

Laws of His Majesty's Province of Upper Canada, passed in the year 1836. Toronto: Robert Stanton, 1836.

6 William IV – Chapter 39 (Session 2)

An Act to improve the Navigation of the Inland Waters of the District of Newcastle. The Royal Assent given by Message to the Legislature, 28th November, 1836.

Whereas it appears that an important accession to the agricultural and mineral products, as well as products of the Forest, would accrue to the Province, and the Inhabitants of a large and fertile section of the Country would be most materially benefited by removing the obstructions to the free navigation of certain parts of the inland waters in the District of Newcastle: And whereas, it appears by the report of N.H. Baird, Esquire, Civil Engineer, that the sum of Sixteen Thousand Pounds, will be required to complete the navigation at the following places, namely—At the head of Heeley's Falls, on the River Trent, in Seymour, the sum of Seven Hundred and Fifty Pounds:—At Crooks' Rapids, on the same River, the sum of Seven Thousand Five Hundred Pounds:—On the Otonabee River, below Peterborough, the sum of Four Thousand Pounds:—At the outlet of Buckhorn Lake, the sum of Seven Hundred and Fifty Pounds:—At Bobcaygeon Falls, the sum of Five Hundred Pounds:—At Purdy's Mills, in Ops, the sum of Two Thousand Five Hundred Pounds: And whereas it is expedient to appropriate the above sum of Sixteen Thousand Pounds: Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled, "*An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, entitled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'*" and by the authority of the same, That it shall and may be lawful for the Governor, Lieutenant Governor, or Person Administering the Government of this Province, to issue his Warrant or Warrants upon the Receiver General, in favour of the Commissioners appointed by this Act, for such sum or sums as they may require from time to time, in the construction of said Works, not exceeding in all the sum of Sixteen Thousand Pounds, and that the Receiver General shall pay the same out of any monies which may be or shall come into his hands, under and by virtue of any Act of the Parliament of this Province.

II. And be it further enacted by the authority aforesaid, That the Honorable Zaccheus Burnham, John Gilchrist, Alexander McDonell, Archibald McDonald, John Brown, Robert Jameson, George S. Boulton, A. S. Fraser, Ebenezer Perry, and Peter Perry, Esquires, shall be Commissioners, whose duty it shall be, if they or a majority of them may think it expedient, to cause further Surveys, Plans and Estimates to be made, of all or either of the before mentioned places of contemplated improvements, by a competent Engineer, and may alter the plans or description of Works as now recommended in N.H. Baird's Survey, if they think proper, but shall in no case diminish the size and depth of the Locks as now recommended; and the said Commissioners, or a majority of them, shall and may contract with such person

or persons as may undertake the construction of any one or all of the said improvements; and the said Commissioners, or a majority of them, shall do and perform all and whatever act or acts, thing or things, necessary and proper to carry the intention of this Act into full effect, and shall report to the Governor, Lieutenant Governor, or Person Administering the Government of this Province, for the information of the Legislature, on or before the first day of December, in each and every year, all matters by them done or performed by virtue of this Act, with an account in detail of all monies by them received and paid out under the provisions thereof.

III. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the Governor, Lieutenant Governor, or Person Administering the Government of this Province, to nominate and appoint for the time being, under his hand and seal, such person or persons as he shall think fit, to fill any vacancy or vacancies which from time to time shall or may happen in the said Board of Commissioners, by death, resignation or otherwise.

IV. And be it further enacted by the authority aforesaid, That the said Commissioners, or a majority of them, may from time to time appoint such Superintendents, Engineers, Agents, Officers, Workmen and Servants, as they may deem necessary, and pay them such salaries and wages as they may consider just and reasonable.

V. And be it further enacted by the authority aforesaid, That no Commissioner or Officer appointed under the provisions of this Act, shall have any pecuniary interest in any job or contract, taken for the completion of any part or the whole of the said Works.

VI. And be it further enacted by the authority aforesaid, That the said Commissioners, or a majority of them, are authorised and empowered to enter upon and take such quantity of land immediately adjoining the erection of any Dam or Dams, Lock or Locks, as may be considered absolutely necessary for the convenience of constructing, attending upon, and at any future time repairing the same, which lands shall be vested in His Majesty, his Heirs and Successors, for the benefit of said Works and Navigation.

VII. And be it further enacted by the authority aforesaid, That after any land or ground shall be entered upon, or taken as aforesaid, being necessary for the construction of such Works as may be required to complete and keep up said Navigation, the Commissioners, or a majority of them, are hereby empowered to contract, compound, compromise and agree, with all Bodies Politic, Communities, Corporations, aggregate and sole Guardians, and all other person or persons, for themselves, or as Trustees, not only for themselves, their Heirs and Successors, but also for and in behalf of those whom they represent, for the absolute surrender of so much of the said lands as shall be required as aforesaid, or for the damages which he, she or they, may be entitled to receive from the said Commissioners, in consequence of any lands being flooded by the erection of the dams necessary to complete said Navigation.

VIII. And be it further enacted by the authority aforesaid, That the said Commissioners, of the Superintendent, shall have power to enter upon any unenclosed lands, and take therefrom any trees, timber or stone, or other materials necessary for the erection and construction of any dam, lock, or other works, necessary to complete said Navigation.

IX. And be it further enacted by the authority aforesaid, That if before the commencement of any Works on or adjoining the lands of any person or persons as aforesaid, no agreement shall have been made as to the value of such lands required, or for compensation for any contemplated damages caused in any other way, by the erection or maintaining of any Dams or other Works necessary for completing and keeping up said Navigation, the Commissioners, or a majority of them, before mentioned, shall at any time after the commencement of said Works, upon the notice or request in writing of the Owner or Agent of any such lands, appoint one of their number as an Arbitrator, who, at the day to be named in such notice, shall attend upon the premises in question, to meet the Arbitrator to be appointed by such Claimant, and such two Arbitrators, before proceeding to consider such claim, shall appoint a third Arbitrator, and such three Arbitrators being duly sworn to make a just and true award upon the claim submitted to them, and after carefully investigating the merits of such claim, either by their own actual observation, or by Witnesses duly sworn, if required, which oath any one of the Arbitrators is hereby authorised to administer, make their award in writing under their hands, of the amount of damages to be paid to such Claimant: Provided always, that any award made under this Act shall be subject to be set aside on application to the Court of King's Bench, in the same manner and on the same grounds as in ordinary cases of submission by the parties, in which case reference may be again had to Arbitrators, as hereinbefore provided.

X. And be it further enacted by the authority aforesaid, That in estimating the claim of any person or persons to compensation for lands taken, or for damages done, under the authority of this Act, the Arbitrators assessing such value or damage, shall take into their consideration the benefit which will probably accrue to such person or persons from the construction of such Works, by its enhancing the value of his property, or producing other equivalent or greater advantage: Provided always, nevertheless, that it shall not be competent to any Arbitrator to direct any person or persons claiming as aforesaid, to pay a sum in consideration of such advantages, over and above the amount at which the damages of such persons shall be estimated.

XI. And be it further enacted by the authority aforesaid, That all Locks which shall be constructed on said Navigation, shall be of the following dimensions, namely—One hundred and thirty-four feet in length; thirty-three feet in breadth; and five feet water above the mitre sill.

XII. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the Commissioners, or a majority of them, to grant or lease, for a term not exceeding twenty-one years, by an instrument under their hands and seals, the use of any water which they may permit to be taken from any of the erections or Dams for Hydraulic purposes; and

all sums arising therefrom shall be paid into the hands of the Receiver General, in the same manner as is provided respecting the Tolls and Dues arising from the use of such Navigation.

XIII. And be it further enacted by the authority aforesaid, That the said Commissioners, or a majority of them, shall, at their first General Meeting held after the whole or any part of the said Navigation is completed, ascertain and fix the Rates and Dues to be taken by virtue of this Act, and to alter such Rates and Dues at any subsequent period, first giving two months notice of such their intention; and a Schedule of Rates and Does shall be affixed on the different Locks and public stopping places along said Navigation.

XIV. And be it further enacted by the authority aforesaid, That the said Rates and Dues shall be paid to such person or persons, at such place or places, near to the said Locks or stopping places, in such manner and under such regulations as the said Commissioners shall direct or appoint; and in case of neglect or refusal of payment of any such Rates or Dues, or any part thereof, on demand, to the person or persons appointed to receive the same as aforesaid, the said Commissioners may sue for and recover the same in any Court having jurisdiction thereof; or the person or persons to whom the said Rates or Dues ought to be paid, may seize and detain such boat, vessel, barge or raft, in respect of which such Rates and Dues ought to be paid, and retain the same until payment be made, together with the expense of such detention.

XV. And be it further enacted by the authority aforesaid, That an, account of all Rates and Dues received by the Commissioners, under the authority of this Act, shall be rendered to the Inspector General of the Province, on or before the thirty-first day of December in each year; and the amount thereof, deducting any necessary expenditure on account of said Navigation, shall, within ten days thereafter, be transmitted to His Majesty's Receiver General of this Province, to be applied towards the payment of the principal and interest of any Loan contracted in pursuance of this Act; and after the interest and the whole of the principal sum loaned under the provisions of this Act shall be paid and discharged, the proceeds of the said Rates and Dues, after deducting the expenses of the collection, and defraying necessary repairs, shall be subject to the disposal of the Legislature of the Province.

XVI. And be it further enacted by the authority aforesaid, That any boat, barge or vessel, used on the said Navigation, without being regularly gauged or measured, and the tonnage marked conspicuously upon the same, shall be liable to be seized and detained until the same is done; which mark shall be evidence of the tonnage of such boat, barge, or vessel, in regard to the payment of the Rates and Dues; and if the Commissioners shall have reason to think that any boat is under-rated as to its measurement, they shall have power to appoint, a proper person, to re-measure and mark the same, at the expense of the owner.

XVII. And be it further enacted by the authority aforesaid, That all penalties and forfeitures for offences against this Act, or against any Rule, Order or By-Law, of the said Commissioners, to be made in pursuance hereof, shall, upon sufficient proof of the offence

before any two Justices of the Peace, be levied by distress, and sale of the goods and chattels of the parties offending, by Warrant under the hand and seal of such Justices, and the overplus, if any, after deducting the charges of prosecution, shall be returned to the owner or owners thereof; and in case sufficient distress cannot be found, it shall be lawful for such Justices to commit such offender or offenders to the Common Gaol of the District, for a term not exceeding thirty days, unless satisfaction be sooner made, by paying such penalties, forfeitures, and all reasonable charges attending the same.

XVIII. And be it further enacted by the authority aforesaid, That all penalties and forfeitures for offences against this Act, or the provisions thereof, when levied and satisfied in manner aforesaid, shall be paid to the said Commissioners, and accounted for in the same manner as other Rates and Tolls, and shall be applicable to the same purposes.

XIX. And be it further enacted by the authority aforesaid, That if any action shall be brought or commenced against any person or persons for any thing done or to be done in pursuance of this Act, or in execution of the powers and authorities, or the orders and directions hereinbefore given or granted, every such suit shall be brought or commenced within six calendar months next after the fact committed; or in case there shall be a continuation of damages, then within six calendar months after the actual doing or committing such damage shall cease, and not afterwards; and the Defendants in such action or suit may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereon, and that the same was done in pursuance and by authority of this Act; and if it shall appear to be done so, or if any action or suit shall be brought after the time limited by this Act, a verdict shall be given for the Defendants.

XX. And be it further enacted by the authority aforesaid, That whenever the Commissioners, appointed under this Act, shall be named therein, it shall be taken and construed to mean the majority of the said Commissioners; and that the said Commissioners shall have power to make all such Rules and Regulations as to them shall appear needful and proper touching the management and disposition of the monies coming into their hands, and touching the duty and conduct of all Officers, Clerks and Servants, employed by them, and all such other matters as appertain to the conduct of the said Commissioners, in carrying into effect the provisions of this Act.

XXI. And be it further enacted by the authority aforesaid, That the said Commissioners shall have power and authority to appoint one of their own number to be Superintendent, to act in all matters relating to the management and control of the works to be carried on under the provisions of this Act, subject to such restrictions as the said Commissioners shall think proper to impose; and the Commissioners shall meet during the progress of said works at least every two months, for the purpose of inspecting and investigating the progress of the works, and all matters relating to the same, at such time and place as they may think proper; and shall allow to the person appointed by them as Superintendent such compensation for his services as may seem to them just, to be paid out of the monies which shall come into their hands, under the provisions of this Act.

XXII. And be it further enacted by the authority aforesaid, That the said Commissioners shall hold their first Meeting at such time and place as the majority of them shall appoint.

XXIII. And be it further enacted by the authority aforesaid, That all monies which shall be paid by the Receiver General of this Province, in discharge of such Warrant or Warrants as may, from time to time, be issued by the Governor, Lieutenant Governor, or Person Administering the Government of this Province, in favour of such Commissioners, shall be accounted for through the Lords Commissioners of His Majesty's Treasury, in such manner and form as His Majesty, His Heirs and Successors, shall be pleased to direct.