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22 Victoria – Chapter 44

**An Act to authorize the extension of King's Street, in that part of the City of Saint John called Carleton. Passed 13th April 1859.**

Section.

1. Commissioners, appointment of; oath.
2. Authority to extend King's Street in Carleton.
3. Estimate of lands, &c. required, and apportionment of moiety on parties benefited: Plan and report - effect of.
4. Notice of estimate and apportionment before filing report; objections
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Section.

6. Payments by parties benefited: Assessment for other moiety and expenses.
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Be it enacted by the Lieutenant Governor, Legislative Council, and Assembly, as follows:---

1. It shall be lawful for the Governor in Council to appoint, and also to reappoint and supply as it may be necessary and expedient, three or more discreet and disinterested persons, as Commissioners to perform the duties hereinafter prescribed for them; who shall be sworn to the faithful performance of the trust and duties reposed in and required of them by this Act, previously to their entering upon the same.

2. The Mayor, Aldermen and Commonalty of the City of Saint John, are hereby authorized and empowered to extend and continue King's Street, in that part of the City of Saint John called 'Carleton,' from its present northeasterly termination at its intersection with the southwesterly line of Union Street, in a direct line with the present line of King's Street, and of the same width of ninety feet to the easterly side line of a cross-street between blocks A and B, as shewn on the plan of subdivision of Carleton Flats on file in the office of the Common Clerk, a distance of six hundred and forty feet; and it shall be the duty of such Commissioners forthwith to enter upon the duties of their appointment, and cause a survey and plan of the said proposed extension, and the several lots of land fronting thereon, to be made and prepared; and for that purpose and for any purpose connected with the continuation or extension of the said Street, the said Commissioners, or their employees, shall have full power and authority to enter into and upon the lands and tenements situate or being upon or near the said proposed extension, or for any other purpose connected with the said extension.

3. The said Commissioners, so soon as they shall have caused such survey and plan to be made, shall proceed to make a just and equitable estimate of the value of the lands, tenements, and hereditaments required for continuing and extending the said Street; and shall assess and

apportion the half of the amount of such estimated value on all the parties owning or interested in any lands, tenements, and hereditaments fronting on the said extension, or lying in the vicinity thereof, and in the discretion and opinion of the Commissioners to be benefited by such extension, according to the best of their judgment, in proportion to the benefit accruing to such parties respectively from the extension 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 this 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 shall set forth the names of the respective owners, lessees, parties, and persons entitled to 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, tenements, hereditaments, and premises fronting upon the said extension, or lying in the vicinity thereof, 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, recompense, or the allowance to be made for the value of the land, 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 damages, 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 when 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 of 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 extension of the said Street, without specifying the names, or the estates, or interest of such owners, proprietors, or 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 emitted 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 Report mentioned, that shall or may be so required for the purpose of extending the said Street, the same to be appropriated, converted, and used to and for such 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 at any time or times thereafter, except as hereinafter provided, take possession of the same, or any part or parts thereof, without any suit or proceedings 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 the whole on such part or parts of the said lands, tenements, hereditaments, and premises, that may be required for the extension of the said Street; provided always, that the said Mayor, Aldermen and Commonalty, shall not proceed to extend the said Street, or take possession of any such lands, tenements, hereditaments, and premises, until after the several sums or assessments required to be assessed in this Section, or so much thereof as may be necessary to pay for the land, tenements, hereditaments, and premises required to be taken for the purposes of this Act, shall have been levied and collected, and the said Mayor, Aldermen and Commonalty, are prepared to pay the several Sums allowed as and for compensation for the lands, tenements, hereditaments, and premises so required for the extension of the said Street, and shall actually pay or tender the amounts to the several and respective persons and parties entitled to receive the same, their authorized agents or representatives; provided that whenever the persons or parties, any or either of them, 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*, *femme covert*, or absent from the City of Saint John, and also in all cases where the name of the owner or owners, parties or persons entitled unto or interested in any lands, tenements, hereditaments, or premises that may be so required for any of the purposes aforesaid, shall not be set forth or mentioned in the said Report, or when the said owners, parties, or persons respectively being named therein, cannot upon diligent enquiry 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, parties, or persons respectively, into the Equity side of the Supreme Court of this Province, to be secured, disposed of, and improved, as the said Court shall direct; and such payment shall be as valid and effectual, to all intents and purposes, as if made to the said owners, parties, or persons respectively, themselves, according to their just rights, if they had been known, present, of full age, discover, or *compos mentis*.

4. 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 said estimate and assessment in the office of the Common Clerk 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 such deposit, 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 right 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, or such of them as shall have made such estimate and assessment, and the Commissioners, in case objections shall be so made, 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 correcting, but not otherwise, they shall and may correct the same accordingly; but should the Commissioners adhere to their original opinion, and notify the party objecting thereof, then it shall be lawful for the party interested objecting, to nominate, by writing, within five days after receiving such notice, one arbitrator, and the Commissioners shall name another, and they two shall name a third, who shall arbitrate and determine the question, provided their award, or the award of any two of them, is made in writing, and filed in the office of the Common Clerk within two days from the date of the

appointment by the Commissioners of the arbitrator, in which case the Commissioners shall correct the estimated assessment agreeably to such award.

5. The said Mayor, Aldermen, and Commonalty shall, within one calendar month after the said 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 and referred to in the said Report, in whose favour any sum or sums of money shall be estimated and reported by the said Commissioners, or otherwise deal with as in the third Section of this Act is provided, 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 extension of the said Street; and in case of neglect or default in payment, according to the intention and requirements of this Act, 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 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 reported as required for the purpose herein mentioned; and it shall be lawful for the plaintiff or plaintiffs to give any special matter in evidence trader 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.

6. 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 in lands and tenements deemed to be benefited by the extension and continuation of the said Street, as mentioned in the said Report, shall he borne and paid to the said Mayor, Aldermen and Commonalty, by the said parties and persons respectively; and the residue or remainder, being a moiety or half part of all the moneys 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 any sum necessary for mating and finishing the said extension, and also all expenses, disbursements, and charges, which may arise or be incurred under the provisions of this Act, shall and may be assessed on that part of the said City of Saint John which Ties on the western side of the Harbour; 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, being one moiety or one half of the said moneys, 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 County, Town, or Parish charges.

7. 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 and proprietors thereof, or parties interested therein; and as well the said owners and proprietors thereof, and parties interested therein, as 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 and occupied by him or them, or wherein he, she, or they, are so interested, or at which the owners or 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 Mayor of the said City, by Warrant under his hand and seal, 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 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 there be, after deducting all just charges, to [which] 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 any or either 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 after such general declaration; or the same may be recovered by sale of the respective lands, tenements, hereditaments, and premises, for and on account of which the said respective sums shall be so assessed: And it shall be the duty of the Mayor of the City of Saint John, upon the requisition of the person so appointed to receive the said sums or assessments, and after demand of such person of any sum of money which is hereby declared to be a lien or charge upon any such lands, tenements, hereditaments, and premises, of and from the owner or owners, any or either of them, of such lands, tenements, hereditaments, and premises, in respect of which the said sum or sums shall have been so assessed; or from and after twenty days after such requisition published in the Royal Gazette, and one or more of the Newspapers published in the City of Saint John, by Warrant under his hand and seal, directed to the Sheriff of the City of Saint John, to cause the said lands, tenements, hereditaments, and premises to be sold at public auction, and out of the proceeds thereof, the amount of the assessment against the owner or owners thereof, or parties interested therein, together with lawful interest thereon, to be paid to such receiver, and the overplus, if any, arising from such sale, after deducting all just charges and expenses, to be paid to the owner or owners of the lands, tenements, and hereditaments so sold as aforesaid, or person or persons entitled to receive the same; or if he, she, or they cannot, upon

diligent enquiry be found or ascertained to the satisfaction of the said Mayor, then to be paid into the Equity side of the Supreme Court of this Province, to be secured, disposed of, or invested as the said Court shall direct.

8. The Sheriff shall give ten days notice of the time and place of such sale, in two or more of the Newspapers published in the City of Saint John, and shall execute a Deed or Deeds of the lands, tenements, and hereditaments so sold, to the purchaser or purchasers thereof, which shall be good and effectual to pass the title thereto as against the owner, and all and every person and persons made liable to pay any sum or sums of money in respect thereof, under and by virtue of this Act, and for payment and collection of which the said lands, tenements, hereditaments, and premises shall have been sold as aforesaid: Nothing in this Act contained shall affect any agreement between landlord and tenant, or any other contracting parties as between themselves, respecting the payments of any such assessments or charges as aforesaid, but they shall be answerable to each other in the same manner as if the provisions in this Act contained concerning the same had not 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 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.

9. In all cases, the acts, decisions, and proceedings of the major part of the Commissioners so to be appointed for the purposes of this Act, who shall be acting in the premises, shall always be as valid, binding, and effectual, as if all the Commissioners had concurred or joined therein; and such of the Commissioners who shall enter upon the duties of their appointment shall be entitled to receive such sum for each day they shall be respectively actually employed thereon, as the said Mayor, Aldermen and Commonalty shall name, to be paid by the said Mayor, Aldermen and Commonalty, and included in the before mentioned sums of money, and considered part of the disbursements and expenses incurred by virtue of this Act, besides all reasonable expenses of maps, surveys, and plans, clerk-hire, and other necessary expenses and disbursements.