

*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 55

**An Act for the appointment of Commissioners of Sewers for the Parish of Sackville, in the County of Westmorland, and to divide certain Marsh Lands in the said Parish into several Bodies or Districts. Passed 14th April 1849.**

Whereas there are several large tracts of Marsh Land in the Parish of Sackville, in the County of Westmorland, which require the superintendence of Commissioners of Sewers, and it will diminish the expense of taking care of the said March by dividing it into Districts;

I. Be it enacted by the Lieutenant Governor, Legislative Council and Assembly, That the bodies of Marsh Land in the Parish of Sackville, in the County of Westmorland, now under the actual care and superintendence of Commissioners of Sewers, be divided into Districts, and classed as follows, namely: All that body of Marsh known by the name of the Ram Pasture Marsh, to be District Number Once; all those bodies of Marsh known by the names of West Cole's Island Marsh; and East Cole's Island or Sunken Island March, to be District Number Two; all those bodies of Marsh Land known by the names of the New and Old West Marshes, to be District Number Three; all those bodies of Marsh known by the names of Bear Island March, and Middle Village Marsh, and King's Marsh, to be District Number Four; all those Marshes known by the names of Spectacle Island Marsh, and Dixon Island Marsh, to be District Number Five; and all that body of Marsh Land known by the name of the Great Marsh; together with all the Bogs and Low Lands lying to the northward and westward thereof, to be District Number Six.

II. And be it enacted, That the Districts Number One, Number Two, Number Three, Number Four, and Number Five, shall each choose one Commissioner of Sewers, and District Number Six shall choose two Commissioners of Sewers, to be elected in the manner and for the period hereinafter provided for; which persons so elected shall be Commissioners of Sewers for the said several Districts; that is to say: that on the third Tuesday in April next ensuing the passing of this Act, and on the third Tuesday in April in every third year thereafter, between the hours of eight and nine in the forenoon, a meeting of the proprietors of the said Districts be held at or in front of the Temperance Hall, in Sackville, for the purpose of choosing the said Commissioners; at which meeting the senior Magistrate residing in the said Parish shall preside, and in case of his absence or refusal, the senior Magistrate resident in the said Parish present at the said meeting shall preside; and in case of his likewise refusing to preside, or there being no Magistrate present at the said meeting, then that the majority of the said proprietors present, shall at once elect some person to preside over the said meeting; that the said Magistrate or person so presiding over the said meeting, shall appoint some impartial person to act as Clerk at the said election, and who shall be sworn by the said presiding officer to a true and faithful discharge of his duties as such Clerk, in the words set out in the Schedule to this Act, which oath shall be written on the Poll Book for the said election, and which oath the said presiding officer is hereby empowered to administer; that the said presiding officer shall cause this Law to be read to the meeting, and then proceed to take

the Poll for the said Commissioners of Sewers; and the said Clerk shall enter the votes for the said Commissioners of Sewers in a Book to be provided for that purpose, in the form in the Schedule hereto annexed, or in words and figures to the like intent, which Poll shall be kept open until twelve o'clock and in case there be a contest, then the Poll shall be continued and kept open until six o'clock in the evening of the same day, when it shall be finally closed.

III. And be it enacted, That the Magistrate or Chairman presiding at the said meeting shall forthwith after closing of the Poll, proceed to ascertain from the Poll Book which of the candidates has the highest number of votes, and declare the same, and certify upon the Poll Book that candidate duly elected a Commissioner of Sewers for the said several Districts by that District for which he has the highest number of votes; and for District Number Six in like manner declare and certify on the Poll Book that candidate having the second highest number of votes for that District also duly elected a Commissioner of Sewers by the said District for the said several Districts; that if upon such examination: of the Poll Book it shall appear that two or more candidates for any one District have an equal number of votes, the said Magistrate or Chairman shall then determine which of such candidates shall be deemed to have a majority over the other or others; which several Commissioners of Sewers so elected shall be sworn into office which oath any Justice of the Peace of the said County resident in said Parish of Sackville, or the Chairman presiding at the said meeting, is hereby authorized and required to administer; and any Commissioner so elected who shall neglect for the period of one week to take the oath of office, shall be deemed to have refused to accept such office; that such oath of office if taken before the Magistrate or Chairman presiding at such meeting, shall be in writing upon the Poll Book, and if taken before any other Magistrate, that the same be in writing, and filed with the Chairman presiding at such meeting, to be by him attached to the Poll Book, which Poll Book, certificates of election, and oaths of office, shall be by him transmitted to and filed with the Clerk of the Peace for the said County.

IV. And be it enacted, That every proprietor of Marsh Land situate in any of the said Districts, whether male or female, shall be entitled to vote at such elections, under the regulations hereinafter provided; except children under the age of sixteen years that is to say: each proprietor shall have as many votes as he owns acres of Marsh in such Districts, exclusive of all fractional parts; and in case the number of votes claimed by any voter should be disputed at the time he offers to vote, by any other proprietor, then before such votes are received and entered, the person claiming the right to vote shall take the following oath:

“You do swear that you are the proprietor of acres of Marsh, situate in District Number [or acres in District Number and acres in District Number as the case may be, where the person claims the right to vote for more than one District,] and that you are entitled to vote therefor at this election of Commissioners of Sewers, and that you have not before voted at this election.”

That no proprietor of Marsh Land in one District shall give any vote upon the same for a Commissioner or Commissioners to be elected for any other District; and provided always, that in District Number Six that no proprietor shall be entitled to vote for or upon any Marsh or Bog not yielding the annual value of two shillings and six pence per acre, except such Marsh or Bog has at the time of such election been assessed to the amount of two shillings and six pence per acre; and

in case the number of votes claimed by any voter in District Number Six should be disputed at the time he offers to vote, by any other proprietor, then before such votes are received and entered, the person claiming the right to vote shall take the following oath:—

“You do swear that you are the proprietor of acres of Marsh, [or Bog, as the case may be] in District Number Six, that the same is of the annual value of two shillings and six pence per acre, [or has been assessed to the amount of two shillings and six pence per acre,] that you are entitled to vote therefor at this election of Commissioners of Sewers, and that you have not before voted at this election of Commissioners of Sewers.”

Which oaths the presiding officer is hereby authorized and required to administer, and no other proof of qualification shall be required of such voter.

V. And be it enacted, That the persons so elected, certified and sworn as Commissioners of Sewers shall be Commissioners of Sewers in and for the said several Districts for and during the term of three years then next ensuing; and such Commissioners shall be authorized and empowered during the term of office to convene and meet together from time to time as occasion may require, to consult, consider and devise means and methods for building, erecting or repairing such Aboideaux [Aboiteaux], Dikes and Wears as are or may be necessary to prevent inundation, and for drowning or draining of Marshes, Swamps and other unreclaimed Lands, either diked or undiked, and to employ labourers and workmen for such reasonable wages as may be agreed on for that purpose, and to take and assess all such persons from time to time as shall or may be owners of such Marshes, Meadows or unreclaimed Lands as aforesaid, for defraying the expenses thereof, having regard to the quantity and quality of land of each person and benefits thereby to be received, as equally as they can according to their best judgment, and shall appoint and swear a Collector or Collectors for collecting such assessments and paying the same to such persons as by the said Commissioners shall be appointed, with powers to distrain upon the property of all such persons as shall neglect or Refuse to make payment of his, her or their proportions assessed as aforesaid, in like manner as is usually done in other cases by distress; and such Collector appointed as aforesaid, shall be entitled to levy for his services a sum over and above such assessment not exceeding seven and a half per cent, on the amount of such assessment; and the said sum so to be allowed for collecting to be first regulated by the Commissioners having regard to the amount to be collected; and to call before them such Collector or Collectors to account for his or their trusts in regard to the premises: and the said Commissioners, or a majority of them, if they deem it fit and proper, may and they are hereby empowered to appoint and swear a Clerk by whom all records, entries, notices and other document shall be made and kept, and the said Commissioners shall be authorized and empowered to make and repair the Bye Roads leading through or in the said Districts, and in like manner as aforesaid assess the Marshes for the expenses thereof, the said Commissioners first giving notice of such their intention by advertising the same in three or more public places in the said Parish for ten days; provided always, that if the proprietors of a majority of acres in the District where such road or roads so to be made or repaired shall lie, by order in writing to the Commissioner or Commissioners elected for such District, desire the said Commissioners not to proceed with such making or repairing so advertised, the said Commissioners shall not proceed in

the same for the period of one year, and not then unless by again advertising such proposed repairing or making; and the said Commissioner or Commissioners of each District is and are hereby required to keep separate and distinct accounts of all labour performed in their several Districts during the period for which they are appointed; and during the last half year of their term of office the said Commissioners shall arrange, collect, settle up and satisfactorily arrange as far as possible all the accounts arising or accruing during their term of office, and on the expiration thereof, to deliver the same up, together with all vouchers and documents whatsoever, to their successors in office; that the said Commissioners shall receive out of assessments made by them a reasonable compensation for their services, not to exceed seven shillings and sixpence per clay for each and every Commissioner.

VI. And be it enacted, That in case of the refusal to act, removal or death of any person elected as Commissioner of Sewers under and by virtue of this Act, the proprietors of the District by which such Commissioner may have been elected, may make application to the Town Clerk of said Parish, to call a public meeting of the proprietors of such District for the election of a Commissioner for such District; which meeting the said Town Clerk is hereby required to advertise in three or more public places in said Parish; and such election shall be conducted in the same manner as is provided in the second and third sections of this Act for the election of Commissioners of Sewers at the general election thereof; provided always, that such Commissioner or Commissioners so elected, shall not Hold such office for a longer period than until the general election of Commissioners of Sewers next ensuing such election.

VII. And be it enacted, That if the proprietors of any body of Marsh Land in said Parish, not included within the provisions of the first section of this Act, and containing not less than two hundred acres, should desire the superintendence of Commissioners of Sewers to take care of the same, they may make application in writing, signed by the proprietors of a majority of acres in said body, requiring the Town Clerk of said Parish to call a public meeting of the proprietors of such body of Marsh Land, for the purpose of electing a Commissioner of Sewers by such body of Marsh; that thereupon the said Town Clerk shall give ten days notice of the said meeting to be held in the said Parish, by advertising the same in six or more public places in the said Parish; and that at the time and place so advertised for the election of a Commissioner of Sewers by the said proprietors, the election of such Commissioners of Sewers shall be proceeded with, which election shall be conducted in like manner as is provided for in the second and third sections of the Act for the election of Commissioners of Sewers for the District therein named; which Commissioner of Sewers so elected shall be declared a Commissioner of Sewers for the several Districts herein named, and such further bodies of Marsh as may avail themselves of the provisions of this Act, with all the duties, authorities and privileges imposed and conferred by this Act upon the said other Commissioners of Sewers for said Districts; provided always, that such Commissioner of Sewers so elected shall not continue in office for a longer period than until the general election of Commissioners of Sewers for said Districts next ensuing such election, at which time the election for a new Commissioner of Sewers by such District shall proceed as is provided by the said second and third sections of this Act; for the several Districts therein named; and provided always, that if the proprietors of a majority of the number of acres in such body of Marsh do not vote at such

election so called by the Town Clerk, in such case the said election shall be deemed wholly null and void.

VIII. And be it enacted, That in case the proprietors of the majority of acres of any body of Marsh in said Parish, shall be desirous of being annexed to any District or body of Marsh having elected a Commissioner of Sewers by virtue, of this Act, the said Commissioners of Sewers are hereby empowered and authorized, upon the consent of the proprietors of a majority of acres in both bodies of Marsh, as well of that body desiring to be annexed as of the body or District to which it is to be annexed, to declare such body of Marsh annexed to such District or body, and subject to the jurisdiction and control of the Commissioners of Sewers to all intents and purposes the same as if it had originally been part of such District; and in case any body of Marsh in said Parish shall be desirous of being discharged from the power and control of the said Commissioners of Sewers, the said Commissioners, upon the like consent being had, shall and may declare such District or body of Marsh withdrawn from the jurisdiction and control of the Commissioners of Sewers, from which time the said Commissioners shall cease to have any control over such body of Marsh; provided that any rate made before the time of such order may still be enforced and levied in all respects the same as if such body of Marsh had not been withdrawn.

IX. And be it enacted, That every person allowed by law to make an affirmation instead of taking an oath, shall be allowed to affirm in every case where by the provisions of this Act an oath is required to be taken; and if any person taking an oath or making affirmation as required by this Act, shall wilfully swear or affirm falsely, such person shall be deemed guilty of wilful and corrupt perjury, and shall be liable to all the pains and penalties by law provided for that offence.

VIII. And be it enacted, That a copy of a Certificate of Return of Commissioners of Sewers, filed in the Office of the Clerk of the Peace, certified under the hand and seal of office of such Clerk, shall be prima facie; evidence of the regularity and legality of all proceedings up to and the election of such Commissioners of Sewers; and that a copy of what regulations the said Commissioners may from time to time make, certified under the hand and seal of office of the said Clerk of the Peace, shall in like manner be evidence of such regulations in all Courts of Record in this Province.

IX. And be it enacted, That whenever any person shall be aggrieved by the wilful neglect or gross carelessness of any of the said Commissioners, such Commissioner or Commissioners shall be personally liable to the party injured for all damages by him sustained in consequence of such neglect, to be recovered in an action on the case either in the Supreme Court or the Inferior Court of Common Pleas for the County of Westmorland, with costs as in other cases.

X. And be it enacted, That when and so soon as the said Commissioners or any two of them so chosen, shall have taken the oath of office, any former existing commission for the appointment of Commissioners of Sewers in and for the said Parish of Sackville, shall be deemed to be cancelled and void, and, all the powers and duties of any such previous Commissioner shall cease and determine; provided that any matter or thing by them before, done under such cancelled commission, agreeably to the directions of an Act made and passed in the tenth and eleventh years of the Reign of His late Majesty King George the Fourth, intituled *An Act to repeal certain Acts relating to Commissioners of Sewers*, and to make more effectual provisions in lieu thereof,

shall be held valid, and all rates hitherto imposed may be enforced by the elected Commissioners; and provided that nothing in this Act contained shall affect or be construed to affect the power or authority of any Commissioner appointed or to be appointed under and by virtue of an Act made and passed in the third year of Her present Majesty's Reign, intituled *An Act in addition to the Acts now in force relating to Commissioners of Sewers*.

XIII. And be it enacted, That all the powers and authority given in and by the said recited Act, intituled *An Act to repeal certain Acts relating to Commissioners of Sewers*, and to make more effectual provisions in lieu thereof, shall extend to the Commissioners chosen and appointed under the provisions in this Act, save and except where part of the same is by this Act repealed.

XIV. And be it enacted, That the second Section of an Act passed in the tenth and eleventh years of the Reign of His late Majesty George the Fourth, intituled *An Act to repeal certain Acts relating to Commissioners of Sewers*, and to make more effectual provisions in lieu thereof be repealed, so far as the same extends to the said Parish of Sackville.

XV. And be it enacted, That throughout this Act, in the construction thereof, except there be something in the subject or context repugnant to or inconsistent with such construction, the word "Commissioners" shall mean a majority of such Commissioners; the word "Marsh" shall extend to and mean Marsh, Low Lands and Meadows; the word "Proprietor" shall extend to and mean the owner in fee of any such Lands, either in possession by himself or his tenant under a lease not having seven years to run, the Mortgagor, Tenant by courtesy, Tenant in Dower, Tenant for life, or for years under a lease having seven years to run, or a Tenant in possession of Land under an agreement for the absolute purchase thereof from the owner in fee simple of any such Lands, and having the possession thereof; and when the subject or context requires it, every word importing the singular number or the masculine gender only, shall include and extend to several matters as well as one matter, and several persons as well as one person, and females as well as males, and bodies corporate as well as individuals.

#### SCHEDULES.

I, A. B., do swear that I will well and faithfully perform the duties of a Poll Clerk at the election of Commissioners of Sewers for the Parish of Sackville, now holden, and a true record make of all votes tendered at said election, according to the law in such case provided.

Poll Book for Election of Commissioners of Sewers for the Parish of Sackville, County of Westmorland. April _____ 18__		District No. 4			District No. 5			District No. 6				
Proprietors' Names.	Number Acres and Votes	Candidates' Names.			Number Acres and Votes	Candidates' Names.			Number Acres and Votes	Candidates' Names.		
		K.	L.	M.		N.	O.	P.		Q.	R.	S.
James Jones, .....					10			10	80			80
William Brown, .....	50		50		100	100		200	200		200	
Thomas Smith, .....					40		40		100	100		
Richard Roe, .....	100		100		150	100	40	10	380	100	100	200
Total ..	150		150		150	100	40	10	380	100	100	200

Poll Book for Election of Commissioners of Sewers for the Parish of Sackville, County of Westmorland. April _____ 18__		District No. 1			District No. 2			District No. 3				
Proprietors' Names.	Number Acres and Votes	Candidates' Names.			Number Acres and Votes	Candidates' Names.			Number Acres and Votes	Candidates' Names.		
		A.	B.	C.		D.	E.	F.		G.	H.	I.
James Jones, .....	50		50		100			100	100			
William Brown, .....		60			40	40		100	100			
Thomas Smith, .....	60				10		10		80		80	
Richard Roe, .....	50		50		150			180	100	100	80	
Total ..	160	60	50	50	150	40	110		180	100	80	