

Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1860. Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1860.

23 Victoria – Chapter 63

An Act in addition to and amendment of an Act intituled *An Act in addition to and amendment of an Act 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.'* Passed 9th April 1860.

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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*, and also an Act made and passed in the twenty first year of the Reign of Her present Majesty, intituled *An Act in addition to and amendment of an Act 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'*, require certain additions and amendments in order to carry out the purpose of the said Acts;—

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

1. That the Mayor, Aldermen and Commonalty of the said City shall have power and are hereby authorized from time to time to issue "Carleton Water Scrip" to an amount not exceeding fifteen

hundred pounds, in addition to and over and above the amount of twenty five thousand pounds in and by the fifth Section of the said first above recited Act authorized to be issued.

2. That such additional "Carleton Water Scrip" shall be issued in the form and on the requirement as in the said recited Act is set forth, and shall be payable with interest in the same manner, and redeemable at the same time as in the said recited Act specified, and the proceeds of the same shall be applied by the Commissioners appointed under the said recited Acts, or any other Commissioners hereafter to be appointed, in the first place and before the expenditure of such proceeds for any other purpose whatever, in payment of interest already due or which may be due on the first day of May next, and for such interest only, and for none that may be due after that period on any "Carleton Water Scrip" issued under the said recited Acts or under this Act, and after such payment of interest, in any other manner, and for such other purposes, except for further payments of interest, as to the said Commissioners shall seem expedient, in order more effectually to carry out the purposes of this Act, and of the said several recited Acts to which this Act is an amendment, and in defraying any necessary expenses incurred by the said Commissioners in the discharge of their duty, any thing in either of the said recited Acts to the contrary notwithstanding.

3. That from and after the completion of any work now in progress, or during the progress of any work now in the course of completion, and from and after the completion of any work authorized by this Act, or by the two several Acts to which this Act is an amendment, or during the progress of any such work, or from and after the rescinding or annulling of any existing contract, or contract hereafter to be entered into for executing such work, or any part thereof, under the authority of this Act or of the said two recited Acts to which this Act is an amendment, 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 portions of Carleton aforesaid, or through Streets hereafter to be laid out in Carleton aforesaid, all the male inhabitants of Carleton aforesaid, being of the age of twenty one years or upwards, and liable in any way to be rated for taxes, whether they be owners of property, real or personal, in Carleton aforesaid, or not, and also all other 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, charges and expenses of 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 has accrued or 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; provided always, that it shall be in the discretion of the said Commissioners, and they shall have power if they deem it expedient so to do, to require any such assessment to be paid by the respective parties assessed, either in one payment only or by such instalments and at such times as the Commissioners may in and by such assessment direct; 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 an 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 shall be final, and such assessment shall therefor be amended by the Commissioners or be ratified and confirmed as the said Common Council may order and direct.

4. In the event of any damage 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; and the seventh Section of the said last recited Act is hereby repealed.

5. That the Commissioners shall have power to appoint, and are hereby authorized to appoint and employ, and from time to time at their discretion, and as they may deem requisite, to dismiss, re-appoint and employ a Collector of Rates, to collect all Assessments or Water Rates now made or hereafter to be made by the Commissioners under the said two recited Acts, or under this Act, or any other Act relating thereto, and to pay and allow the said Collector such compensation or percentage as to the said Commissioners may appear reasonable and proper; provided always, that every such appointment, dismissal or re-appointment shall be made in writing, under the hands of the Commissioners or any two of them, and be filed in the Office of the Common Clerk of the said City, before such Collector or any other Collector appointed after dismissal of any former Collector shall act.

6. That in case the Commissioners shall not deem it expedient to apply the proceeds of the additional Carleton Water Scrip, authorized to be issued by the first Section of this Act, to the payment of the interest in the said first Section of this Act named, then the Commissioners already appointed and now acting under and by virtue of the said two recited Acts, or any other Commissioners hereafter to be appointed under and by virtue of this Act, or of the said two recited Acts to which this Act is an amendment, or any other Act relating thereto, shall have power to assess, and are hereby authorized from time to time as may be necessary to assess, for the payment of the said interest, or any part or proportion of the same, all persons liable to be assessed under and by virtue of the third Section of this Act, and the Commissioners shall also have power, and are hereby authorized from time to time to assess all persons liable to be assessed under and by virtue of the third Section of this Act, beyond the amount of the said interest, and over and above all other rates or assessments, such further sum or sums, amount or amounts, as may in the opinion of the said Commissioners be sufficient to reduce and ultimately to pay off the whole amount of principal and interest due on Carleton Water Scrip, within the period of forty five years from the first issue of Carleton Water Scrip, under the said two recited Acts to which this Act is an amendment, or either of them.

7. That all penalties or fines for breach of any of the bye laws, rules and regulations, or requirements made or hereafter to be made by the Commissioners under and by virtue of the said recited Acts, or either of them, or any other Act relating thereto, shall be recoverable, with costs, before the Police Magistrate of the said City of Saint John, on complaint of the said Commissioners, or of any other person on behalf of the said Commissioners, and such fines shall be paid by the said Magistrate to the said Commissioners, and shall be used and applied by them in and about carrying out the purposes of this Act, and of the said two recited Acts to which this Act is an amendment.

8. That any power, jurisdiction or authority in and by the said two recited Acts and in and by this Act given to or vested in two Justices of the Peace, is hereby also given to and vested in the Police Magistrate of the City of Saint John.

9. That all rates and assessments whatever made by the said Commissioners under the authority of this Act, or of the said two recited Acts to which this Act is an amendment, and all and every instalments or instalment of such rates or assessment, and also all sums of money in any way payable to the said Commissioners as such, under this Act or under the said two recited Acts to which this Act is an amendment, or any other Act relating thereto, shall be payable to the Collector to be appointed under this Act by the said Commissioners, and shall be recoverable before the Police Magistrate of the said City of Saint John, with costs, upon an affidavit of the said Collector that the said rates or assessments, or instalments thereof, have been demanded from the parties liable to pay the same and have remained unpaid by the space of ten days after such demand, and the same shall be recovered with costs and 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.

10. That as well the chattels real as the real estate of defaulters shall be liable to be sold by the Sheriff under the thirteenth Section of the said last recited Act, and for the Warrant (A) the sum of ten shillings shall be paid to the Justices or Police Magistrate issuing the same, and the Sheriffs fees on the execution of said Warrant shall be the same as now allowed by law upon execution issuing out of the Supreme Court: Provided always, that no sale of any chattels real, or real estate, shall be sold under any such Warrant until such Sheriff shall have given two weeks previous notice of the time and place of such sale by publication in a Newspaper published in the said City and County; and the said Sheriff shall execute the said Warrant and return the same to the said Justices or Police Magistrate within two months from the date of the same being placed in his hands, and pay over the proceeds to the said Justices or Police Magistrate for the said Commissioners, and no irregularity in the previous proceedings shall avail as against a bona fide purchaser of the said chattels real or real estate at any such sale by the said Sheriff.

11. That the commitment of any person to the common gaol under the twenty fourth Section of the said last recited Act, shall be by Warrant (B) under the hand of the committing Magistrate or Justice.

12. That all proceedings for penalties or fines under and by virtue of this Act, or of the said two recited Acts to which this Act is an amendment shall, unless in this Act otherwise ordered, as nearly as may be, be in the form as now provided in the Act of the General Assembly regulating proceedings upon Summary Convictions before Justices of the Peace, and shall be recoverable before the Police Magistrate of the said City of Saint John.

13. That the said Commissioners and all their officers and servants, and all other persons acting under this Act, shall be entitled to the same protection with reference to actions against them, as Justices of the Peace in this Province are now entitled to by any Act or Acts of the General Assembly of this Province.

14. That all parts, portions and provisions of the said two recited Acts to which this Act is an amendment, in any wise inconsistent with or repugnant to any or either of the provisions of this Act, shall be and the same are hereby repealed.

15. The several Forms in Schedule to this Act contained, or Forms to the like substance and effect, shall be deemed good in law.

16. That the Chairman of the Board of Water Commissioners at present in office, or whoever may be hereafter appointed, shall, before doing any matter under this Act, or the Acts to which this is an amendment or addition, or any other Acts relating thereto, enter into a Bond to the Mayor, Aldermen and Commonalty of the City of Saint John, with two sufficient sureties in such form and sum not exceeding one thousand pounds, as the said Mayor, Aldermen and Commonalty may prescribe and approve.

SCHEDULE A.

Warrant to sell Chattels Real and Real Estate.
CARLETON WATER ASSESSMENT.

City and County }
of Saint John. } S.S.

To the Sheriff of the City and County of Saint John:

Whereas A.B. of [here describe the defaulter's place of abode and occupation, if known,] hath been duly assessed by 'The Commissioners of Water Supply and Sewerage for Carleton,' in the sum of [here state the amount of the full assessment] which amount [or if any part be paid them, part of which amount, that is to say the sum of _____] together with the further sum of _____ being the costs and expenses, are now due and unpaid to the said Commissioners:

And whereas it hath been made to appear to the undersigned, two of Her Majesty's Justices of the Peace in and for the said City and County [or to me the undersigned Police Magistrate of the City of Saint John,] that the said A. B. hath no goods and chattels which can be levied, and that due public notice of such assessment hath been duly published [here insert name of paper] a Newspaper published in the said City and County:

We [or I] do therefore, in pursuance of the Act of the General Assembly in such case made and provided, hereby command you, that out of the chattels real, lands and tenements of the said A. B. in your bailiwick, and by the public and open sale thereof, or of so much or such part or portion thereof as may be sufficient for that purpose, you cause to be made and levied the said sum of [assessment or balance of assessment,] and also the said costs and expenses, together also with the sum of ten shillings for this Warrant, and also all Sheriff's, officers' or other fees and expenses consequent upon the execution hereof, or incidental thereto, and for so doing this shall be your warrant and authority, and make return thereof to us [or me] as by law required.

Given under our hands and seals [or my hand and seal] at the City of Saint John, this ____ day of _____ in the year of our Lord one thousand eight hundred and _____.

I. J. [L.S.]
or
C. D. [L.S.]
E. F. [L.S.]

SCHEDULE B.

Warrant to commit for refusing to obey order of Police Magistrate or two Justices.

City and County of }
Saint John. } s.s.

To the Sheriff of the City and County of Saint John, or to any Constable or other Peace Officer of the said City and County, and to the Keeper of the Common Gaol of the said City and County: Whereas A. B. [here describe what he is, whether Officer, Servant, &c..] of the Commissioners of Water Supply and Sewerage for Carleton, hath been charged before me by the said Commissioners [or if two Justices of the Peace, before us] with [here state shortly the substance of charge]; and whereas the said A. B. having been by me [or by us] duly summoned to answer such charge or complaint, hath disobeyed such summons [or if party appeared and after trial refused to obey order on judgment, hath appeared before me (or as) at the return of such summons, and hath been duly convicted on such charge and complaint,] and been therefor by me, [or us] ordered and adjudged [here shortly recite substance of order or judgment]; and whereas the said A. B. hath disobeyed the said order and judgment, I [or we] do therefore, in pursuance of the Act of the General Assembly in such case made and provided, hereby command you, the said Sheriff, Constable, or other peace officer, forthwith to convey the said A. B. to the said common gaol, and there safely keep the said A. B. until he shall have fully obeyed the said order or judgment, or until he be otherwise discharged by due course of law.

Given under my [or our] hand and seal [or hands and seals] this ___ day of _____ in the year of our Lord one thousand eight hundred and _____.

I.J. [L.S.]

or

C. D. [L.S.]

E. F. [L.S.]