

*Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1865.* Fredericton, NB: G. E. Fenety, Printer to the Queen's Most Excellent Majesty, 1865.

28 Victoria – Chapter 24

**An Act to enlarge and improve the Landings at Indian Town in the Parish of Portland, and for other purposes. Passed 8th June, 1865.**

Section.

1. Commissioners, how appointed.
2. Site of Street and Public Landing described.
3. Survey, when and by whom made.
4. When Survey and Plan made, Commissioners to estimate value of land; Plan to be filed with Clerk Peace; Commissioners to report to Sessions; lands so taken to be held by the Justices in trust.
5. Commissioners to file copy of estimate with Clerk of Peace; objections to estimate, how settled; proviso.

Section.

6. When Sessions may order payment to owners of land.
7. Sums assessed to be paid to Justices; second assessment on whom made.
8. Assessments made to be a charge on lands mentioned in Commissioners' Report.
9. Compensation to Commissioners.
10. Commissioners to report on Harbour line, how appointed.

Whereas in consequence of the late disastrous Fire at Indian Town, in the Parish of Portland, a suitable opportunity has occurred for enlarging and improving the Landings at that place, and the approaches to the same, for the accommodation of Steamers and other Vessels plying between Saint John and Fredericton, and other places on the River;—

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

1. It shall and may be lawful for the Lieutenant Governor in Council to appoint and to re-appoint and supply, as it may be expedient, three or more discreet and disinterested persons Commissioners for the purpose of performing the duties hereinafter prescribed, which said Commissioners, before entering on the duties of their office, shall severally take and subscribe an oath or affirmation, as the case may require, before any Justice of the Peace for the City and County of Saint John faithfully to perform the duties required of them by this Act.
2. There shall be opened a large space for a Street and Public Landing, commencing at Main Street from a point on the northern line of said Street, to be made by running fifty five feet from the southwest corner of Bridge Street when so enlarged, and from the point so made forty nine feet, and thence northerly one hundred and nine feet three inches, until it reaches Robertson's Wharf, so called, thence easterly along the southerly line of the said Wharf fifty two feet, and thence southerly one hundred and nine feet three inches to the point or place of beginning as aforesaid; and also, it shall and may be lawful for the said Commissioners to set apart and appropriate to public uses such part or portion of Slip now fronting and running along the

southern line of said Robertson's Wharf, extending from the said land lastly described outwards in a westerly direction, as may by them be deemed necessary for the purpose of enlarging the Public Landing, thereby filling up or covering the same, or any part thereof, with a Wharf or Bridge, or both.

3. The said Commissioners shall immediately after their appointment, cause a survey and plan of the said proposed landing place and other pieces and parcels of lands so to be appropriated and taken for the purposes aforesaid, and the several lots of land, wharves and streets in connection therewith, to be made and prepared, and for that purpose the said Commissioners, their surveyors or agents, shall have full power to enter into and upon the lands, tenements, wharves, houses, or other buildings or properties so to be appropriated and near to or in connection therewith.

4. The said Commissioners as 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 enlarging and improving the landings aforesaid, and shall assess and apportion so much thereof on all the parties owning or interested in any lands, tenements and hereditaments lying or being on the landings, or in the discretion of the Commissioners directly benefited thereby according to their best discretion, in proportion to the benefit accruing to such parties respectively from the enlarging and improving of such landings, and shall thereupon file the new plan in: the Office of the Clerk of the Peace of the City and County of Saint John, as and for a record of their doing in that respect, and shall forthwith report their proceedings, and whatever may be connected with their duties, to the Sessions of the Peace of the said City and County, to be filed with the said Clerk, and by him to be delivered to the Mayor or Recorder; and in the said report the said Commissioners shall set forth the names of the respective owners, lessees, parties and persons entitled unto or interested in such lands, tenements, hereditaments and premises mentioned in their said report, and each and every part and parcel thereof, as far as may be ascertained by them, and an apt and sufficient description of the respective lots, pieces, or parcels of land, or other premises that may be required for the purposes aforesaid, and also of the respective lots or parcels of land and other the premises near to or connected with the said streets, landings or improvements so assessed by the said Commissioners, for the benefit as aforesaid, and also the several sums estimated and assessed as and for the compensation and recompense or allowance to be made for the value of the land and other premises taken for the purposes aforesaid, as also the sums assessed on the same for the benefit and advantage of the respective owners of the fee or inheritance of such lands and premises respectively, or for the compensation or damage, and for the assessment for the benefit of the respective owners of the leasehold estate, or interest therein separately; but in all and each and every case where the owners and parties interested, or their respective estates or interests are unknown, or not fully known to the said 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 and parties interested therein, for the compensation and damage and for the assessment for the benefit and advantage to 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 and premises respectively, by and in consequence of the

enlarging and improvements aforesaid, without specifying the name or the estates or interest of such owners, proprietors, and 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 Justices in Session as aforesaid, as upon the owners, lessees, parties or persons interested in and entitled unto the lands and premises mentioned in the said report; and the said Justices shall become possessed of all the said lands and premises in the said report mentioned, that shall or may be so required for enlarging, or for the improvements aforesaid, by and in the name and style of "The Justices for the City and County of Saint John," to be appropriated, converted and used to and for such purposes accordingly, and for no other purpose whatsoever, by the said Justices in any General or Special Sessions, and by any committee or committees, officers or servants from time to time to be appointed by them, and thereupon the said Sessions, or any committee, officers or servants as aforesaid, may immediately, or at any time or times thereafter, 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 whatever on the said lands and premises; but the said Commissioners shall not 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 in the whole, on such part or parts of the said lands and premises as may be required for the enlarging or improvement aforesaid.

5. The said Commissioners, after completing their said estimate and assessment, and at least fourteen days before they make their report to the said Sessions, shall deposit a true copy or transcript of such estimate and assessment in the Clerk's office aforesaid, for the inspection of whomever 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 the said deposit thereof in the said office, and of the day on which it will be finally filed as and for a record of their proceedings; and any person whose rights may be affected thereby, who shall object to the same or any part thereof, may within ten days after the first publication of the said notice, state his objection to the same in writing to the said Commissioners; and the said Commissioners, or such of them as may have made such estimate and assessment, in case any objection shall be made to the same in writing to the said Commissioners as aforesaid, shall reconsider their said estimate and assessment, or the part thereof objected to, and in case the same shall appear to them to require correction, they shall correct the same accordingly; but should the said 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, which two arbitrators so nominated shall name a third, who shall arbitrate and determine the question; provided that their award or the award of any two of them be made in writing and filed in the Clerk's office aforesaid within ten days from the date of the appointment of the arbitrators, in which case the said Commissioners shall correct the estimated assessment agreeably to such award.

6. The said Sessions shall within one calendar month after the several assessments made or to be made as herein provided for the purposes of this Act, are collected and received by them, order the payment by the County Treasurer out of the same, to the respective persons and parties

mentioned in the said report in whose favour any sums of money shall be estimated and reported by the said Commissioners, the respective sums so estimated and reported in their favour respectively, deducting in each case any 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 widening, enlarging, or improvements aforesaid; and in case of neglect or default in payment of the same within the time aforesaid, the respective parties aforesaid so entitled to be paid as aforesaid, may retain the possession of the land required to be taken from them until paid what is due for principal and interest; but whenever the owners or proprietors of such lands and premises, or parties interested therein, or persons in whose favour any such compensation shall be reported, shall be under the age of twenty one years, *non compos mentis*, *feme covert*, or absent from the City and County of Saint John, and when snob owners or other parties interested shall not be named in the report, or being named cannot on diligent enquiry be found, it shall be lawful for the said Sessions to order the sums reported in their favour to be invested in good securities on interest, in the name of and to be received again or recovered by the said Justices for the City and County of Saint John for the purpose of paying such claims, on the demand of any party legally entitled, with interest from the time when payable by such report.

7. 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 respectively in the said report mentioned as owners and proprietors or interested in land deemed to be benefited by the enlarging and improvements aforesaid, shall be borne and paid to the said Justices, by the name and style of "The Justices for the City and County of Saint John," by the said parties respectively; and the residue or remainder of all the moneys which may be due for and on account of the sums or estimates of compensation and recompence that may be reported by the Com-missioners in favour of the respective parties deemed entitled thereto, and any sums which may by them be deemed necessary for the making and finishing the said landings, or carrying out any street or a part thereof, and improving any other of the parts or portions taken for such landing places or other improvements, and also all expenses, disbursements and charges which may arise or be incurred under the provisions of this Act, shall and may be assessed upon that part of the Parish of Portland and the inhabitants thereof, which may not be included in the said assessment of the said Commissioners, and upon the City of Saint John on the eastern side of the Harbour and the inhabitants thereof, not exceeding in the whole the sum of two thousand dollars, in two equal annual assessments; and the said Sessions are hereby authorized and required to order and direct the said residue and remainder, and all the said other sums, expenses, disbursements, and charges, to be forthwith assessed, levied, collected, and paid, with the charges thereof, in such pro-portions and in the same manner as any rates for public charges may be raised by virtue of any Act or Acts for that purpose made or to be made.

8. The several sums or assessments hereinbefore directed to be paid to the said Justices, shall be a lien or charge on the lands and premises in the said report of the Commissioners mentioned, or upon the estate and interest of the respective owners, lessees, and parties in the same, for or on account of which the said respective sums shall be so assessed by the said Commissioners, and as well the said owners and parties interested therein, and also the occupants of each and every of them, shall also be respectively liable to pay on demand the respective sums mentioned in the

said report of the said Commissioners, as therein and thereby assessed, to the County Treasurer for the said Sessions, and subject to their order; and in default of payment of the same, or any part thereof, it shall and may be lawful for the Mayor of the said City and any two of the Justices aforesaid, by Warrant under their hands and seals, to levy the same, with lawful interest thereon, from and after thirty days after filing the said report, together with the charges for collecting, by dis-tress and sale of the goods and chattels of such owners, occupants, or parties interested, so refusing or neglecting to pay the same, rendering the overplus, (if any) after deducting all such charges, to such owners, occupants, or parties interested; or the same may be recovered of and from such parties or persons aforesaid, in an action of debt or assumpsit, together with lawful interest and costs, by the said Justices by the name and style aforesaid, in which it shall be sufficient to declare generally for so much money due by virtue hereof to the said Justices by the name and style aforesaid, and every matter may be given in evidence under such declaration; but nothing herein contained shall affect any agreement between landlord and tenant, or other contracting parties, respecting the payment of any such assessment or charges, but they shall be answerable to each other in the same manner as if the provisions in this Act had not been made; and if any money shall be recovered from any person under this Act for which any other person ought so to be answerable, the same may, with interest and costs, be recovered from the party so answerable under such agreement, in an action for money paid, and the said report, with proof of payment, shall be conclusive evidence in such suit along with the said agreement.

9. The Commissioners aforesaid shall be entitled to receive such sums of money for each day's actual employment as the said Justices shall allow, and the same shall be included in the assessment for disbursements incurred under this Act, besides all reasonable expenses for maps, surveys, plans, Clerk hire, and other necessary expenses for disbursements.

10. The Governor in Council are hereby empowered to appoint three Commissioners for the purpose of examining and reporting on a Harbour line at Indian Town aforesaid, beyond which no Wharves or erections of any kind shall be built or extended into the river, and for defining the said line, and in what manner and under what terms, conditions and limitations the several proprietors or public authorities may be authorized or permitted to build out to the said line, with such plans and other suggestions for the public benefit and the improvements of landing places, slips and wharves at Indian Town, as they may think necessary, and with authority to call witnesses and evidence before them, and hear and take such testimony as they may think proper.