

Laws of His Majesty's Province of Upper Canada, passed in the year 1857. Toronto: Stewart Derbshire & George Desbarats, 1857.

20 Victoria – Chapter 115

An Act to authorize the Draining of Lake Wawanosh in township of Sarnia. Assented to 10th June, 1857.

Whereas there is a body of water and marsh in the Township of Sarnia, in the County of Lambton, known as Lake Wawanosh, covering seven thousand acres of land, which said Lake greatly retards the progress of the Township, and injuriously affects the health of the inhabitants; And whereas a large number of the inhabitants of the Township of Sarnia have petitioned Parliament to authorize the Draining of the said Lake: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

I. It shall and may be lawful for the Township Council of the Township of Sarnia, to pass a By-law for the Draining of the said water known as Lake Wawanosh, by widening, deepening and extending the cut (known as the *Cull drain*) now made from the said Lake or from the Perch stream to Lake Huron; and for this purpose the said Township Council are hereby authorized, by their duly appointed agents, to enter upon and into the lands and grounds of, or belonging to the Queen's Majesty, Her Heirs or Successors, or to any other person or persons, bodies corporate or politic, and to survey and take levels of the same or any part thereof, and to set out and ascertain such parts as they shall think necessary and proper for the making of the said Drain and its appurtenances, and for the completion of the same, according to the true intent and meaning of this Act, and all such other matters and conveniences as they shall think proper and necessary for making, preserving, improving, completing and using the said Drain, and also to bore, dig, trench, cut, remove, take, carry away, and lay soil, day, stone, rubbish, trees, roots and stumps of trees, beds of gravel, or sand, or any other matter or thing which may be dug or got in the making of the said Drain, or in deepening or improving the same, or out of any land of any person or persons adjoining or contiguous thereto, and which may be proper or convenient for carrying on the repairing of the said Drain, or which may hinder or obstruct the making, completing and using the same, and the same to lay in or upon the boundaries of the said Drain or the rivers and lakes forming portions of the said Drain, or in and upon the land of any person or persons adjoining thereto; And also to make, build, erect and set up in and upon the said Drain, and at the points of entrance to the same or any part thereof, or upon the land adjoining or near the same, such and so many bridges, tunnels, aqueducts, sluices, rivers, pens for water, tanks, reservoirs, drains, and other ways, roads and works, as the said Council shall think requisite and convenient for the purposes of the said Drain; and also, from time to time to alter, enlarge, amend and repair the said works or any of them, for conveying all manner of materials necessary for making, erecting, altering or repairing, widening or enlarging the said works or any part thereof; also to erect and keep in repair any piers, bridges or other works, in, upon and across any rivers, brooks or lakes; And also to construct, make and do all other works, matters and things whatsoever, which they shall think necessary and convenient for the making, effecting, preserving, improving, completing and using the said Drain in pursuance of and within the true meaning of this Act, they,, the said Council, doing as little damage as may be in the execution of the powers hereby granted, and making satisfaction in manner hereinafter mentioned,

for all damages to be sustained by the owners or occupiers of such lands, hereditaments, and tenements.

II. The said Council may contract, compound, compromise, settle and agree with the owners or occupiers respectively, of any land through or upon which they may determine to cut and construct the said Drain or other works hereby authorized, or the owners or occupiers of any land injuriously affected by the said works, either directly or consequentially, either for the purchase of so much of the land as they shall require, or for damages which he, she or they shall or may be entitled to recover, in consequence of any of the works hereby authorized being constructed in or upon his or their respective lands, or of any damage either direct or consequential which any person or persons may suffer from or by occasion of such works; and in case of any disagreement between the said Council and the owner or owners, occupier or occupiers aforesaid, the amount of the purchase moneys for the land and tenements purposed to be purchased, or the amount of damages to be paid, to them as aforesaid, shall be ascertained by arbitration in manner hereinafter mentioned.

III. In each and every case where any dispute shall arise between the said Council and any other person or persons whomsoever, touching any purchase, sale or damage, or the money to be paid in respect thereof, under the provisions of this Act, the same shall be referred to, ascertained, and determined by three indifferent persons, one of whom shall be chosen by the owner or occupier of the land, or other person or persons interested, who shall disagree with the said Council in respect to the compensation or purchase money to be paid him, her or them respectively, pursuant to the provisions of this Act; one other of the arbitrators shall be chosen by the said Council, and the third shall be chosen by the two persons to be so named as aforesaid; and such three persons shall be the arbitrators to award, determine, adjudge, and order the respective sums of money which the said Council shall pay to the respective persons entitled to receive the same, and the award of such three persons, or any two of them shall be final; and the said arbitrators so appointed are hereby required to attend at some convenient place on or near the line of the said Drain, to be appointed by the said Council, within eight days after notice in writing shall be given them by the said Council for that purpose, then and there to arbitrate, award and determine such matters as shall be submitted to their consideration by the parties interested; and each of the said arbitrators shall be sworn before any one of Her Majesty's Justices of the Peace for the said county, any of whom may be required to attend the said meeting for that purpose, well and truly to assess the damages between the parties according to the best of his judgment; Provided that no arbitrator shall be compellable to attend such meeting who ordinarily resides more than twenty-five miles from the place of meeting: Provided also, that if the owner or owners, or other person or persons interested in any land required for or injured by the carrying out the purposes of this Act, shall neglect or refuse to appoint an arbitrator, upon being notified to do so by the Council aforesaid, by writing a letter to that effect, addressed to him, her or them, at his or their last, or then present residence, and by publication of such notice for one month in one Port Sarnia newspaper, then and in that case, after the expiration of thirty days from the time of such notice being fully completed, the Judge of the County Court of the County of Lambton shall appoint an arbitrator for such party or parties so refusing or neglecting, and the said arbitrator shall, with the other two arbitrators, as hereinbefore provided, proceed to adjudge and determine the damages or purchase money, or other matter or thing submitted to their judgment, according to the provisions of this Act; and the award of any two of such last mentioned arbitrators shall be final.

IV. Provided always, that if the said Municipal Council shall find, on proper examination by a Provincial Surveyor or Engineer, that the said Lake Wawanosh can be more thoroughly drained by any other mode than by widening, deepening and extending the said Cull Drain, then and in that case the said Council shall have power to pass a By-law for, and to carry out the draining thereof by such other mode, and all the provisions of this Act shall apply thereto in like manner as to the said Cull Drain.

V. The whole sum expended and to be expended by the said Council in making and completing the said works, and the payment of such damages aforesaid, shall be raised by the said Municipal Council by rate or loan at such times and in such proportions as the said Municipal Council shall deem fitting, but subject otherwise to the provisions of Law touching the raising of moneys by Municipalities by rate or loan, as the case may be.

VI. The said Council shall, before taking any proceedings under this Act, pay all the costs and expenses that may have been incurred in the Court of Chancery in defending his rights, by any person who may have taken proceedings against such Council by way of injunction or otherwise.

VII. This Act shall be deemed a Public Act.