

Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1855. Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1855.

18 Victoria – Chapter 38

An Act to provide for an improved system of Sewerage and Water supply of part of the City of Saint John, and Parish of Portland in the County of Saint John. Passed 12th April 1855.

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Section.

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Whereas an improved system of Sewerage and Water supply, would conduce to the health and comfort of the citizens and inhabitants of the City and Parish;—

Be it enacted by the Lieutenant Governor, Legislative Council, and Assembly, as follows:—

1. The Common Council of the City of Saint John shall forthwith appoint, and shall also have power to remove and re-appoint from time to time as maybe expedient, two discreet and proper persons to be Commissioners for the purposes of this Act; and the General Sessions of the Peace for the City and County of Saint John, or any Special Sessions for that purpose to be forthwith holden, shall in like manner appoint, and any General or Special Sessions for such purpose holden, shall also have power to remove and re-appoint from time to time one other discreet and proper person, to be a Commissioner with the said other two Commissioners for the like purposes; neither of which said three Commissioners shall be a member of the said Common Council or Sessions.
2. The Commissioners before entering on the duties of their office, shall severally take and subscribe an oath or affirmation before any Justice of the Peace of the said City and County, faithfully to perform the trust and duties required of them by this Act: which oath or affirmation such Justice is hereby authorized to administer; and he shall forthwith file the same in the office of the Common Clerk of the said City.
3. Whenever the said Common Council shall appoint or re-appoint the said two Commissioners, they shall at the same time nominate which of them shall be Chairman of the Board of Commissioners, whose duty shall be to preside at their meetings, and exercise a general supervision of all proceedings under this Act.
4. The Chairman shall have a salary of four hundred pounds per annum, and each of the other Commissioners shall have one pound for each day's actual attendance on the duties of his office, but so as not to exceed the sum of fifty pounds for each Commissioner in any one year.
5. The Commissioners shall hold a general meeting for the transaction of business at least once in each month.
6. Immediately after the passing of this Act, the Commissioners shall make and issue to the holders of preference stock in the Saint John Water Company, Debentures in the form hereinafter provided, to the amount of fifteen thousand pounds New Brunswick currency, at par, in satisfaction of such stock; and like Debentures to the amount of thirteen thousand nine hundred pounds, at the rate of ninety two pounds ten shillings for each one hundred pounds of stock, to the holders of the other stock in the said Company, in satisfaction thereof; and thereupon the entire property, works, revenues, rights, and credits of the said Company, subject to the outstanding liabilities of the said Company, shall become vested in the said Commissioners and their successors, without any other act or conveyance whatever, with all the powers and privileges now held and enjoyed by the said Company under any law or laws of the Province; saving however to all and every person or persons, Company or Corporation, all legal rights and remedies in law or equity, and all actions or suits now pending or hereafter to be brought against the said Company for or by reason of any malfeasance or misfeasance, or any act or thing heretofore done or committed, or for or by reason of any covenant, contract, or agreement heretofore made,

which rights and remedies shall continue, and the actions and suits be brought, prosecuted, and ended as if this Act had not been passed; and the present stockholders therein shall be liable in law and equity for the liquidation and payment of all such claims and damages recovered, or to be hereafter recovered therefor; provided that such claims and damages shall not be levied on any present stockholders, on account of any preference stock, unless the value received by the holders of the original stock, on account of such original stock, shall be insufficient to defray the same; and it shall be lawful also for the said Commissioners to proceed for recovery of any arrears or moneys due to the said Company at the time of such transfer, or which may subsequently fell due under or by virtue of any contracts or agreements made with the said Company prior to such transfer, by distress and sale in manner provided by the twenty second Section of this Act.

7. Upon such transfer being made it shall be the duty of the Commissioners to extend the present water supply as far as they may deem it practicable or expedient, by carrying a sufficient main or mains to Latimer's Lake and Loch Lomond, or either of them, and by laying down good and sufficient main and service pipes in the several Streets of the said City on the east side of the Harbour, not already supplied, and in and through the District in the Parish of Portland defined and described as follows, that is to say:— "Beginning at the Aboideau where the City line strikes the line of the said Parish, thence southerly, easterly, and northerly along the Parish line to a point where the old Westmorland road intersects the road running along the front of Walker Tisdale's stone cottage; thence along the last mentioned road and a prolongation thereof crossing the Marsh Creek, to its northwestern bank; thence westerly along the said bank to a point where a prolongation of the division line between the property of Messieurs Gilbert and Wright would strike the said Creek; thence northwesterly following the said prolongation and line to Wright Street (so called); thence westerly along the said Street to its termination in front of William Jack's property; thence in a straight line to the River Saint John, at the point where the Albion Mills now stand; and thence following the Parish line southerly and easterly in its various courses to the place of beginning;" as laid down and defined in a Plan signed by the Commissioners appointed under the Act of Assembly made and passed in the eighteenth year of Her present Majesty's Reign, intituled *An Act for the appointment of Commissioners of Sewerage and Water supply for that part of the City of Saint John lying on the eastern side of the Harbour and the Parish of Portland*, and filed in the Common Clerk's Office of the City of Saint John; when the same shall have been submitted to the Common Council and Sessions, and approved of by them.

8. The service pipes for water supply to houses, buildings, or establishments, shall be carried from the main to the side line of the street by the Commissioners at the public expense, when required so to do by notice in writing from the owner or owners of any house or building, and all beyond that distance at the expense of the owners or leaseholders for renewable terms of the premises so supplied.

9. Wherever good and sufficient mains for the supply of water to dwellings or other houses or establishments already exist, and likewise wherever the same shall be laid down and ready for the use of such dwellings, houses, or establishments within the said City, on the east side of the Harbour, or the said District in the Parish of Portland, the owners in fee, or leaseholders for renewable terms of any lands or tenements through or along which such mains shall pass, shall,

whether the water be taken or used on the premises or not, be respectively assessed for the same in each year, on a scale to be fixed and determined by the Commissioners in each year, due regard being had to the value, mode of occupation of the premises, and probable consumption of water in each case, except steam mills, manufactories, baths, and hotels, which shall be rated by agreement with the parties; in which scale the several lots or premises assessed, whether occupied or vacant, shall be numbered, and the rate assessed on each set down, and a copy of such assessment shall be filed by the Commissioners in the office of the Common Clerk of the said City within three months after their appointment as such Commissioners; and if any person shall think himself aggrieved by reason of such assessment, it shall be lawful for him in case the same shall be upon the premises situate in the said City, to appeal thereupon to the Common Council of the said City, and in case the assessment shall be upon premises in the said district of the said Parish of Portland, such appeal shall lie to the General Quarter Sessions of the said City and County, and the decision in either case shall be final, and the assessment be amended by the Commissioners in accordance with such order as may be therein made by the said Common Council or Sessions respectively; provided that all such appeals shall be made within thirty days after demand of the amount assessed shall have been made upon the party so appealing.

10. The Commissioners shall employ a competent Engineer or Engineers to make surveys and plans of the streets within the City of Saint John, on the eastern side of the harbour, and in that part of the Parish of Portland included under this Act, shewing the surface of the streets as now existing, and the permanent levels to be hereafter made, which levels, when approved of by the Common Council and Sessions, shall be and for ever hereafter remain the permanent levels, and the said plans shall then be filed in the office of the Common Clerk in the City of Saint John, and a copy in the office of the Provincial Secretary, as public records of the same.

11. The Commissioners shall as soon as they may deem it practicable and expedient, construct and lay down through and along the several streets of the said City, on the eastern side of the harbour, and of the said district in the Parish of Portland, good and sufficient sewers with proper branch drains and pipes for such houses as they may from time to time deem fit to receive the same.

12. All branch drains shall be laid down and fitted at the public expense from the main sewer to the line of the street, or in case of back sewerage to the rear line of each dwelling or tenement.

13. As soon as good and sufficient main sewers are laid down and constructed, with proper branch drains, for the several dwellings in any street of the said City or district aforesaid of the said Parish, the owners in fee, or leaseholders for renewable terms of the several lands and tenements through or along which such main sewers pass, shall, upon the same being ready for use, be respectively assessed for the same in each year on a scale to be fixed and determined by the Commissioners in each year in like manner and at the same time as the scale of water rates or assessments mentioned in the ninth Section of this Act; which last mentioned scale or assessment shall be dealt with in like manner and be subject to the like appeals and amendment as the said scale of water rates.

14. In the laying down, construction, repairing, and alteration of any main service pipes, drains, or sewers, under the provisions of this Act, the Commissioners, or any or either of them, and their servants, agents, or workmen, shall have full power and they are hereby authorized from time to time as occasion may require, to enter upon any lands and tenements in the said City, on the east side of the harbour, or in the district before mentioned in the Parish of Portland, whether inhabited or otherwise, and may remain thereon as long as they may deem requisite for the proper execution of the work, and may make all such excavations on the premises as may be expedient, and take up and remove any floors, timber, planks, or any walls, fences, or erections whatsoever, doing no unnecessary damage to the same, and carefully replacing the same upon the requisite work being performed; provided that no such entry shall be made between the hours of sunset and sunrise, nor without the permission of the owner or occupant, if resident on the premises, being first requested; but the refusal of such permission shall not prevent or delay the execution of the work.

15. In the event of any damage being done in the execution of the work's contemplated by this Act, the Commissioners shall pay to the party sustaining the same such compensation as may be mutually agreed on; and in case the said parties and Commissioners should not agree, it shall be the duty of the Commissioners, at the request of such party, to apply to some one of Her Majesty's Justices of the Peace of the City and County of Saint John for a warrant, which warrant such Justice is hereby authorized and required to issue, commanding the Sheriff or any Constable in the said City and County to summon a jury of five disinterested freeholders or occupiers of land in the said City and County, to assess the damages to be paid to the party complaining; the jury shall be sworn, and the Sheriff or his Deputy shall preside at such inquest, and the verdict shall be binding as well on the party complaining as on the Commissioners, who shall within ten days thereafter pay to such party the amount assessed; the costs of such inquest to be taxed and allowed by the Sheriff or his deputy, at the same rate as on ordinary inquests held before him, and shall be equally borne by the Commissioners and the party complaining, whose moiety thereof shall be deducted and retained out of the amount of damages assessed.

16. Persons intending to build or erect any dwelling house or building in any street of the said City on the east side of the harbour, or within the said district in the Parish of Portland, shall, before proceeding with the work, give notice in writing to the Commissioners of such intention, in order that proper sewerage and water supply may be provided under the direction of the Commissioners during the progress of the work; in case of neglect to give such notice, the party so neglecting shall forfeit and pay a penalty of five pounds, and the Commissioners shall forthwith proceed to execute the requisite works upon the premises at his expense, the costs of which, together with the said penalty, shall be recovered in the manner hereinafter provided.

17. The Commissioners may appoint, dismiss, reappoint, and supply from time to time as may be requisite, a Superintendent of such sewers and water supply, and such other officers, servants, or agents as may appear necessary, with such reasonable compensation to each as shall appear to such Commissioners adequate and proper.

18. The Superintendent, under the direction of the Commissioners, to have the general supervision of all the sewers in the said City on the east side of the harbour, and in the said district of the Parish of Portland, as well when built as while in course of construction; and whenever any sewer is ordered to be constructed or repaired, shall ascertain its depth, breadth, mode of construction, and general direction, and insert those particulars in a book to be kept by him for the purpose at the office of the Commissioners, and under their inspection, and shall also insert therein all entries made into such sewer at any time or times thereafter.

19. Whenever any vault, privy, drain, or place of deposit of offal in the said City on the east side of the harbour, or in the said district of the Parish of Portland, shall become offensive or obstructed, the same shall be cleansed, and if need be repaired, under such restrictions as the Commissioners may deem advisable, by the owner, occupant, or other person having charge of the premises, within a reasonable time after a notice in writing to that effect, given by the Superintendent or Commissioners, and in case of neglect or refusal to comply with such notice within six days thereafter, the Commissioners shall cause the same to be cleansed, repaired, or altered as they may see fit, at the expense of such owner, occupant, or person in charge, to be recovered as hereinafter provided.

20. All vaults, privies, cess pools, sewers, drains, and places of deposit of offal in the said City on the eastern side of the harbour, and in the said district of the Parish of Portland, shall be subject to the control and inspection of the Superintendent aforesaid, who, as well as the Commissioners, their servants and workmen, shall have power, and they are hereby authorized to enter upon any lands and tenements for the purpose of inspecting and regulating the same, and to do all such work in and upon the premises as may be necessary for the proper construction and laying down of sufficient conduits and pipes to convey the contents of such vaults, privies, cess pools, sewers, or drains, into any common sewer.

21. All mains, hydrants, service pipes, main and branch drains, sewers and other works, whether connected with sewerage or water supply of the said City on the east side of the harbour, and in the said district in the Parish of Portland, to be deemed and taken to [illegible] the property of the Commissioners for all legal purposes; and all wilful or malicious injuries to the same shall be deemed felony.

22. The assessments to be made under and by virtue of the ninth and thirteenth Sections of this Act, as well as the penalties which may from time to time be incurred under and by virtue of the sixteenth Section of the same, shall be binding upon the respective lands and tenements specified in the scales of assessment prescribed by this Act, as well as on the respective owners and parties therein mentioned, and the same shall be recovered with all incidental charges and expenses, by distress and sale of any goods and chattels found upon the premises, and in case of a deficiency of goods or chattels to satisfy the same, it shall be lawful for the said Commissioners to sequester and take and hold possession of the said premises until such deficiency be made good, and to collect, receive, and appropriate and apply the rents and profits of the said lands and premises in payment of the same; provided always, that no such distress or sequestration shall be made until the expiration of thirty days after a demand in writing under the hands of the said Commissioners, or

any two of them, of the moneys due in such case, shall have been served upon the owner, occupant, or person appearing to be in charge of the premises for the time being, and in case the same shall be unoccupied or vacant, then no such distress or sequestration shall be made until such demand as aforesaid shall have been advertised in one or more of the Newspapers published in the said City for four consecutive weeks prior to such distress or sequestration.

23. For the recovery of assessment and rates and of all arrearages, it shall be lawful for the Commissioners, or any two of them, to issue distress warrants and sequestration orders under their hands from time to time, in such form as they may determine, briefly reciting therein the amount to be levied in each case, and that such previous demand has been made as hereinbefore prescribed, and all Sheriffs and other peace officers are hereby required to execute such warrants and orders.

24. The moneys accruing from the annual income of water supply, together with all moneys arising from such local assessments and payments as are hereinbefore mentioned, shall be appropriated and applied by the Commissioners, in the first place to the discharge of the current expenses incurred in the execution of the trusts and duties required by this Act, and in the next place towards the half yearly dividends or payments of interest of the Debentures issued under the authority of this Act, and in case the whole income shall not be sufficient for the purposes aforesaid, the deficiency shall be made good and supplied by general assessment on the inhabitants of the said City on the east side of the harbour, and of the said district in the Parish of Portland, as hereinafter prescribed; provided that no general assessment shall be made during the first five years after this Act going into operation, unless the same may be required to supply any deficiency to meet the half yearly payments of interest on Debentures.

25. The Commissioners shall prepare a careful estimate in each year of the amount or sum of money which may be required to make good such deficiency as hereinbefore mentioned, for the purposes set forth in the twenty fourth Section of this Act; and shall on or before the thirty first day of March in each year, send a requisition in writing under their hands to the Assessors of rates and taxes for the said City and for the said Parish of Portland, to assess the same in the following proportions, viz:— Three fourth parts thereof upon that part of the City of Saint John which lies on the east side of the harbour, and the remaining fourth part upon the said district of the Parish of Portland, in like manner as other rates and taxes; and it shall be the duty of the said assessors, and they are hereby required forthwith to comply with such requisition, and to proceed thereon in the same manner as upon ordinary warrants of assessment, and the amounts so assessed shall be levied and collected in like manner as other City and County taxes, and paid over by the several collectors to the Commissioners.

26. The Commissioners shall keep regular books of account, in which shall be entered all moneys received and all disbursements made from time to time under the authority of this Act, and they shall annually submit a detailed account made up to the thirty first of December with proper vouchers, to two or more Auditors to be appointed for that purpose by the Common Council of the said City, which said Auditors shall report thereon to the Common Council, and furnish a copy

,of such report to the Commissioners, who shall publish the same for the information of the public on or before the thirty first day of March in each year.

27. The Commissioners and their officers and servants shall have the like protection in the exercise of their respective offices and in the execution of their duties, as Justices of the Peace now have under the laws of this Province.

28. The Auditors appointed under the twenty sixth Section of this Act shall receive from the Commissioners such remuneration as the Common Council may determine, not exceeding one pound each for each day's actual employment in the duty assigned them.

29. The Commissioners shall not be answerable the one for the other of them, nor for the acts, defaults, or misdoings of each other, and in case of any default or misapplication of the moneys received by any Commissioner by virtue of this Act, the whole real and personal estate of such Commissioner within the Province shall be liable for the same in like manner as for a debt due unto the Crown; and immediately upon such default or misapplication being made known to the Lieutenant Governor or Commander in Chief of the Province for the time being, it shall be his duty to order a Writ of Extent to be thereon issued.

30. Every officer or servant employed by the Commissioners, shall upon request by them so to do, account to them for all moneys received and all disbursements made by such officer or servant, on pain of immediate dismissal from his employment, and such other remedies to be pursued against him as may be legal.

31. If any officer or servant of the Commissioners shall refuse to account with them, and to produce and deliver up any vouchers, receipts, books, papers, goods, chattels, or moneys in his possession or power touching or concerning the said Commissioners, or the works to be carried on, or moneys to be raised by virtue of this Act, it shall be lawful for any Police Magistrate or any two Justices of the Peace for the said City and County, on complaint thereof made, to summon such offender to appear before them, and if he shall disobey such summons the said Magistrate or Justice shall and may commit such offender to the common gaol of the said City and County, there to remain until he shall have accounted and delivered up such property as aforesaid.

32. If any one of the Commissioners or any one acting on their behalf, shall make oath before any Justice of the Peace of the said City and County, that he has reason to believe, and does believe that any officer or servant of the Commissioners is about to abscond for the purpose of evading such accounting as aforesaid, such Justice shall immediately thereupon issue his warrant for bringing such officer or servant before any Police Magistrate or Justice aforesaid, who shall proceed thereon as is provided by the thirty first Section of this Act; provided that the person executing such warrant shall not keep such officer or servant in custody longer than thirty six hours before bringing him before such Police Magistrate or Justice aforesaid.

33. For the purpose of raising the necessary funds to purchase the property of the said Water Company, and carrying into effect the works contemplated by this Act, the Commissioners are

hereby authorized and empowered to make and issue from time to time, as they may deem expedient, Debentures in the form specified in Schedule A to this Act annexed, bearing interest at a rate not exceeding six per cent, per annum, payable half yearly, and redeemable at periods not exceeding forty years from the dates of the issuing of such scrip; provided that the whole amount of such Debentures shall not exceed the sum of seventy five thousand pounds currency of New Brunswick.

34. The Debentures shall be issued payable in sterling money of Great Britain, or in New Brunswick currency, as may be deemed advisable; they shall, if in currency, be redeemable with the Coupons attached, at the office of the Commissioners in the City of Saint John, and if in sterling at such banking house or office in London as the Commissioners shall from time to time appoint for that purpose; they shall be signed by all the Commissioners for the time being, and verified by their common seal of office, which common seal the Commissioners are hereby empowered to have and use as often as occasion may require, bearing such device thereon as they may determine. The Debentures shall also be countersigned by the Chamberlain of the City of Saint John, numbered consecutively, beginning with number one, and shall be issued in such sums as may be thought desirable, not less than one hundred pounds if in sterling, or twenty five pounds if in currency; provided that the Coupons may be signed by one only of the said Commissioners.

35. The Commissioners shall have power, and they are hereby authorized to appropriate any surplus of income over the expenditure required for the current expenses of the Commission, and the half yearly dividends on Debentures, to the payment of bonds, or in funding such surplus in such way and manner as they may devise.

Schedule A.

No. _____ Sterling Debenture.

£ _____ Sterling transferable.

Under the authority of the Legislature of the Province of New Brunswick.

[L. S.]

The Commissioners of Sewerage and Water supply of the City of Saint John and Parish of Portland, N. B., and their successors, do hereby promise to pay in London to the bearer hereof the sum of _____ pounds sterling _____ years from the date hereof, likewise the interest from the same date at the rate of _____ per cent, per annum, to be paid half yearly on the presentation of the proper Coupons for the same, as hereunto annexed, on the day of and the day of in each year in London.

In testimony whereof, we, the Commissioners of Sewerage and Water supply aforesaid, by virtue of the authority vested in us by the Act of the General Assembly of the said Province, intituled "An Act, &c.," have hereunto set our hands und affixed our seal of office, at the City of Saint John

aforesaid, and the Chamberlain of the City of Saint John has countersigned the same this _____ day of _____ A. D. 18_____.

A. B. }
C. D. } Commissioners.
E. F. }

B. R. Chamberlain of the City of Saint John.

Form of Coupon.

Province of New Brunswick.

Debenture No. _____ £_____ Sterling.

Pounds Sterling payable at the Banking House of _____ London, being six months interest on the above Debenture, due _____ day of _____ A. D. 18_____.

A. B. }
C. D. } Commissioners.
E. F. }

Province of New Brunswick.

No. _____ £_____ N. B. Currency.

Under the authority of the Legislature of New Brunswick.

The Commissioners of Sewerage and Water supply of the City of Saint John and Parish of Portland, N. B., promise to pay at their office in the said City, to the bearer hereof, the sum of _____ pounds current money of New Brunswick years from the date hereof, likewise interest from the same date, at the rate of _____ per cent. per annum, to be paid half yearly, on the presentation of the proper Coupons for the same, as hereunto annexed, on the day of in each year at the said office. In testimony whereof, &c. [same as in foregoing form.]

A. B. }
C. D. } Commissioners.
E. F. }

B. R. Chamberlain of the City of Saint John.

Form of Coupon.

Province of New Brunswick.

Debenture No. _____

£ _____ N. B. Currency.

Pounds N. B. currency payable at the office of the Commissioners of Sewerage and Water supply
in the City of Saint John, N. B., being six months interest on the above Debenture due _____ day of
_____ A. D. 18 _____.

A. B. }
C. D. } Commissioners, &c.
E. F. }