

Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1849. Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1849.

12 Victoria – Chapter 49

An Act to authorize the widening and enlarging of Mill Street in the City of Saint John. Passed 14th April 1849.

Whereas by a recent disastrous fire in the City of Saint John a large number of buildings situate between Union and Pond Streets, including nearly all those fronting on Mill Street, on either side thereof, in King's Ward, have been destroyed by fire: And whereas it is deemed expedient and necessary to widen and enlarge Mill Street;

I. Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, That it shall and maybe lawful to and for the Lieutenant Governor or Administrator of the Government for the time being, by and with the advice and consent of Her Majesty's Executive Council, to nominate and appoint, and also to re-appoint and supply as it may be necessary or expedient, three or more discreet and disinterested persons 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 and subscribe an oath or affirmation before any Justice of the Peace in and for the City and County of Saint John, faithfully to perform the trust and duties required of them by this Act.

II. And be it enacted, That it shall be the duty of such Commissioners forthwith to enter on the duties of their appointment, and cause a survey and plan of the said Street and the several Lots of Land fronting thereupon, to be made and prepared, and to fix and decide upon the best mode and method of widening, altering, straightening, and enlarging; Mill Street aforesaid, in that part extending north, from the north line of Union Street, till it meets the Bridge or Causeway leading to Portland; 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 to determine and decide where and in what manner the said Street shall be widened; altered, straightened: and enlarged.

III. And be it enacted, That the said Commissioners, so soon as they shall have caused such survey and plan to be made, and shall have decided where and in what manner the said Street shall be widened, altered, straightened and enlarged, shall proceed to make a just and equitable estimate and assessment of the value of the lands, tenements and hereditaments required for widening, altering, straightening and enlarging the said Street; and shall assess and apportion one half the amount of such estimated value on all the parties owning or interested in any lands, tenements and hereditaments fronting on the said Street, including the parties interested in such lands, tenements and hereditaments, required for the purpose of the said Street, according to their best discretion, in proportion to the benefit accruing to such parties respectively from the improvement of the said Street; and shall thereupon file the said plan with the Common Clerk of the said City, as and for a record of their doings in that respect, and shall forthwith report their

proceedings, and all matters and things connected with their duties as such Commissioners, to the Common Council of the said City; and in the said Report, the Commissioners who shall make the same shall set forth the names of the respective owners, lessees, parties and persons entitled unto or interested in such lands, tenements, hereditaments and premises mentioned in the said Report, and each and every part and parcel thereof, as far forth as the same shall be ascertained by them, and an apt and sufficient designation or description of the respective lots or parcels of land and other tenements, hereditaments and premises that may be required for the purpose of widening, altering, straightening and enlarging the said Street, and also of the said respective lots or parcels of land and other tenements, hereditaments and premises that may be required for the purpose of widening, altering, straightening and enlarging the said Street; and also of the said respective lots or parcels of land and other tenements, hereditaments and premises fronting upon the said Street so assessed by the said Commissioners for the said benefit as aforesaid, and also the several and respective sums estimated and assessed as and for the compensation and recompense, or the allowance to be made for the value of the land and other tenements, hereditaments and premises so taken for the purposes aforesaid, as also the sums assessed upon the same for the benefit and advantage of the respective owners of the fee or inheritance of such lands, tenements, hereditaments and premises respectively, or for the compensation or damage, and for the assessment for the benefit of the respective owners of the leasehold estate or other interest therein separately; but in all and each and every case and cases, where the owners and parties interested, or their respective estates and interests are unknown, or not fully known to the Commissioners, it shall be sufficient for them to estimate and assess and to set forth in their said Report in general terms, the respective sums to be allowed and paid to or by the owners or proprietors generally of such lands, tenements, hereditaments and premises, and parties interested therein, for the compensation and damage, and for the assessment for the benefit and advantage to such owners, proprietors and parties interested in respect of the whole estate and interest of whomsoever may be entitled unto or interested in the said lands, tenements, hereditaments and premises respectively, by and in consequence of the widening, enlarging, altering and straightening the said Street, without specifying the names or the estates or interests of such owners, proprietors and parties interested, or of any or either of them; and upon the coming in and filing of such Report, the same shall be final and conclusive, as well upon the Mayor, Aldermen and Commonalty of the City of Saint John, as upon the owners, lessees, parties or persons interested in and entitled unto the lands, tenements, hereditaments and premises mentioned in the said Report; and the said Mayor, Aldermen and Commonalty shall become possessed of all the said lands, tenements, hereditaments and premises in the said Report mentioned, that shall or may be so required for the purpose of widening, altering, straightening and enlarging the said Street; the same to be appropriated, converted and used to and for such said purposes accordingly, and for none other whatsoever; and thereupon the said Mayor, Aldermen and Commonalty, or any person or persons acting under their authority, may immediately, or at any time or times thereafter, take possession of the same or any part or parts thereof, without any suit or proceeding at law for that purpose, and may at any time thereafter take down and remove all buildings or parts of buildings, erections or improvements of any description whatsoever, on the said lands; tenements, hereditaments and premises; provided that it shall not be lawful for the said Commissioners to allow any sum or compensation whatsoever for any building or buildings which may, after the passing of this Act, be built, placed or erected, in

part or in the whole, on such part or parts of the said lands, tenements, hereditaments and premises that may be required for the widening, altering, straightening and enlarging the said Street.

IV. And be it enacted, That the said Commissioners after completing their said estimate and assessment, and at least fourteen days before they make their Report to the Common Council; shall deposit a true copy or transcript of such estimate and assessment in the Clerk's office of the said City, for the inspection of whomsoever it may concern, and shall give notice, by advertisement, to be published in at least two of the public newspapers printed in the said City, of the said deposit thereof in the said office, and of the day on which it will be finally filed as and for a record of their proceedings; and any person or persons whose rights may be affected thereby, and who shall object to the same 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 such of them as shall have made such estimate and assessment, in case any objections shall be made to the same, and stated in writing as aforesaid, shall reconsider their said estimate and assessment, or the part or parts thereof so objected to, and in case the same shall appear to them to require correction, but not otherwise, they shall and may correct the same accordingly.

V. And be it enacted, That the said Mayor, Aldermen and Commonalty shall within one calendar month after the several assessments made and, to be made, as herein provided for the purposes of this Act, are collected and received by them, pay to the respective persons and parties mentioned or referred to in the said Report, in whose favour any sum or sums of money shall be estimated and reported by the said Commissioners the respective sum or sums so estimated and reported in their favour respectively, deducting in each case any sum or sums that such parties respectively, may in the said Report and assessment of the Commissioners, be declared liable to pay by reason of the benefit to them respectively accruing from the improvement of the said Street; and in case of neglect and default in payment of the same within the time aforesaid, the respective person or persons, party or parties in whose favour the same shall be so reported, his, her or their Executors or Administrators, at any time or times after application first made by him, her or them to the said Mayor, Aldermen and Commonalty in Common, Council convened, for payment thereof, may sue for and recover the same with lawful interest from and after the said application therefor, and the costs of suit in an action of debt or assumpsit against the said Mayor, Aldermen and Commonalty, in any Court having cognizance thereof, and in which it shall be sufficient to declare generally for so much money due to the plaintiff or plaintiffs therein, by virtue of this Act, for premises taken for the purpose herein mentioned, and it shall be lawful for the plaintiff or plaintiffs to give any special matter in evidence under such general declaration; and this Act and the Report of the said Commissioners, with proof of the right and title of the plaintiff or plaintiffs to the sum or sums demanded, shall be conclusive evidence in such suit or action provided that whenever the owners and proprietors of any such lands, tenements, hereditaments and premises so to be taken for any of the purposes aforesaid, or the party or parties, person or persons interested therein, or any or either of them, the said owners, proprietors, parties or persons in whose favour any such sum or sums or compensation shall be so reported, shall be under the age of twenty one years, non compos mentis, *feme covert*, or absent from the said City

of Saint John, and also in all cases where the name or names of the owner or owners, parties or persons entitled unto or interested in any lands, tenements, hereditaments or premises that may be so taken for any of the purposes aforesaid, shall not be set forth or mentioned in the said Report, or where the said owners, parties or persons respectively being named therein, cannot upon diligent inquiry be found, it shall be lawful for the said Mayor, Aldermen and Commonalty to pay the sum or sums mentioned in the said Report payable, or that would be coming to such owners, proprietors, parties or persons respectively, into the Court of Chancery in this Province, to be secured, disposed of and improved as the said Court shall direct, and such payment shall be as valid and effectual in all respects as if made to the said owners, proprietors, parties and persons respectively themselves, according to their just rights, as if they had been known, and had all been present, of full age, *discover*t and *compos mentis*; and provided also, that in all and every case and cases where any such sum or sums, or compensation so to be reported by the said Commissioners in favour of any person or persons, or party or parties whatsoever, whether named or not named in the said Report, shall be paid to any person or persons, or party or parties whomsoever, when the same shall of right belong and ought to have been paid to some other person or persons, party or parties, it shall be lawful for the person or persons, party or parties to whom the same ought to have been paid, to sue for and recover the same, with lawful interest and costs of suit, as so much money had and received for his, her or their use, by the person or persons, party or parties respectively, to whom the same shall have been so paid.

VI. And be it enacted, That the respective sums or assessments so to be assessed and reported by the said Commissioners, as and for the allowance to be made by the parties and persons respectively in the said Report mentioned, as owners and proprietors of or parties interested inlands and premises deemed to be benefited by the widening, altering, straightening and enlarging of the said Street mentioned in the said Report, shall be borne and paid to the said Mayor, Aldermen and Commonalty by the said parties and persons respectively; and the residue or remainder of all the monies which may be due for and on account of the sums or estimates of compensation and recompense that may be reported by the Commissioners in favour of the respective persons and parties deemed to be entitled thereto, and also all expenses, disbursements and charges which may arise or be incurred under the provisions of this Act, shall and may be assessed upon that part of the said City of Saint John which lies on the eastern side of the Harbour, excluding from the assessment the lands, tenements and hereditaments fronting upon the said Street which have been already assessed in the Report of the said Commissioners; and the said Mayor, Aldermen and Commonalty of the City of Saint John, in Common Council convened, are hereby authorized and required to order and direct the said residue and remainder of the said monies, and the expenses hereinbefore mentioned, together with the charges of assessing; levying, and collecting the same, to be forthwith assessed, levied, collected and paid in such proportions and in the same manner as any rates for public charges are or may be assessed, levied, collected and paid under and by virtue of any Act or Acts of Assembly made or to be made for assessing, levying and collecting rates for public charges.

VII. And be it enacted, That the several and respective sums or assessments hereinbefore directed to be paid to the said Mayor, Aldermen and Commonalty, shall be a lien or charge on the lands, tenements, hereditaments and premises in the said Report of the Commissioners

mentioned, or upon the estate and interest of the respective owners, lessees and parties in such lands, tenements; hereditaments and premises, for and on account of which the said respective sums shall be so assessed by the said Commissioners, upon the said respective owners and proprietors thereof, or parties interested therein, and as well the said owners and proprietors thereof and parties interested therein; and also the occupants of each and every of them shall moreover be respectively liable to pay on demand the respective sum or sums mentioned in the said Report of the Commissioners; at which the respective lands, tenements, hereditaments and premises so owned or occupied by him, her or them, or wherein he, she or they are so interested, or at which the owners and proprietors thereof shall be so assessed, to such person or persons as the said Mayor, Aldermen and Commonalty shall appoint to receive the same; and in default of payment of the same or any part thereof, it shall be lawful for the said Mayor, or the Recorder of the said City, and any three of the Aldermen or Assistant Aldermen of the same City, by Warrant, under their hands and seals, to levy the same with lawful interest thereon from and after thirty days from the time of the filing of the said Report of the Commissioners, together also with the charges and expenses to be had for the collection thereof, by distress and sale of the goods and chattels of such owner and owners, occupant or occupants, or party or parties interested, so refusing or neglecting to pay the same, rendering the overplus (if any overplus there shall be) after deducting all just charges, to such owner or owners, occupant or occupants, or party or parties interested, or the said respective sums, with lawful interest as aforesaid, may be recovered, with all costs and charges, by the said Mayor, Aldermen and Commonalty, from and against the owner or owners of the respective lands, tenements, hereditaments and premises, whereon or in respect of which the same may be assessed or set forth in the said Report of the Commissioners, or from or against either or any of them the said parties or owners, without joining any other or others of them the said parties or owners therein, by action of debt or assumpsit, in which it shall be sufficient to declare generally for so much money due by virtue of this Act to the said Mayor, Aldermen and Commonalty, and every matter may be given in evidence under such general declaration; provided that nothing herein contained shall affect any agreement between landlord and tenant, or any other contracting parties respecting the payment of any such assessment or charges, but they shall be answerable to each other in the same manner as if the provisions in this Act contained concerning the same had never been made; and if any money so to be assessed be paid by or collected, or recovered from any person or persons, when by agreement or by law the same ought to have been borne and paid by some other person or persons, it shall be lawful for the person or persons paying the same; or from whom the same shall be recovered by distress, suit or otherwise, to sue for and recover the money so paid by or recovered from him or them, with interest and costs, as so much money paid for the use of the person or persons who ought to have paid the same, and the said Report of the Commissioners, with proof of payment, shall be conclusive evidence in the suit.

VIII. And be it enacted, That it shall be competent and lawful for any three of such said Commissioners so to be appointed to proceed to and execute and perform the trusts and duties of their said appointment, and their acts shall be as valid and effectual as the acts of all the said Commissioners so to be appointed for such said purpose if they had acted therein would have been, and further that in all cases the acts, decisions and proceedings of the major part of such of the Commissioners to be appointed for the purposes aforesaid, as shall be acting in the premises,

shall always be as binding, valid and effectual, as if the said Commissioners named and appointed for such purpose, had all concurred and joined therein.

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 their appointment, shall each be entitled to receive such sum for each day they shall respectively be actually employed in the duties of their appointment, as the said Mayor, Alder-men and Commonalty in Common Council convened, shall name; to be paid by the said Mayor, Aldermen and Commonalty, and included in the beforementioned sums of money, and considered as part of the disbursement and expenses incurred by virtue of this Act, besides all reasonable expenses for maps, surveys and plans, Clerk hire, and other necessary expenses and disbursements.