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29 Victoria – Chapter 24 (Session 2)

An Act to authorize the extension of Saint John Street from Duke Street to Reed's Point Wharf, in the City of Saint John, on the Eastern side of the Harbour. Passed 9th July, 1866.

Section.

1. Commissioners, by whom appointed.
2. St. John Street to be opened and extended; width of street defined.
3. Duty and power of Commissioners.
4. Commissioners to make estimate of value of land, apportion amount, & report. When Mayor, &c. may take possession; proviso.
5. Commissioners to deposit copy of estimate with Common Clerk, and to give public notice of such deposit. If objections made, arbitrators to be appointed.
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Section.

8. Assessments to be paid to Mayor, &c. to be a lien on lands.
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Whereas the opening and extension of Saint John Street, in the City of Saint John, from Duke Street to Reed's Point Wharf, on the eastern side of the Harbour, is deemed highly necessary, and would be a great public benefit;—

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

1. It shall and may be lawful for the Governor in Council to nominate and appoint, and also to re-appoint and supply as it may be expedient or necessary, three discreet and disinterested persons, Commissioners for performing the duties hereinafter in this behalf prescribed, which said Commissioners, before they enter on the performance of the duties of their appointment, shall severally take and subscribe an oath or affirmation before any Justice of the Peace in and for the City and County of Saint John, faithfully to perform the trust and duties required of them by this Act.
2. Saint John Street, in the City of Saint John, on the eastern side of the Harbour, shall be opened and extended from the south line of Duke Street to Reed's Point Wharf aforesaid, so as to make a street fifty feet in width, the easterly line whereof shall begin

on the southerly side of Duke Street at a point ninety feet distant westerly from the west side line of Prince William Street, and shall extend southerly, parallel to said westerly line of Prince William Street, and at ninety feet distant therefrom, and directly prolonging such easterly line of Saint John Street extension, until it strikes the Reed's Point Wharf; and the westerly line whereof shall begin on the said southerly line of Duke Street at a point one hundred and forty feet distant westerly from the said west side line of Prince William Street, and shall extend southerly, parallel to easterly line of such Saint John Street extension, until it strikes the Reed's Point Wharf, so as to make a street fifty feet in width from the south side of Duke Street to Reed's Point Wharf aforesaid.

3. It shall be the duty of such Commissioners forthwith to enter on the duties of their appointment, and cause a survey and plan of such proposed extension of the street aforesaid, and the several lots or parcels of land through which it shall pass, and fronting thereupon, to be made and prepared; and for this purpose the said Commissioners shall have full power and authority to enter in and upon the lands and tenements situate and being upon or near to the said street, and for any other purpose connected with the opening and extending of said street.

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 opening and extending the said street, and shall assess and apportion (1/3) one third of the amount of such estimated value on all the parties owning or interested in any lands, tenements and hereditaments fronting on the said street, or lying in the vicinity thereof, and in the discretion and opinion of the Commissioners benefited thereby, according to their best discretion, in proportion to the benefit accruing to such parties respectively from the opening of the said street, and shall thereupon file the said plan with the Common Clerk of the said City, at his Office, as and for a record of their doings in that 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 who shall make the same, 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 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 lands, or other tenements, hereditaments and premises that may be required for the purpose of opening the said street; and also of the said respective lots or parcels of lands and other tenements, hereditaments and premises 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 and recompense, or the allowance to be made for the value of the land and other 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 damage, 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 where 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 opening of the said street, without specifying the names of the estates or interests 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 entitled 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 said report mentioned, that shall or may be so required for the purpose of opening the said street; the same to be appropriated, converted and used to and for such said 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 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 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 in the whole on such part or parts of the said lands, tenements, hereditaments and premises that may be required for the opening and extending of the said street; provided always, that whenever the persons or parties, any or either of them, in whose favour any such sum or sums or compensations shall be so reported, shall be under the age of twenty one, *non compos mentis*, *femme covert*, or absent from the City of Saint John, and also in all the 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 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 invested as the said Court shall direct; and such payments shall be as valid and effectual to all intents and purposes, as if made to the said owners, parties and persons

respectively themselves, according to their proportions, as if they had been known, present, of full age, *des-covert*, or *compos mentis*.

5. The said Commissioners, after completing their said estimates and assessments, 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 at least ten days 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 thirty 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 any one of them, who should have made or consented to 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 in writing, 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 who shall have made or consented to such estimate and assessment, and they two shall name a third before proceeding to arbitrate in the matter, who shall arbitrate and determine the question; and their award, or the award of any two of them, shall be made in writing and filed in the office of the Common Clerk within fifteen 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; provided that, in case the said arbitrators do not agree upon such third person within three days after the appointment of such two arbitrators, the said Commissioners shall forthwith proceed to nominate another arbitrator, and the party interested objecting also to nominate another arbitrator, and so on *toties quoties* until the said two selected arbitrators agree on a third; and further provided, that in the event of the said three persons when selected as arbitrators, or some two of them, not agreeing upon any decision, three new arbitrators to be appointed as hereinbefore first provided, and so on *toties quoties* until such arbitrators or some two of them do agree upon their decision; and further provided, that in case the said party or parties objecting do not, within three days after notice in writing of the nominating of an arbitrator by the Commissioners making or assenting to such estimate and assessment, appoint an arbitrator and notify the Commissioners, or one of them, making or assenting to such estimate and assessment; then the said estimate or assessment to be final and conclusive; that either party may be heard before said arbitrators by counsel; and that such arbitrators shall, if required by either party, hear the parties and their witnesses upon oath, which oath the said arbitrators, or any one of them, are hereby authorized to administer.

6. The said Mayor, Aldermen and Commonalty shall proceed forthwith to collect the said several estimates and assessments for compensation reported or found due as aforesaid, and 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 fourth Section of this Act is provided, the respective sum or sums so estimated and reported in their favour as aforesaid respectively, first deducting in each case any sum or sums that such parties respectively may, on the said report and assessment of the Commissioners, be declared liable to pay by reason of the benefit to them respectively accruing from the opening and extension of the said street; and in case of neglect or default by the said Mayor, Aldermen and Commonalty in payment, according to the intention and requirement 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 such collection and receipt as aforesaid, and after such 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 said application therefor, together with costs of suit, in an action of debt or assumpit 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 under 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.

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 and persons respectively in the said report mentioned as owners or proprietors of or parties interested in lands or tenements deemed to be benefitted by the extension and continuation of the said street, as mentioned in the said report, shall be borne and forthwith paid to the said Mayor, Aldermen and Commonalty by the said parties and persons respectively; and the residue or remainder, being two-thirds 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 making and finishing the said extension, and also all expenses, disbursements and charges which may arise and be incurred under the provisions of this Act, shall and may be assessed on that part of the said City of Saint John which lies on the eastern 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 two-thirds of the said moneys and expenses hereinbefore mentioned,

together with any sum necessary for making and finishing the said extension, together with the charges for assessing, levying, and collecting the same, to be assessed upon that part of the City of Saint John on the eastern side of the Harbour, and the inhabitants thereof, in time extending over ten years, and the same shall be assessed, levied and collected in proportions in each year as follows:--- One-tenth part of such whole amount, with the expenses of assessing and collecting the same, to be so assessed, levied and collected in each year for ten years in succession, in addition to the annual assessments, and shall be levied, collected and paid in the same manner as any assessment under the Saint John City Assessment Act, 1859, and the several Acts in force in amendment thereof.

8. 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, for or on account of which the said respective sums shall be so assessed by said Commissioners; and the said owners and proprietors thereof, and parties interested therein, shall moreover be respectively liable to pay on demand in writing the respective sum or sums mentioned in the said report of the said Commissioners, at which the respective lands, tenements, hereditaments and premises so owned by him, her, or them, or wherein he, she or they are so interested, or at which the owners or proprietors thereof shall be 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 or Recorder of the said City, and any three of the Aldermen, from and after thirty days from the time of such demand, by Warrant under the hand and seal of the said Mayor or Recorder, and the hand and seal of the said Aldermen, directed to the Sheriff of the said City and County of Saint John, to cause the said lands, tenements, hereditaments and premises, or a sufficient portion thereof to satisfy the claim and expenses, 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, 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.

9. The Sheriff shall give ninety days notice of the time and place of such sale in three 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 or 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 have been recovered by distress, suit, or otherwise, to sue for and recover the money so paid by or recovered from him or them, with 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.

10. 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 sums for each day they shall be respectively actively employed therein, 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 expense incurred by virtue of this Act, besides all reasonable expenses of maps, surveys, and plans, clerk's hire, and other necessary expenses and disbursements.

11. It shall and may be lawful for the Mayor, Aldermen and Commonalty of the City of Saint John, and they are hereby authorized and empowered to borrow such sums of money as may be necessary for the purpose, to be applied towards the opening and building up the said street, and the expense connected therewith.

12. Such sums of money shall be borrowed in loans of not less than four hundred dollars each; and Debentures, payable in ten years from the issuing of such Debentures respectively, shall be issued to the person or persons from whom any such loan may be obtained, and in such form as the said Mayor, Aldermen and Commonalty may deem expedient, with coupons for interest payable half-yearly, which Debentures shall be called "Saint John Street Extension Debentures," and shall be sealed with the common seal of the said Corporation, and signed by the Mayor and Common Clerk, and shall be numbered consecutively according to the order in which the same shall be issued, and the coupons for interest shall be signed by the Mayor and Common Clerk, and a Record thereof shall be kept by the Common Clerk.

13. The said Debentures so to be issued under the provisions of this Act, shall be negotiable in the same manner as promissory notes payable to bearer, and the holders

thereof shall be entitled to receive interest on the same semi-annually at the rate of six per cent. per annum, to be paid by the Chamberlain of the said City out of the funds hereinbefore provided, on presentation of the coupons for the same.

14. The money raised under this Act shall be paid by the lenders thereof to the Chamberlain, and shall be by him paid out upon the order of the Common Council to the contractors or workmen who shall be employed under the provisions of this Act, or other the persons entitled to such payment hereunder.

15. The amount required to be assessed on the City of Saint John on the eastern side of the Harbour, under the provisions of this Act, shall be assessed in a time extending over ten years, one-tenth part being assessed in each year until the whole amount is paid as hereinbefore prescribed; and the amount raised by the Chamberlain on all such amounts shall constitute a fund, to be called "The Saint John Street Extension Fund," and shall be appropriated as follows: In the first place to pay the interest on such Debentures issued under the provisions of this Act, and the balance remaining in the hands of the Chamberlain in each year, shall form a sinking fund, which is to accumulate from year to year until required, and be appropriated in payment of such Debentures as they become due, and shall not be used or applied for any other purpose whatsoever.

16. The moneys forming the said sinking fund shall from time to time, as the Common Council may direct, be invested by the Chamberlain, in the name of the Chamberlain of the City of Saint John, in good public or landed securities as the Common Council may from time to time approve, and the sums so invested, and the securities therefor, and the interest thereon, shall be held by the Chamberlain in trust for the purposes of this Act.