

Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1859. Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1859.

22 Victoria – Chapter 53

An Act to amend an Act intituled *An Act to authorize the draining of German Town Lake, in the County of Albert.* Passed 13th April 1859.

Section.

1. District called 'Lake District' erected.
2. Commissioners of Sewers for District, appointment of: oath;
3. Empowered to cut canals from Lake to Shepody River; and
4. Agree as to damages.
5. Arbitration in case of disagreement.
6. Appointment of arbitrators when owners fail to nominate.

Section.

7. Compensation of arbitrators.
8. Power to remove obstructions; and
9. Erect dykes.
10. Commissioners to have powers conferred by Title X, Rev. Stat.;
11. To appoint necessary officers.
12. Liability for neglect to assess.
13. Inconsistent parts of 19 V. c. 26, repealed.

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

1. That all the marsh land, bog land, low land, alder land, and lands covered with water, in the Parish of Harvey, in the County of Albert, known and included in and by the following description and boundaries, be and the same is hereby erected into a District, to be called the Lake District, that is to say: By a line starting at the Shepody River in the channel of Beaver Brook, so called, and following said channel in its several courses to a certain line ditch between lands of David H. Calhoun and James Kinne; thence along said ditch to the channel of the Upper Branch, so called, of Beaver Brook aforesaid; thence along the channel of said Upper Branch, to line of land owned by John Downing, or to a place opposite Spruce Point, so called; thence in a direct course or along said Downing's line to said Spruce Point; thence following the edge or margin of the upland in its several courses to channel of said Shepody River, near William Tingley's west line; thence along channel of said River down stream to first mentioned bounds.
2. The Governor in Council may appoint not less than three or more than five Commissioners of Sewers for said District, who shall be invested with the same powers as other Commissioners of Sewers in said County, and who shall be duly sworn to the faithful discharge of their duty.
3. The said Commissioners, or a majority of them, are hereby authorized and empowered to cut and make a canal or canals, from German Lake, in said district, to Shepody River, or so far as the same may be found necessary for the draining of said Lake and adjoining lands, to intersect said River, if necessary, at such place or places as they may deem most advisable; and for this purpose may cut through and across any public highway lying between said Lake and the outlet of said Canal or Canals, and may also appropriate so much of the lands lying between said Lake and

intersection with said River, or the outlet aforesaid, not exceeding six rods in width for any one canal, as may be deemed necessary for the purposes of this Act.

4. The Commissioners or a majority of them may agree with the owner or owners of any land through which the said canal or canals may be required, and fix and determine the amount of damages, if any, accruing to each, to be paid out of the first assessment as hereinafter provided, which shall be collected after such damage has been incurred.
5. In case the parties cannot agree, as provided by the preceding Section, the amount of damages may be determined by two arbitrators, being disinterested freeholders of said County, one of whom to be chosen by said Commissioners, or a majority of them, and the other by owner or occupier of the land in question, and in case of further disagreement said two may choose a third disinterested freeholder; the decision and award of said arbitrators, or any two of them, shall be final and conclusive.
6. If the said Commissioners, or a majority of them, or the owner or owners of any such land, refuse or fail to choose an arbitrator as provided by the preceding Section, or in case no award be rendered within ten days after the choosing of arbitrators by said Commissioners, or owner or owners, then either party may apply to a Justice of the Peace, who shall be empowered to issue his Warrant, directed to any Sheriff or Constable within the County, commanding him to summon five disinterested freeholders in said County, who shall be sworn, as a Jury, to examine the said land where the said canal or canals are intended to be made, and appraise the damages to the respective owners thereof: The Commissioners shall attend with the said arbitrators or jury, and mark the courses, width, and boundaries of said proposed canal or canals: The arbitrators or jury aforesaid, shall consider all benefits as well as damages accruing or likely to accrue from the making of said canal or canals.
7. Each arbitrator or juror summoned as aforesaid, shall be entitled to receive five shillings, and the officer summoning ten shillings; and these and all other necessary expenses of the jury shall be paid by the party applying for the Warrant, upon the rendering of the award, the same to be included in the account of general expenses for draining and paid to the party advancing the same when collected by assessment as hereinafter provided.
8. The Commissioners are also empowered to remove, or cause to be removed, any obstructions in the way of said canal or canals, or any dams or other obstructions which may tend to prevent at any time the necessary venting or flowing of the same, and in case of any damage accruing to private property, to agree upon the amount of the same, and make compensation in the same way as provided by the fourth, fifth, and sixth sections of this Act for the payment of damages incurred by the right of way.
9. The Commissioners are empowered and required to erect dykes or aboideaus [aboteaux] on either side of said Canal or Canals, sufficient to prevent the flowage of the adjacent marshes out of said district, and within the district if necessary.

10. The Commissioners shall have all the general power and authority conferred on Commissioners of Sewers by Title X, of Revised Statutes, including the employing of workmen at reasonable wages, and the taxing and assessing of the owners of lands in said district for defraying all expenses of said draining or dykeing, having due regard to quantity and quality of land of each proprietor respectively, and benefits to be received, allowing for a difference of improvement in different lots according to locality, with respect to flowage of tide water, or any other local benefits: The Commissioners may also lay off and mark off such portions or allotments of work as may conveniently be contracted for, which may be let by auction to lowest bidders, at least ten days notice in three public places in vicinity being first given of the time, place, and description of work required, and at the time and place may let the same, and enter into written contracts, with sufficient sureties, for the faithful and satisfactory performance of the work in time and manner specified.

11. The Commissioners shall appoint all necessary officers to act under them, who shall be duly sworn, and shall be invested with the same powers and subject to the same duties and penalties as are imposed on similar officers under and by virtue of Acts now in force regulating Commissioners of Sewers in said County.

12. If the said Commissioners shall neglect or refuse to make the necessary assessments for paying any sum or sums agreed upon or awarded for land damages, within one year from the time of said agreement or award, they shall be held personally liable for the same, and may be sued therefor by the party or parties entitled to receive the same.

13. So much of the Act passed 19th Victoria, Chapter 26, intituled An Act to authorize the draining of German Town Lake, in the County of Albert, as is inconsistent herewith, be and the same is hereby repealed.