

Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1858. Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1858.

21 Victoria – Chapter 6

An Act in addition to and amendment of an Act intituled *An Act to authorize that part of the City Saint John, called Carleton, to obtain Water from Spruce and other Lakes, and the Mayor, Aldermen, and Commonalty of the said City, to issue Scrip to defray the expenses of so doing.* Passed 12th March 1858.

Section.

- Preamble; 18 V. c. 6.
- 1. Salary of Commissioners.
- 2. Two Commissioners may act.
- 3. Adoption of plans, and prosecution of works.
- 4. Sewers with branches, construction and assessment.
- 5. Act not to affect existing Contracts.
- 6. Superintendent of works and other officers, appointment of.
- 7. Damages, payment and ascertainment of.
- 8. Execution upon judgments against the Commissioners.
- 9. Stile and title for suits, &c.
- 10. Fuel, materials, salaries, &c. whence payable.
- 11. Assessments for what, on whom, and when to commence.
- 12. Rates and assessments, levy and collection of.
- 13. Assessments to bind property: recovery.

Section.

- 14. In lieu of a Sale, a Memorial of Assessment may be registered.
- 15. Books of Accounts; detailed statements; and audit.
- 16. Compensation of Auditors.
- 17. Water charges, regulation of.
- 18. Water charges to be paid to the City Chamberlain, to meet interest.
- 19. Sale of Carleton Water Scrip by the City Corporation.
- 20. Property in, and injury to works.
- 21. Protection in exercise of office.
- 22. Liability of the Commissioners.
- 23, 24. Accounts by subordinate officers; dismissal, and other remedies.
- 25. Arrest of officers about to abscond.
- 26. Certain parts of 18 V. c. 6, repealed.
- 27. Commissioners may make bye laws.
- 26. Assessment for the payment of the Water Scrip.

Whereas an Act made and passed in the eighteenth year of the Reign of Her present Majesty, intituled *An Act to authorize that part of the City of Saint John, called Carleton, to obtain Water from Spruce and other Lakes, and the Mayor, Aldermen, and Commonalty of the said City, to issue Scrip to defray the expenses of so doing*, has been found defective and insufficient for the purposes for which the same was designed and passed; for remedy thereof,—

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

- 1. The Commissioners appointed under the said Act shall be paid for their services as such, a salary not exceeding one hundred pounds currency each per annum.

2. All and singular the rights, powers, authorities, privileges and functions of the said Commissioners, under and by virtue of the said recited Act, shall and may at any time be exercised and discharged by the joint assent and authority of the said three Commissioners, or of any two of them; and every order, direction, warrant, contract, agreement, document, or other instrument in writing, relating to the doing of any matter or thing whatsoever within the scope of the authority and within the intent and meaning of the said recited Act, of the said Commissioners, shall be valid and effectual to all intents and purposes, if signed with the names and in the respective proper hand-writing of any two or more of such Commissioners.

3. The Commissioners are hereby authorized and empowered, with all convenient speed to adopt and carry into effect all such plans, operations, measures and works, for supplying the inhabitants of Carleton aforesaid with water, as they may deem meet and advisable; the extent to which such plans, operations and works shall be carried out, and the specific area or portion of the whole extent of Carleton aforesaid, in, over or through which such works and operations shall be carried on at any one time, or within any given period of time, being wholly in the discretion of the said Commissioners, not exceeding in cost the sum of twenty five thousand pounds, as provided for in the said recited Act, and to be from time to time determined upon, as to them may seem meet and expedient.

4. The Commissioners shall, as soon as they may deem it practicable and expedient, construct and lay down through and along the several Streets of Carleton aforesaid, 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; and all such 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, but it shall not be compulsory on the said Commissioners to expend or lay out any part or portion of the funds or moneys raised or to be raised under and by virtue of the said recited Act, or of this Act, or for the constructing or laying down of any such sewers, branch drains or pipes; provided, however, that when and as often as the inhabitants, or owners of property (or a majority thereof) of or in any particular street, alley or square in Carleton aforesaid, shall petition or request the said Commissioners to lay down and construct any such sewer and sewerage works as aforesaid, the said Commissioners shall forthwith proceed to lay down and construct such works, and shall make an assessment upon all the inhabitants of, or owners of property in or upon such street, alley or square, and upon all the real and personal estate situated, or lying in or upon, or fronting upon such street, alley or square, in such proportions as the Commissioners shall deem just, for the whole amount of the costs, charges and expenses of, and in anywise incidental to, the constructing and completing such works; and every such assessment shall be made, levied, collected, payable and receivable in the same manner as any other City taxes are made, levied and collected; provided always, that it shall be in the discretion of the Commissioners to require any such assessment to be paid by the respective parties assessed, either in one payment or by such instalments as the Commissioners may direct.

5. Nothing in this Act shall in anywise affect, or impair, or decide, or determine the validity of any contract, covenant, engagement or agreement heretofore made and entered into by the said

original Commissioners before their resignation of office, but every such contract, covenant, engagement or agreement shall be and remain as if this Act had not been passed.

6. The Commissioners may from time to time, at their discretion, and as they may deem requisite, appoint, dismiss, reappoint and employ a Superintendent of works, and such other officers, servants, and agents as may be required, and fix, allow, and pay to all such officers, servants, and agents respectively, such salaries, wages or compensation as to the said Commissioners may appear reasonable and proper; and may also settle, pay and discharge all such claims and accounts of the Commissioners first appointed under the said recited Act, and of any other persons, for services or otherwise, rendered, performed, or incurred under and by virtue of the said recited Act, and before the passing of this Act, as to the said Commissioners may seem just and reasonable.

7. In the event of any damage, direct or indirect, as well present as future, being done to the owner or owners of any lands, mills, or manufacturing establishments, or to the owner or owners of any water courses or water rights, or caused in or by the execution of any of the works contemplated by this Act, or by the said recited Act to which this Act is an amendment, the Commissioners shall forthwith on demand pay to the party or parties aggrieved, such amount of compensation or sum of money as may be mutually agreed upon by and between the said Commissioners and other parties respectively; and in case the said parties and Commissioners shall not agree, the amount of said damage and compensation may be ascertained and awarded by two disinterested arbitrators, one of whom shall be chosen and nominated by the said Commissioners, and the other by the said party or parties aggrieved; and in case of disagreement between the said arbitrators, they the said two arbitrators shall choose and appoint a third; and in case of their not agreeing in such choice within ten days after their appointment, then and in such case it shall and may be lawful for the Lieutenant Governor in Council for the time being, upon the application of the said party or parties aggrieved, to appoint the third arbitrator; and the decision and award in writing of the said arbitrators, or of any two of them, under their hands and seals, shall be final and conclusive, and binding on all parties concerned, provided their award be made and delivered to the parties within the period of sixty days from the time of their appointment; and in case the said arbitrators should not make their award within the time above specified, other arbitrators may be appointed in like manner, until an award shall be made; and in case the said Commissioners shall neglect or refuse to appoint an arbitrator as aforesaid, for the space of ten days after being requested by the opposite party so to do, or in case any arbitrator appointed by the said Commissioners shall neglect or refuse for the space of ten days after notification of his appointment to act in the said arbitration, the arbitrator appointed by such opposite party shall alone proceed with such arbitration, and his decision and award shall in such case be final, conclusive, and binding on all parties; and all sums of money so agreed upon or awarded, shall be paid in Carleton Water Scrip at par.

8. Upon any judgment recovered against such Commissioners (as such), execution may be issued against and levied upon all moneys, funds and assets of the said Commissioners (as such), in whosoever bands or custody the same or any of them may be; provided that the persons and private property or estate of the said Commissioners, or any of them, shall in no case be liable to,

or affected by, any such judgment, and shall not be levied upon or taken in execution, under or by virtue thereof.

9. All suits, actions and proceedings, whether at law or in equity, for the recovery, maintenance or defence of any moneys, dues, debts, damages, liabilities, rights, privileges, penalties, claims or demands whatsoever due or owing to, or by, or claimed or demanded by, or on account of, or from or against, or in anywise affecting or concerning the said Commissioners, as such Commissioners, shall be brought, commenced, instituted and carried on by or against the said Commissioners for the time being, by the collective name, style and title of "The Commissioners of Water supply and sewerage for Carleton," notwithstanding the cause or causes of action, or ground or grounds of defence, may have arisen or accrued previously to the appointment of such Commissioners, or either of them; and no such action, suit, or proceeding at law, brought by or against the said Commissioners, shall abate by reason of the death, removal or appointment of any such Commissioners after the commencement thereof; and service of any process made on any one of said Commissioners, or their Secretary or Clerk, shall be deemed a good service on all of the said Commissioners.

10. The Commissioners shall provide and furnish all such fuel, furniture, materials, and all things of every description, as in their judgment may be necessary for the office of the said Commissioners, and for the due and efficient maintenance and business thereof; and the costs and expenses of all such matters and things as are above mentioned in this Section, as well as the salaries, wages and compensation of the Commissioners, their officers, servants and agents, and all other payments which may be made or allowed by the said Commissioners, under and by virtue of the sixth Section of this Act, shall be paid by the said Commissioners out of the moneys realized by the sale of the said Carleton Water Scrip, for the purpose of this and the said recited Act.

11. From and after the completion of any works now in progress, under and by virtue of any authority derived from the said recited Act, to which this Act is an amendment, or from and after the rescinding or annulling of any existing contract for executing any such works, or whenever any good and sufficient mains for the supply of water to dwellings or other houses or establishments, shall be laid down and ready for the use of such dwellings, houses, or establishments within Carleton aforesaid, or in any part or portion thereof, and also from time to time when and as such good and sufficient mains shall be extended, laid down and ready as aforesaid, in and through other and more extensive portions of Carleton aforesaid, the inhabitants in general of, and all persons, whether resident or non-resident, being owners of real and personal estate in Carleton aforesaid, or in any part or portion thereof, shall be assessed by the said Commissioners for the same in each year, for a sum sufficient to defray the cost of managing and keeping the same in good order and .repair, on a scale to be fixed and determined by them, due regard being had to the value, local situation, and mode of occupation of all the several and respective premises, and to the proportionate benefit that may probably accrue to the several and respective inhabitants and persons or their property liable to such assessment, and also to the probable consumption of water in each case, in such districts or localities wherein such good and sufficient mains shall have been laid down as aforesaid; and a copy of every such assessment shall be filed by the

Commissioners in the office of the Common Clerk of the City of Saint John, within ten days after the making out of the same; and if any person shall consider himself aggrieved by reason of such assessment, it shall be lawful for him to appeal to the Common Council of the said City, provided that such appeal be made within thirty days after demand of payment of the amount assessed upon the party so appealing, and the decision of the Common Council on any such appeal shall be final, and such assessment shall thereupon be amended by the Commissioners, or be ratified and confirmed, as the said Common Council may order and direct.

12. All rates and assessments whatsoever made by the said Commissioners, under and by virtue of the authority of this Act, or of the said recited Act to which this Act is an amendment, and also all sums of money which may be payable under any agreement to be made by the Commissioners with any person for the use of the said water without the limits of the City, shall be levied and collected in the manner mentioned and provided in and by the fourth Section of this Act.

13. All assessments legally made by the said Commissioners shall, from the time of levying the same, be binding upon all and singular the goods and chattels, lands and tenements of the respective persons or parties so assessed, whether such persons or parties be resident or non-resident in Carleton aforesaid, and the same shall be recovered, with all incidental charges and expenses, by distress and sale of any goods and chattels belonging to such parties respectively, wherever the same may be found; and in case of any deficiency of goods and chattels to satisfy the same, the Commissioners may give public notice of any such assessment in any Newspaper published in the City and County of Saint John, such notice to be published for four consecutive weeks, if the party is a resident in the said City or County, and for twelve consecutive weeks if non-resident therein; and if after such notice duly published, the amount of such assessment, and all incidental costs and charges be not paid, any two Justices of the Peace, on the application of the said Commissioners, or any two of them, shall issue their warrant to the Sheriff of the said City and County, for the sale of so much of the real estate of the defaulting party as may be sufficient to pay and satisfy the same, with the costs of such execution and sale; and such Sheriff shall thereupon execute such warrant according to the exigencies thereof, and shall execute a Deed to the purchaser of the property so sold by virtue of such warrant; provided always, that no distress shall be made or levied on any goods or chattels as aforesaid, until thirty days after demand and refusal or neglect of payment of any such assessment.

14. It shall be in the option and at the discretion of the Commissioners in every case, in lieu of proceeding forthwith to authorize a sale of any real estate as aforesaid, to file or register a memorial of the amount or balance of any such assessment, costs and expenses, which may not have been levied or realized by distress and sale of goods and chattels; and such memorial being registered in the office of the Registrar of Deeds for the City and County of Saint John, shall have the same force and effect, and shall bind the lands and tenements of the defaulting party named therein, in the same manner as any registered memorial of a judgment recovered in the Supreme Court; provided always, that no such memorial shall be so filed or registered until after the expiration of the time herein before mentioned and required for advertising the assessment, and every such memorial shall set forth and state on oath the facts and particulars of such assessment

having been made, of the deficiency of goods and chattels to satisfy the same, and of the due publication or advertising of the same as aforesaid.

15. The Commissioners shall keep regular books of account, in which shall be entered all moneys received and all disbursements made by them from time to time under the authority of this Act, or of the Act to which this Act is an amendment, and a detailed statement of all such accounts shall be annually made up by the Commissioners to the first day of January in each year, and by them submitted with all proper vouchers to two or more Auditors to be appointed by the Common Council of the City of Saint John, by and with the consent of the majority of the said members of Common Council elected in and for Carleton, which said Auditors shall report thereon to the said Common Council, and furnish a copy of such report to the Commissioners, who shall publish an abstract thereof for the public information on or before the first day of March in each year; and the report so furnished to the Common Council shall be filed in the office of the Common Clerk of the said City.

16. The Auditors appointed under the fifteenth Section of this Act shall be paid by the Commissioners such remuneration as a majority of the said Members of Common Council may determine, not exceeding twenty shillings per day for each day's actual employment in the duty assigned to them.

17. The Commissioners shall at all times regulate the price, rents or rates to be charged or assessed for the use of the water supplied by the works contemplated by this Act, or by the said recited Act, of which this Act is an amendment, any thing in the said recited Act to the contrary notwithstanding.

18. The Commissioners shall pay the moneys from time to time collected for the use of the water aforesaid, into the hands of the Chamberlain of the said City, who shall keep a separate account of said moneys, to be applied to the payment of the interest on the said Carleton Water Scrip.

19. When any Carleton Water Scrip is issued under the fifth Section of the said recited Act, the said Mayor, Aldermen and Commonalty shall sell the same or any part thereof, from time to time, at public or private sale, or pledge the same for money borrowed for the purposes of this Act, or the said recited Act, on such terms and conditions as the Commissioners shall judge best, and the proceeds shall be paid over to the Commissioners.

20. All mains, hydrants, service pipes, main and branch drains, sewers, and other works, whether connected with sewerage or water supply of Carleton aforesaid, shall be deemed and taken to be the property of the Commissioners for all legal purposes, and every wilful or malicious injury to the same or any of them shall be deemed and held to be felony, and any person convicted thereof shall be imprisoned for a period not exceeding six months, but no part or portion whatsoever of the works or property mentioned in this Section shall in any case be liable to be, or be levied upon, or taken in execution.

21. 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.
22. 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, or the said recited Act, the whole real and personal estate of such Commissioner, within the Province, shall be liable for the same from the time of issuing a Writ of Extent, as hereinafter mentioned, 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 Administrator of the Government of the Province for the time being, by the Mayor of the City of Saint John, he may order a Writ of Extent to be thereon issued.
23. 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 and penalties as may be legally pursued and enforced against him.
24. 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 any of their works, moneys, affairs or business, it shall be lawful for any Police Magistrate, or any two Justices of the Peace for the said City and County of Saint John, on complaint thereof made, to summon such offender to appear before him or them, and if he shall disobey such summons, or if after obeying such summons he shall refuse or neglect to obey any order or judgment made or pronounced by such Police Magistrate or Justices, and which he shall be required to obey, the said Magistrate or Justices shall and may in either of such cases commit such offender to the common gaol of the said City and County, there to remain until he shall have fully obeyed such order or judgment, or accounted for and delivered up such property as aforesaid, or until discharged by such Magistrate or Justices.
25. If any one of the Commissioners, or any person 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 Justices as aforesaid, who shall proceed thereon as is provided by the twenty fourth 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 Justices as aforesaid.
26. The third, fourth, and seventh Sections of the said recited Act to which this Act is an amendment, and also all other parts or portions and provisions of the said recited Act in anywise inconsistent with or repugnant to any or either of the provisions of this Act, shall be and the same are hereby repealed.

27. The said Commissioners are hereby authorized and empowered to make such bye laws as they may deem necessary for the management of the said Water Works or Sewerage, not inconsistent with this Act, or the said recited Act, and any person convicted of a breach of said bye laws, shall be subject to a fine not exceeding forty shillings for each offence.

28. The said Mayor, Aldermen, and Commonalty of the City of Saint John aforesaid, are hereby authorized and empowered from time to time, when and as they may deem necessary and expedient, to assess the property, real and personal, of the inhabitants of that part of the said City called Carleton, for such sum or sums of money as they may deem best, to provide for the ultimate redemption and payment of the said Carleton Water Scrip.