

At the General Assembly of the Province of Nova Scotia, begun and holden at Halifax, on Thursday, the Thirteenth Day of February, 1823, in the Fourth year of the Reign of our Sovereign Lord George the Fourth, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith &c. &c. being the Third Session of the Twelfth General Assembly, convened in the said Province.

4 George IV – Chapter 13

An Act for the appointment of Commissioners of Sewers, prescribing their power and authority, and for repealing the Acts now in force relating to that Office.

Whereas great quantities of marsh, meadows and low grounds in this province, and particularly in the Bay of Fundy, and rivers, bays and creeks, branching therefrom, are spoiled by overflowing of the sea, and other waters, which by industry may be greatly improved, as well for the general good as for the benefit and profit of the owners; and also much meadow and pasture land might be gained out of swamps and other rough and unprofitable grounds, by drowning and draining the same: to the intent therefore that proprietors of such marshes, meadows and low grounds, may be encouraged and enabled to raise dykes, and remove such obstructions, as to prevent these lands from being immediately useful:

I. Be it enacted by the Lieutenant Governor, Council and Assembly, that it shall be lawful for the Lieutenant Governor, or Commander in Chief, with the advice of His Majesty's Council, upon request of any of the proprietors of such lands, to grant commissioners of sewers, to such and so many able and discreet persons as to him shall seem meet, for the building and repairing such dykes and wears [weirs] as are necessary to prevent inundations, and also for damming and flowing, and draining, such swamps and other unprofitable lands, which commissioners shall be, and are hereby authorised, and empowered, to meet and convene together, from time to time as occasion may require, to view, consider, consult and contrive, such ways and methods for building and repairing such dykes and wears as are necessary to prevent inundations, and for the drowning and draining of swamps and other unprofitable land, and to employ workmen and labourers for such reasonable wages as may be agreed upon for the effecting the premises, and, from time to time, to assess and tax the owners or possessors of such meadows, marshes, or such unprofitable swamps and lands as aforesaid, towards the charge thereof, having regard to each person's quantity of land and benefits to be received thereby, equally, according to the best of their judgment, and also to appoint and swear a collector or collectors for collecting and paying the same to such person or persons as by the said commissioners shall be appointed to receive the same, with powers to distrain all such persons as shall neglect or refuse to make payment of his, her or their, parts or proportions set and assessed, as aforesaid, in such manner as is usually done in like cases, and to call before them the said collector or collectors to account for his or their trusts in the premises.

II. And be it further enacted by the authority aforesaid, that the said commissioners shall be sworn to the faithful discharge of their duty, and shall receive a compensation for their services, at the rate of ten shillings each per day, while actually employed, which services shall be included in the said assessment, together with such reasonable sum, as may be necessary to defray the expense of the clerk of the said commissioners, and the collecting of assessments made under this act.

III. And be it further enacted, that upon complaint being made upon oath before any one of His Majesty's justices of the peace, for the county where such lands lie, by the collector or collectors appointed as aforesaid, it shall and may be lawful for the said justice, to grant a warrant under his hand and seal, directed to any one of the constables in the said county, to levy of, and from, the goods and chattels of such person or persons so neglecting or refusing to pay his, her or their, part or promotion of such assessment by distress, and sale, of the said goods and chattels, the full sum so assessed, with costs for prosecuting the same; which costs shall not, in any one case, exceed the sum of ten shillings.

IV. And be it further enacted, that if goods or chattels of any owner or owners, possessor or possessors, of lands so dyked, drained or improved, as aforesaid, are not to be found within the county or district where the said lands lie, to answer his, her or their, proportion of the assessment so made as aforesaid, it shall and may be lawful, for any one of His Majesty's justices of the peace for the said county, to let the same, or so much thereof, as may be sufficient to pay the proportion of the said assessment, first giving twenty days notice in the township or place where the lands lie.

V. And be it further enacted, that each and every owner or possessor of marsh, swamps, and other unprofitable lands, in any township or place within this province, (where commissioners of sewers are appointed,) shall in all common cases, either in raising new or repairing old dykes, or ditching or draining such lands, attend either by himself, or provide a sufficient labourer, with proper tools to work, and teams, if required at the time and place appointed by the said commissioners of sewers, agreeably to the orders of such commissioners, and every owner or possessor of any such land, shall furnish labourers and teams, in proportion to the quantity of land he may own or possess, pursuant to the order of such commissioners.

VI. Provided always, that such owner or possessor of such land shall have at least six days notice of the time and place where the work is required to be done by one or more of the commissioners of sewers, or by some person appointed by them for that purpose.

VII. And be it further enacted, that in case of any sudden breach in any dyke or aboiteau, or where any breach is likely to be made, or inundation occasioned, by storms, high tides, or otherwise, each and every owner or possessor of land within such dykes, shall forthwith, on notice being given by any one or more of the commissioners of sewers, or persons appointed by them, repair to the place directed with teams, if required, and proper tools to labour, and shall use their utmost endeavours to repair the breach, or place likely to be a

breach, and shall continue to work from day to day on the same, so long as the commissioners of sewers shall judge necessary.

VIII. And be it further enacted, that if any owner or possessor of any such land, shall neglect or refuse to attend, and labour, or to send a sufficient number of labourers or teams, at the time and place, to be appointed by the commissioners of sewers as aforesaid, in proportion to the quantity of land in his or their possession, (due notice having been given as aforesaid) each and every owner or possessor of such lands so neglecting or refusing shall forfeit and pay over and above his or their assessment or tax, the sum of five shillings for every day's neglect or refusal, for each and every labourer, and the like sum for each and every team, such owner or possessor of such land was required to furnish; and if any such owner or possessor of such lands shall neglect or refuse to attend and labour where any sudden breach shall happen, or be likely to happen, to any such dykes, on immediate notice given to such owner or possessor, or shall neglect to furnish such teams as may be required, such owner or possessor shall forfeit and pay the sum of ten shillings for each day's neglect, and the like sum for each team he was required to furnish, for each and every person, to be recovered by warrant of distress, on proof thereof, before any one of His Majesty's justices of the peace, for the county where such persons shall reside, and, for want of goods and chattles to satisfy the distress and charges, the lands of such person, or so much as shall be sufficient, shall be held and let out by the said justice, until the produce thereof shall amount to the fine and charges so levied, in the same manner as is directed by law for a delinquent's proportion of assessments or taxes, for making and repairing dykes; and the monies arising from such fines to be paid into the hands of the commissioners of sewers, to be appropriated for the making and repairing of the said dykes.

IX. And be it further enacted, that if no person shall appear to pay the proportion of any assessment, made according to the provisions of this act, and no sufficient distress shall be found, to satisfy such assessments as aforesaid, the commissioners of sewers shall, by advertisement during three months in the Royal Gazette, cause notice to be given for the selling the lands of such person; setting forth in the said notice, the time and place of such sale, and also, that if no person shall appear within the said three months to pay the said proportion of such assessment, with the costs of advertising the said land, that the same will, at the expiration of such notice, be sold at public auction, by the sheriff or his deputy, for the purpose of paying the said proportion of the said assessment; and if upon such notice, so given as aforesaid, no person shall within the said three months appear, and pay the said proportion of such assessment, it shall and may be lawful for the said commissioners, or the major part of those named in the commission, to cause the said sheriff or his deputy, at the time and place set forth in said notice, to sell at public auction, to the highest bidder, so much of such delinquent's lands so dyked, drained or improved, as aforesaid, as may be sufficient to pay the proportion of the sum due as aforesaid, with the charges; and the sheriff, or his deputy, is hereby authorised and directed, immediately, upon such sale, to execute a deed thereof, and deliver seizen and possession of the lands so sold to the purchaser or purchasers, (for which the said sheriff or his deputy shall receive a fee of ten shillings, and no more,) any law, usage or custom, to the contrary notwithstanding.

X. And be it further enacted, that when the sods or soil, shall have been cut off the land of any proprietor, dyked in common with other proprietors, for the purpose of dyking the same, or that the land of such proprietor shall have been washed away by the tide or current of the river or bay, and that by the making of new dykes to secure such land, so held in common, such proprietor shall have left a part or the whole of his lot, it shall and may be lawful for the commissioners of sewers to cause a just valuation to be made of the loss such proprietor shall have sustained as aforesaid, which valuation shall be made by at least five freeholders, not interested in the said land where the loss shall have been sustained, who shall be sworn, truly and impartially, to value the same; and if it shall happen that there is in such a sufficient quantity thereof, lying in common and undivided to make good the loss so sustained, the commissioners of sewers shall decree possession thereof, or of so much thereof as is sufficient to make good the same to such proprietor, or, on failure thereof, by an assessment for the value, to be paid in a just proportion by the other persons interested in such piece or tract of land.

XI. And be it further enacted, that, whenever the building or repairing dykes and wears are necessary to prevent inundations, or for the draining marsh lands, shall appear expedient to the commissioners aforesaid, and the expenses thereof shall exceed the sum of five shillings per acre on the whole quantity of such land, the said commissioners, or the major part of them, shall summon the owners or possessors of such lands, to meet on a certain day and place for the purpose of electing five assessors, and the said commissioners, with such assessors, or the major part of them, shall, and they are hereby authorized and directed (the said assessors being first duly sworn impartially to execute the said office) to assess and tax all such persons as shall be owners or possessors as aforesaid, towards the charge of building or repairing such dykes and wears, and draining such unprofitable lands, having regard to each person's quantity and quality of land, and the benefits to be received thereby.

XII. And be it further enacted, that it shall not be lawful for the commissioners of sewers, by virtue of this act, to meet and convene together from time to time, as occasion may require, to view, consider, consult and contrive, such ways as methods for building such dykes and wears as are necessary to prevent inundations, and for the drowning and draining of swamps and other unprofitable lands, otherwise than upon application from, and at the request of, such a number of the proprietors, whose rights and shares in such dyked land, marsh, swamp and other unprofitable land, when added together, will amount to more than one half of such land, any thing herein contained to the contrary notwithstanding. Provided always, that nothing herein contained shall extend, or be construed to extend, to prevent the commissioners of sewers from proceeding to drain or repair breaches made in any lands, now dyked, in the manner before directed and prescribed.

XIII. And be it further enacted, that when any person or persons shall pasture any part of the marshes or other lands inclosed within any common dyke, or any land without and adjoining such dyke, whereby any part of the common dyke shall be injured, that it shall be lawful for

any two or more of the commissioners of sewers, from time to time, as often as there shall be occasion, to make an order upon such person or persons for the repairing of such injury by a certain day to be named in such order, and in case of refusal to obey such order, such commissioners shall cause the injury to be forthwith repaired.

XIV. And be it further enacted, that the person or persons neglecting or refusing to obey any such order of the commissioners, shall forfeit and pay for each offence the sum of ten shillings: which said sum, with the cost of such repair, to be recovered before any one of His Majesty's justices of the peace for the county, shall from time to time be levied by warrant of distress under the hand and seal of such justice.

XV. And be it further enacted, that all commissions heretofore issued for the appointment of commissioners of sewers shall be and continue in force until the Governor, Lieutenant-Governor or Commander in Chief, shall otherwise direct.

XVI. And be it further enacted, that all proceedings that have heretofore taken place under the authority of the acts hereby repealed, or any of them, shall, to all intents and purposes, be as valid as if the said acts were in force.

XVII. And be it further enacted, that all work and proceedings that have been commenced by the direction of any commissioners of sewers before the publication of this act, shall be proceeded in and completed pursuant to the provisions of the acts hereby repealed, or to the provisions of this act, as shall seem most expedient to the commissioners of sewers, under whose authority and directions the same shall have been commenced.

XVIII. And be it further enacted, that the lands granted for the support of schools, and set off as glebes and ministerial rights, shall in no case be sold for the payment of assessments under the provisions of this act, but shall be let at auction to the highest bidder for the payment of such assessments, on such terms and conditions as may be deemed expedient by the commissioners of sewers; twenty days previous notice of the time and place of such letting being publicly given in the Royal Gazette.

XIX. And be it further enacted, that the commissioners of sewers within each township and district, or county in this province, shall keep a record of all their proceedings, and a fair account of all work and monies laid out and expended by them, or under their direction, and of monies by them received which record and account shall be open for the inspection of all and every person or persons interested therein, upon paying one shilling for each inspection or search, and a copy thereof shall be furnished to the proprietors of lands who are interested therein, when demanded, he or they paying for such copy or copies, sixpence for every ninety words.

XX. And be it further enacted, that if any owner or possessor of land, shall think himself aggrieved by the proceedings of the commissioners of sewers, or any other person in pursuance of this act, it shall and may be lawful to remove the proceedings of the

commissioners of sewers into the supreme court, by certiorari, where the whole of such proceedings shall be examined if necessary, and such determination made thereon, as, by the said court, shall be deemed proper. Provided, that before any writ of certiorari shall be issued, sufficient security shall be given, by the person or persons applying for the same, for payment of such costs as may be awarded and taxed by the said court.

XXI. And be it further enacted, that an act, made and passed in the thirty-fourth year of the reign of His late Majesty King George the Second, entitled, "An Act for appointing Commissioners of Sewers," and all acts since passed in amendment, extension or alteration of the same, or in addition thereto, shall be, and the same are hereby, repealed.