

*Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1846.* Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1846.

9 Victoria – Chapter 65

**An Act to authorize the widening of Saint John Street, and the continuation thereof to Duke Street, in the City of Saint John. Passed 14th April 1846.**

Whereas the widening of Saint John Street, and the continuation thereof to Duke Street, in the City of Saint John, would greatly improve that portion of the City, and it is deemed advisable to effect the same before the Buildings destroyed by the late fire along the western side of the said Street shall have been replaced by others of a permanent description;

I. Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, That it shall and may be lawful to and for the Mayor, Aldermen and Commonalty of the City of Saint John, to nominate and appoint, and also to re-appoint and supply, as it may be necessary and expedient, three or more disinterested persons, (of whom the Alderman for Queens' Ward, in the said City, for the time being, if so qualified, shall be one,) Commissioners, for the purpose of performing the duties hereinafter in that behalf prescribed; which said Commissioners, before they enter on the performance of the duties of their appointment, shall severally take an oath, or affirmation in any case where affirmation is by Law allowed, before any Justice of the Peace of the said City and County, faithfully to perform the said duties.

II. And be it enacted, That it shall be the duty of the said Commissioners forthwith to enter upon the duties of the said appointment, and to cause a survey and plan of the said Street, and the continuation thereof to Duke Street, and the several lots of Land, Beach or Flats lying between the said Street and continuation thereof, and low water mark, in the Harbour of Saint John, and to fix and decide upon the best mode and method of widening and enlarging the said Street and continuation thereof, as aforesaid; and for that purpose the said Commissioners shall have full power and authority to enter in and upon the Lands and Tenements situate or being upon or near to the said Street and continuation thereof aforesaid, and to determine and decide where and in what manner such Street and continuation thereof shall be widened and enlarged; provided that the Land required for the widening and enlarging of the said Street and continuation thereof, shall be taken from the western side thereof, and shall in no case exceed the width or distance of forty feet from the present eastern side line of the said Street and continuation thereof aforesaid.

III. And be it enacted, That the said Commissioners, or the major part of them, so soon as they shall have caused such survey and plan to be made, and shall have decided where and in what manner such Street and continuation thereof as aforesaid shall be widened and enlarged, shall proceed to make a just and equitable estimate and assessment of the value of the lands, tenements and hereditaments required for the widening and enlarging of the said Street and continuation thereof, (due regard being had to lac benefit accruing to the owners or parties interested in such lands, tenements or hereditaments respectively, from the widening and enlarging of the said Street and continuation thereof,) and also an estimate of the amount or sum

of money which will be required for the purpose of taking down and removing all buildings or parts of buildings, or erections on the said Street and continuation thereof, and building up and completing the said Street and continuation thereof, to the width hereinbefore mentioned, so as to make the same a good and sufficient public Street or Highway, and also an estimate of the amount or sum of money which will be required for the purpose of paying to the said Commissioners, or such of them as shall be actually engaged in the duties directed by this Act, an adequate remuneration for their trouble in the due performance of such duties, not exceeding ten shillings per diem, during the time they respectively shall be actually engaged therein, together with all reasonable expenses for plans, surveys, clerk hire, and other necessary disbursements, and the charges of collection of the several assessments to be made under and by virtue of this Act, and shall assess and apportion the aggregate amount of such several estimates on all the parties owning or interested in the several Lots of land, tenements and hereditaments fronting upon the said Street and continuation thereof, and upon the Wharves lying on the western side thereof, so far forth as the same can be ascertained, according to the best discretion of the said Commissioners, or the major part of them, in proportion to the benefit accruing to such parties respectively, from the widening and enlarging of the said Street and continuation thereof; and shall thereupon report their proceedings in that behalf to the Common Council of the said City, which said Report shall contain an apt and sufficient designation or description of the respective lots or parcels of land, tenements or hereditaments that may be required for the purpose of widening and enlarging the said Street and continuation thereof, with the names of the respective owners, lessees or other parties interested in such lands, tenements or hereditaments, so far forth as the same can be ascertained by the said Commissioners, and also the several sums of money estimated and assessed as and for compensation or allowance to be made for the value of the land or other tenements respectively, required for the purposes aforesaid, and also the names of the respective owners, lessees and other parties interested in the several lots of land, tenements and hereditaments so to be assessed as aforesaid for the benefit aforesaid, with the several and respective sums of money assessed upon the same; provided that in all cases where the owners and parties interested, or their respective estates and interests in the said lands, tenements and hereditaments are unknown or cannot be fully ascertained by the said Commissioners, it shall be sufficient for them to set forth in their said Report, in general terms, the respective sums assessed or to be allowed or paid by the owners of the fee or inheritance of and in such lands, tenements and hereditaments, without specifying the names or the particular estates or interests of such parties, or any or either of them.

IV. And be it enacted, That the said Commissioners, or the major part of them, immediately after the making and completing of such report as is required in and by the third section of this Act, shall deposit and file a true copy thereof, together with the plan or survey mentioned in the second section of this Act, in the Office of the Common Clerk of the said City, for the inspection of all whom it may concern, and shall give notice thereof, by advertisement to be published in two or more of the public Newspapers printed in the said City; and any person or persons whose rights may be affected, or who may consider themselves aggrieved by the said Report, or any part thereof, may within ten days after the first publication of the said Notice, state his, her or their objections to the same in writing, to the said Commissioners, and the said Commissioners or the major part of them, shall thereupon proceed to reconsider the said Report, or such part or parts

thereof as shall or may be so objected to as aforesaid, and in case the same shall upon such re-consideration appear to the said Commissioners, or the major part of them, to require alteration or amendment, but not otherwise, they shall and may amend the same accordingly.

V. And be it enacted, That upon such alteration or amendment, if required, being made, or in case no alteration or amendment shall be required, then within ten days from and after the filing the said Report, as directed in and by fourth section of this Act, such Report shall be final and conclusive, as well upon the Mayor, Aldermen and Commonalty of the said City of Saint John, as upon the owners, lessees, or other parties interested in the Lands, Tenements or Hereditaments in such Report mentioned; and the Mayor, Aldermen and Commonalty of the said City of Saint John shall become possessed of and entitled to all the said Lands, Tenements, Hereditaments and Premises in the said Report described and mentioned, as being required for the purpose of widening and enlarging the said Street and continuation thereof, to and for the use of the Public, and to be converted and applied to and for the purpose of a Public Street and Highway; and thereupon the said Mayor, Aldermen and Commonalty, and any person or persons acting under their authority, shall and may take possession of the same, or any part or parts thereof, without any suit or proceeding at Law for that purpose, and shall and may, at any time or times thereafter, take down, remove and carry away all Buildings, or parts of Buildings, or erections of what nature or kind soever, on such Lands, Tenements, Hereditaments or Premises, and shall, immediately after receiving the amount to be assessed, as hereinbefore mentioned, for building up and completing the said Street and continuation thereof, with all convenient speed build up and complete the said Street and continuation thereof, as hereinbefore provided; and any obstructions to the authorities aforesaid, in taking such possession of the said Streets and Buildings or Erections, or removal of such Buildings or Erections, as aforesaid, or building up and completing the said Street and continuation, as aforesaid, by any person or persons whomsoever, shall and is hereby declared to be a misdemeanor, and for every offence such person or persons shall and may be indicted and punished, as in ordinary cases of misdemeanor; and moreover the said Buildings and Erections are hereby declared to be and shall be treated as common nuisances.

VI. And be it enacted, That the several and respective sums of money or assessments hereinbefore directed to be assessed, shall be a lien or charge upon the Lands, Tenements, Hereditaments and Premises in the said Report mentioned, in that behalf, and upon the estate and interest of the respective owners and proprietors thereof, or parties interested therein; and as well the said owners and proprietors thereof, and parties interested therein, as also the occupants and tenants thereof respectively, shall be liable to pay on demand the respective sum or sums so assessed and mentioned in the said Report, to the Chamberlain of the said City for the time being, to and for the use of the persons and parties hereinafter mentioned; and in default thereof, it shall be the duty of the Mayor or Recorder of the said City for the time being, on proof of such demand having been made, and of the sum or sums so demanded being and remaining unpaid, to issue a Warrant under the hand and seal of the said Mayor or Recorder, directed to the Sheriff of the said City and County, commanding him forthwith to levy the same, with lawful interest thereon from the time of such demand, together with the charges and expenses of collection, by distress and sale of the goods and chattels of such owner or owners, occupant or occupants, or party or parties interested so neglecting or refusing to pay the same, tendering the overplus, if any there shall be

after deducting all just charges, to such owner or owners, occupant or occupants, party or parties interested respectively; and if in any case there shall be found no goods or chattels whereon to levy, then, and in every such case, the Warrant so to be issued, as aforesaid, shall be returned by the said Sheriff to the said Mayor or Recorders with the return "Nulla Bona" indorsed thereon, and thereupon it shall be the duty of the said Mayor or Recorder to issue another Warrant, under his hand and seal, directed as aforesaid, and commanding the said Sheriff to levy the amount therein specified upon the Lands, Tenements, Hereditaments or Premises respectively, whereon the particular sum so to be levied shall have been assessed; provided that nothing herein contained shall affect any agreement between landlord and tenant, or any other contracting parties respecting the payment of such assessments or charges.

VII. And be it enacted, That so soon as the several and respective sums of money or assessments hereinbefore directed to be assessed, shall have been collected or received by the said Chamberlain of the said City, it shall be the duty of such Chamberlain, from and out of the fund thereby created, forthwith to pay to the respective persons and parties mentioned and specified in the said Report, as entitled to receive compensation and allowance, the sum or sums of money therein set down and awarded to each of such person or persons, party or parties respectively; and in case of neglect or default in payment of the same, the respective person or persons, party or parties so entitled to the same as aforesaid, his, her or their Executors or Administrators, at any time or times after demand by him, her or them respectively made in writing for the same, shall and may sue for and recover the same, with lawful interest from and after the date of such demand, with costs of suit, in an action of debt against the said Chamberlain for the time being, in any Court of Record in this Province, and in case the amount or sum of money so to be recovered shall not exceed five pounds, lawful money of this Province, then the same shall and may be sued for and recovered by the person or persons, party or parties, entitled thereto, as aforesaid, by suit or process against such Chamberlain, in the City Court of the said City; and in all or any of such suits or actions so to be brought, as aforesaid, this Act and the Report of the said Commissioners, with proof of such demand as aforesaid, and of the right or title of the Plaintiff or Plaintiffs, to the sum or sums of money demanded under or by virtue of the said Report, shall be conclusive and sufficient evidence; provided that whenever the said person or persons, party or parties, so entitled, as aforesaid, or any or either of them respectively, shall be infants, or *non compos mentis*, or *feme covert*, or under any other legal disability, or absent from the Province, and also in all cases where the name or names of the owner or owners, party or parties, interested or entitled in and to any Lands, Tenements, Hereditaments or Premises required or taken for the purposes aforesaid, shall not be set down and mentioned in the said Report, or when the same, though mentioned and set down in such Report, cannot upon diligent enquiry be found, it shall and may be lawful for the said Chamberlain to pay the sum or sums mentioned in the said Report, as payable to such person or persons, party or parties respectively, into the Court of Chancery of this Province, or as such Court shall direct and decree in that behalf, to and for the use of such person or persons, party or parties respectively; and provided also, that in all or every case or cases where any sum or sums of money, compensation or allowance under this Act, shall be paid or allowed to any person or persons, party or parties, other than the person or persons, party or parties, to whom the same should, or of right, ought to be paid by virtue of this Act, it shall and may be lawful for the person or persons, party or parties, so entitled, to sue for and recover the same, with lawful

interest, and costs of suit, by action of debt as aforesaid, against the person or persons, party or parties respectively, to whom the same shall have been so paid.

VIII. And be it enacted, That the Chamberlain of the said City shall in the first place hold and retain from and out of the first payments made to him on account of such assessments, the amount so to be assessed for taking down and removing the buildings or erections, and building and completing the said Street as aforesaid, to the order of the said Mayor, Aldermen and Commonalty, to be by them used and applied to and for the purpose of taking down and removing the said buildings or erections, and building and completing the said Street as aforesaid; and shall in the next place from and out of the said assessments, make the several payments in and by the seventh section of this Act directed to be made; and lastly pay the respective Commissioners and all other parties and expenses hereinbefore mentioned, agreeably to the assessments aforesaid.

IX. And be it enacted, That the Commissioners to be appointed under and by virtue of this Act, who shall enter upon the duties of such appointment, shall each be entitled to receive such sum for each day they shall be respectively actually engaged in the duties of their appointment, as the Mayor, Aldermen and Commonalty of the said City shall award to be paid by the said Chamberlain, which said sum or amount shall be considered as part of the expenses incurred by virtue of this Act, and shall, together with all reasonable expenses for plans, surveys, clerk hire, and other necessary disbursements and charges of collection thereof, be assessed by the said Mayor, Aldermen and Commonalty upon the respective persons, parties and properties mentioned in the said Report of the Commissioners to be assessed pursuant to the third section of this Act, such second or further assessment to be at the same rate and in the like proportion on each of the said persons' properties, or parties, and be received, levied and recovered in like manner as the sums of money or assessments mentioned in the sixth section of this Act.