or any road already made and used as such by the public or on any land referred to in any grant as a road whether the same shall or shall not have been used as a road in such manner as to reduce the breadth thereof or who shall in any way encroach on any such road or fill up or obstruct any ditch at the side thereof or make any drain gutter sink or watercourse across or otherwise break up or injure any road or any part thereof or shall in any manner obstruct the free use thereof shall on conviction thereof in a summary way before two Justices forfeit and pay for every such offence a sum not exceeding ten pounds And whoever having been convicted of any such offence shall within three months after such conviction commit the like offence and shall be convicted thereof in like manner shall forfeit and pay any sum not exceeding twenty pounds and a further penalty not exceeding five pounds for every day during which such encroachment or obstruction may remain And any duly authorized officer of the Government may cause such fence building drain sink watercourse gutter or other encroachment or obstruction to be removed filled up or cleared as the case may require And any two Justices upon proof thereof to them upon oath may levy the expenses of such removing filling up or clearing as well as the respective penalties hereby imposed by distress and sale of the offender's goods and chattels rendering the surplus if any to the owner.

Encroachments or obstructions already made how removed.

23. If after the passing of this Act any erection building fence drain gutter sink or watercourse on or at the side of any road traced and marked out under this Act or by the Commissioner of Main Roads or of any road or thoroughfare dedicated to or vested in trustees for public use or under the Act Fourth William the Fourth number eleven shall be constructed or made in such manner as to reduce the breadth of or in any way encroach on any such road or if the same shall be erected or made in contravention of the provisions of the Act second William Fourth number twelve or if the free use thereof shall be in anywise obstructed any duly authorized officer of the Government may cause a notice to be placed upon the land where such encroachment or obstruction exists and

2 Wm. IV No. 12.

and (such notice to be published in the *Gazette*) requiring such encroachment or obstruction to be removed within twenty days after the date of such publication and if such encroachment or obstruction shall not have been effectually removed within the aforesaid time any duly authorized officer of the Government may remove such encroachment or obstruction and in every such case the owner or occupant of the land in right of which such encroachment has been made shall be entitled to compensation as hereinafter provided for any loss or damage caused by such removal upon proving to the satisfaction of any arbitrator or arbitrators to be appointed under this Act that such encroachment has been occasioned by the marking of said road by any duly authorized officer of the Government Provided also that nothing in this section shall authorize the removal of any erection or building constructed in pursuance of the provisions of any alignment Act.

Tracks for travelling stock.

24. The Government may from time to time by public notice after a like notice of four weeks previous of their intention so to do authorize or declare any track or line of direction upon Crown Lands to be a track required for travelling stock under the nineteenth section of the Crown Lands Occupation Act of 1861 and to be a public road or thoroughfare for the purposes of any Act relating to the impounding of stock in force for the time-being and may in like manner limit the operation of the said section in regard to any run or other Crown Lands or any part thereof held under lease to tracks so authorized and declared and may alter or revoke such limitation and any animals which shall at any time after the expiration of thirty days from the date of such first-mentioned notice be driven or travel over or across any run or other Crown Lands specified in such notice without the permission of the lessee or occupant of such run or other Crown Land otherwise than by a track so authorized and declared or by a public road or main road under the Main Roads Management Act shall be liable to be impounded and any provisions contained in the twenty-third section of the Impounding Act of 1865 or any Act relating to the impounding of stock in force for the time-being or to the maintenance of animals temporarily impounded and charge therefor shall so far as practicable apply to any seizure and detention hereunder but nothing herein contained shall affect any right of such lessee or occupant to compensation for any loss or damage caused by any such animals which he shall have sustained.

Penalty for resisting authorized officer.

25. Any person who shall resist obstruct or in any manner forcibly oppose any person duly authorized while acting under this Act shall be guilty of a misdemeanor.

Obliteration of boundary marks a misdemeanor.

26. Any person who shall wilfully obliterate remove or deface any boundary mark made or erected for the purposes of this Act by or under the direction of any duly authorized officer of the Government or by any arbitrators or umpire acting under this Act shall be guilty of a misdemeanor.

Penalty for injuring roads.

27. Any person who shall without proper authority wilfully break the surface of any road or bridge or deposit rubbish or material thereon or remove material therefrom or otherwise injure the same shall on conviction thereof in a summary way before a Justice be liable to a penalty not exceeding ten pounds over and above the amount of the injury occasioned thereby.

Penalty for unauthorized or unnecessary intrusion.

28. Any unauthorized person who shall wilfully enter upon or encroach or interfere with or trespass upon or cause any loss or damage to any land or other property under colour or pretence of being authorized under this Act shall on conviction thereof before a Justice be liable to a penalty not exceeding twenty pounds

29.

29. Every sum of money which shall be adjudged to be paid by way of forfeiture or penalty on any summary conviction under this Act shall be assessed in each case by the convicting Justice or Justices and shall be paid to the party aggrieved so far as may be necessary for compensation Provided that where such party is unknown or there is a surplus such sum or the residue thereof shall be applied in the same manner as a penalty is by law made applicable. Application of amount paid as damages.

30. In every case of a summary conviction under this Act (unless otherwise provided by the section creating the offence) where the sum which shall be forfeited for the amount of injury done or which shall be imposed as a penalty by the Justice or Justices be not paid either immediately after the conviction or within such period as the Justice or Justices shall at the time of the conviction appoint the same shall be levied by distress and sale of the goods of the offender. Recovery of penalties.

31. Every question of compensation which shall arise under this Act shall unless the Minister and the claimant or claimants for compensation agree upon the amount be submitted to arbitration as hereinafter provided and the Surveyor General on part of the Government shall be one party to such arbitration and claimant of compensation shall be the other party thereto Provided that the Surveyor General by becoming a party to such arbitration shall not incur any personal liability in respect thereof. Compensation.

32. Unless the Surveyor General and the claimant shall concur in the appointment of a single arbitrator the Surveyor General and the claimant shall severally appoint an arbitrator to whom such dispute shall be referred and every such appointment shall be made in writing and shall be delivered to each arbitrator and shall be deemed a submission to arbitration on the part of any party by whom the same shall be made and after any such appointment shall have been made no such party shall have power to revoke the same without the consent of the other nor shall the death of any party or parties operate as a revocation And if for the space of one calendar month after any such dispute shall have arisen and after a request in writing in which shall be stated the matter so required to be referred to arbitration shall have been served by the one party upon the other to appoint an arbitrator such last-mentioned party fail to appoint an arbitrator then the party making the request and having himself appointed an arbitrator may appoint such arbitrator to act on behalf of both parties and such arbitrator may proceed to hear and determine the matter which shall be in dispute and his award or determination shall be final. Appointment of arbitrators.

33. If before the matters so referred shall be determined any arbitrator die or become incapable of acting the party or parties by whom such arbitrator was appointed may appoint in writing another person to act as arbitrator and if for the space of one month after notice in writing to appoint from one party the other party fail to do so the remaining or other arbitrator may proceed *ex parte* and every arbitrator so substituted as aforesaid shall have the same powers and authorities as were vested in his predecessor and every succeeding vacancy may be supplied in like manner and subject to the same conditions. Vacancy of arbitrator to be supplied.

34. Where more than one arbitrator shall have been appointed such arbitrators shall before they enter upon the matters referred to them appoint by writing under their hands an umpire to decide on any matters on which they shall differ or which shall be referred to them under the provisions of this Act and if such umpire shall die or become incapable of acting they shall forthwith appoint an umpire in his place and the decision of every such umpire on the matters so referred to him shall be final. Appointment of umpire.

35.

35. If in either of the cases aforesaid the arbitrators shall refuse or shall for seven days after request of either party to such arbitration neglect to appoint an umpire any two Justices shall on the application of either party to such arbitration and on proof of such neglect appoint an umpire and the decision of such umpire on the matters on which such arbitrators shall differ or which shall be referred to such umpire under this Act shall be final.

Two Justices to appoint an umpire on neglect of the arbitrators.

36. If where a single arbitrator shall have been appointed such arbitrator shall die or become incapable of acting before he shall have made his award the matters referred to him shall be determined by arbitration under the provisions of this Act in the same manner as if such arbitrator had not been appointed.

In cases of death of single arbitrator the matter to begin *de novo*.

37. If where more than one arbitrator shall have been appointed either of the arbitrators refuse or for fourteen days neglect to act the other arbitrator may proceed *ex parte* and the decision of such arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

If either arbitrator refuse to act the other to proceed *ex parte*.

38. If where more than one arbitrator shall have been appointed and where neither of them shall refuse or neglect to act such arbitrators shall fail to make their award within one calendar month after the day on which the last of such arbitrators shall have been appointed or within such extended time if any as shall have been appointed for that purpose by both such arbitrators in writing under their hands the matters referred to them shall be determined by the umpire appointed as aforesaid.

If arbitrators fail to make their award within one calendar month the matter to go to the umpire.

39. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute and may examine the parties or their witnesses on oath or by declaration and administer any oath of declaration necessary for that purpose.

Power of arbitrators to call for documents and administer oaths.

40. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him he shall in the presence of a Justice make and subscribe the following declaration (that is to say)

Arbitrator or umpire to make declaration.

I. A. B. do solemnly and sincerely declare that I will faithfully honestly impartially and to the best of my skill and ability hear and determine the matters referred to me under the provisions of the Public Roads Act of 1870.

A. B.

Made and subscribed in the presence of

C. D. J.P.

And such declaration shall be annexed to the award when made and if any arbitrator or umpire having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanor.

41. Every arbitrator or umpire who shall enter upon the consideration of any matter so referred to him without having first made and subscribed the said declaration shall be liable on conviction before any Court of Petty Session to a fine not exceeding five pounds but no such arbitration shall be invalidated by reason of such omission.

Penalty for neglect to make declaration.

42. The costs incident to any arbitration shall be assessed by the arbitrators and shall be borne by the Minister and paid in the same manner as is hereinafter directed in respect of compensation payable under this Act unless the arbitrators shall award the same or a less sum as compensation than shall have been offered by the Surveyor General in which case each party shall bear his own costs incident to the arbitration and the costs of the arbitrators shall be borne by the parties in equal proportions.

Costs of arbitration how to be borne.

43. The arbitrator arbitrators or umpire shall deliver their or his award in writing to the Minister who shall retain the same and shall

Award to be delivered to the Surveyor General.

shall forthwith on demand furnish a copy thereof to the other party at such party's expense and shall at all times on demand produce the said award and allow the same to be inspected or examined by such party or any person appointed by him for that purpose.

5 44. The submission to any such arbitration may be made a Rule of the Supreme Court on the application of either of the parties. Submission may be made Rule of Court.

45. No award made with respect to any question referred to arbitration under the provisions of this Act shall be set aside for irregularity or informality. Award not void for informality.

10 46. In all cases in which any compensation shall become payable in pursuance of this Act the amount thereof shall be paid to the claimant or to his agent duly authorized in that behalf by warrant under the hand of the Governor out of any sum of money to be provided by Parliament for that purpose and in the event of any 15 owner and occupant each making a several claim for such compensation the question as to the amount of the compensation to be paid to either shall be referred to arbitration And the arbitrator arbitrators or umpire shall apportion such compensation between such owner and occupant as they or he may think fit unless such 20 apportionment be previously settled by agreement. Compensation how to be paid.

47. Nothing in this Act shall entitle any person to compensation for any land in unlawful possession of such person or dedicated to or used by the public as a road before the passing of this Act. Compensation not authorized in certain cases.

48. The Government may by public notice make regulations 25 not inconsistent with this Act for carrying the same into effect and all such regulations shall be laid before Parliament. Government may make regulations.

49. A schedule of roads proclaimed or opened or confirmed under this Act shall be prepared from time to time and laid before Parliament. Schedule to be laid before Parliament.

30 50. This Act shall be styled and may be cited as the "Public Roads Act of 1870." Short title.

SCHEDULE A. Section 1.

5 William IV. Number 20.
2 Victoria Number 2.
4 Victoria Number 12.
14 Victoria Number 41.

Sydney: Thomas Richards, Government Printer.—1871.

1870-71.

Legislative Council.

ROADS BILL.

(New Clauses to be proposed in Committee of the Whole by SIR T. A. MURRAY, *to follow Clause 4 of the Bill as printed.)*

5. In case the proprietor of any land alienated by grant from the Crown to no part of which grant any road shall have been traced or established as a thoroughfare by usage from the nearest highway shall be desirous to have a road from the said highway or other way communicating therewith to his or her said land through the lands of any other person every such proprietor shall and may be at liberty to make application in writing to the Court of Quarter Sessions for the district in which such road shall be required setting forth in a particular manner the situation of such land and the direction of the proposed road and through what other land the same may be required to pass in order to reach such nearest highway or other way as aforesaid first giving notice in writing one month at least previous to the holding such Quarter Sessions to all proprietors or occupiers of such other land and to the Surveyor General at Sydney of his or her intention to make such application and thereupon the said Court of Quarter Sessions shall hear the parties and the said Surveyor General or some person deputed by him and shall decide as to the propriety of such road being made and the direction in which the same shall be made with reference as well to the application of the party or parties then before the Court as to the general benefit and convenience of all other persons owning or occupying lands adjacent to those of the said parties and to the general advantage of the district in which such lands shall be situate and shall cause to be taken down in writing all such evidence as shall be produced in support of and against the said application and shall cause such evidence to be repeated to the several witnesses giving the same and shall swear such witnesses as to the truth thereof and shall subscribe such evidence and shall transmit the same to the office of the Surveyor General as aforesaid to be kept as a record of his office Provided always that in case any of the parties shall consider himself herself or themselves aggrieved by the decision of the said Court of Quarter Sessions it shall be lawful for him her or them within one calendar month after such decision to appeal unto the Governor and the Executive Council for the said Colony whose decision shall be final binding and conclusive upon all parties and persons whomsoever Provided however that no new further or other evidence shall be given or laid before the said Governor and Executive Council on such appeal save and except the evidence which had been examined and taken down before the Justices of

Persons requiring a road through any other persons land.

Proviso.

Appeal to Governor and Executive Council.

Proviso.

of the said Court of Quarter Sessions as aforesaid And provided further that nothing herein contained shall extend to authorize the several possessors or occupiers of land which originally forming one grant from the Crown shall have been subsequently divided to use or claim the right of more than one common road through the lands of any other person or persons for the purpose of communicating with the whole and every part of the land so divided as aforesaid.

Surveyor General within two months after decision to mark out line of road.

6. In case the propriety of making such private road as last aforesaid shall have been determined in manner aforesaid either by the said Court of Quarter Sessions or upon appeal made to the Governor and Executive Council as aforesaid the said Surveyor General or other person deputed by him shall within three months next after such decision trace and mark out by such permanent marks as the nature of the country shall permit and as nearly as may be practicable and convenient in the direction approved by the Court of Quarter Sessions or by the Governor and Executive Council as aforesaid the said intended road such road to be not more than twenty feet wide in the clear and the said line of road so traced and laid out shall be from thenceforth a private road for the use of the party applying for and all other persons requiring to use the same and shall be subject to such and the like laws as other private roads.
