

*Laws of Her Majesty's Province of United Canada*, passed in the year 1846. Montreal:  
Stewart Derbishire & George Desbarats, 1846.

9 Victoria – Chapter 42

**An Act to explain a certain provision of the Ordinance Vesting Act, and to remove certain difficulties which have occurred in carrying the said provision into effect.**

Whereas the twenty-ninth section of the Act passed in the seventh year of Her Majesty's Reign, intituled, *An Act for vesting in the Principal Officers of Her Majesty's Ordinance the Estates and Property therein described, for granting certain powers to the said Officers, and for other purposes therein mentioned*, contains a Proviso in the words following: "Provided always, and be it enacted, that all lands taken from private owners at Bytown, under the authority of the Rideau Canal Act, for the uses of the Canal, which have not been used for that purpose, be restored to the party or parties from whom the same were taken," and doubts have arisen as to the true intent and meaning of the same, and as to the land to which it is intended to apply; and proceedings at law and in equity, which have arisen out of such doubts, have been commenced and are still pending; And whereas, during the now last Session of the Legislature, a Bill was passed by the Legislative Council and Legislative Assembly of this Province, for the purpose of explaining and amending the said Act as far as regards the effect of the said Proviso, and of setting such doubts at rest; but the said Bill being reserved for the signification of Her Majesty's pleasure thereon, has not received the Royal Assent; And whereas as well the Principal Officers of Her Majesty's Ordinance as the private parties interested, are desirous that the doubts aforesaid should be removed, and all matters of difference between them should be fairly and amicably settled: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament, of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That the Proviso recited in the Preamble to this Act shall be construed to apply to all the land at Bytown set out and ascertained and taken from Nicholas Sparks, of the said Town, Esquire, under the provisions of the Act of the Legislature of Upper Canada, passed in the eighth year of the Reign of King George the Fourth, intituled, *An Act to confer upon His Majesty certain powers and authorities, necessary to the making, maintaining and using the Canal intended to be completed under His Majesty's direction for connecting the waters of Lake Ontario with the River Ottawa, and for other purposes therein mentioned*, except so much thereof as is actually occupied as the site of the Rideau Canal, as originally excavated at the Sappers' Bridge and of the Basin and By-wash, as they stood at the passing of the Ordinance Vesting Act, and excepting also a tract of two hundred feet in breadth on each side of the said Canal, the portion of the said land so excepted having been freely granted by the said Nicholas Sparks to the late Colonel By, of the Royal Engineers, for the purposes of the said Canal, and excepting also a tract of sixty feet round the said Basin and By-wash, (wherever the present Ordinance boundary stones stand beyond that distance from the said Basin or By-wash, but where they stand within that distance then they shall bound the tract so excepted,) which is freely granted by the said Nicholas Sparks to the said Principal Officers, for the purposes of the said

Canal, provided no buildings be erected thereon, and that notwithstanding any thing in the Act last cited, or in the Act of the said Legislature, passed in the second year of Her Majesty's Reign, and intituled, *An Act to limit the period for owners of lands making claims for damages already occasioned by the construction of the Rideau Canal, and for other purposes therein mentioned*, or any judgment, decree, verdict or decision of or in any Court of Law or Equity, all the land to which the said Proviso is applicable as aforesaid, shall, if retained by the Principal Officers of Her Majesty's Ordnance, under the provisions of this Act, be paid for by them in the manner provided by this Act, and any parts thereof which shall not be so retained and paid for, shall be and the same are hereby declared to be absolutely re-vested in the said Nicholas Sparks, or the parties respectively to whom the same may have been conveyed by him before the tenth day of May, one thousand eight hundred and forty-six, to his and their own proper use for ever, and such conveyances shall not then be invalidated by any want of possession in the said Nicholas Sparks, or adverse possession by the said Principal Officers at the time they were respectively made.

II. And be it enacted, That the said Principal Officers shall, within one month after the passing of this Act, obtain a certificate from the Officer Commanding Her Majesty's Forces in this Province, setting forth what part or parts of the land to which the said Proviso is applicable, it is necessary to retain for the service of the Ordnance Department for Military or Canal purposes; and such part or parts shall be retained by and remain vested in the said Principal Officers in trust for Her Majesty, and the remainder (if any) shall be immediately thereafter absolutely re-vested in the said Nicholas Sparks, or the party or parties claiming under him, to his and their own proper use for ever; any law to the contrary notwithstanding.

III. And be it enacted, That all Suits, Actions and Proceedings, either at Law or in Equity, which have been commenced against any person or persons by the said Principal Officers or by Her Majesty's Attorney General, for any cause of action arising out of the occupation of or erection of any buildings upon any part of the land to which the said Proviso is applicable as aforesaid, shall, from the day of the passing of this Act, utterly cease and determine and become of no effect whatever: Provided always, that if any party shall, at the time of issuing the certificate aforesaid, be in possession or occupation of any part of the land therein mentioned, the Sheriff of the District of Dalhousie may be required to put the said Principal Officers in possession thereof in the manner and under the provisions in like cases provided by the Ordnance Vesting Act; saving to all parties their claims to compensation for such land under the provisions of this Act.

IV. And be it enacted, That James Sutton Elliot, Esquire, or in case of his death, inability to act or absence from the Province for more than one month, such other person as the said Principal Officers shall appoint; and Stewart Derbishire, Esquire, or in ease of his death, inability to act or absence from the Province for more than one month, such other person as the said Nicholas Sparks, his heirs, executors, administrators or assigns shall appoint, shall be Arbitrators for ascertaining and establishing the sum and sums to be paid as compensation for the said Land and for the part or parts thereof, respectively, so to be retained as aforesaid, to the parties entitled to the same; and that John Alexander Macdonald, Esquire, or in case of his death or refusal or inability to act, such person as the other two Arbitrators shall agree upon, shall be the third Arbitrator for the purposes aforesaid, and shall have like powers with the others, respectively.

V. And be it enacted, That after having obtained such Certificate, the said Principal Officers shall, within one month after the same shall have been granted, serve a copy thereof on the said Stewart Derbishire (or such person as may then be in his stead as Arbitrator) and on the third Arbitrator, which service shall be deemed notice of such Certificate to all the parties interested, and the said Arbitrators shall then meet after giving due notice of the time of their meeting to the parties interested, who may be known to them, and being first respectively sworn before some Justice of the Peace to perform their duty under this Act without partiality, fear, favor or affection, shall proceed to ascertain the compensation to be paid by the Principal Officers for the whole of the land mentioned in the said Certificate as being retained as aforesaid, and having made their award in that behalf, shall then proceed to ascertain what part of such compensation shall be paid for each separate parcel of the land so retained or to the compensation for which it shall appear to them that a separate party may be entitled, and shall make their awards accordingly; and the said compensation shall, in every case, be such sum as the said Arbitrators shall deem to be the true money value of the property for which it shall be awarded; and the said Arbitrators shall have full power to examine on oath (which oath any one of them is hereby empowered to administer) any person who shall voluntarily appear before them to give evidence as to the value of the said land or any part of it; and any wilfully false statement made before them shall be perjury; and the award of or any act or thing done or agreed to by any two of the said Arbitrators at any meeting at which the other Arbitrator shall have been present, or of which he shall have had sufficient notice to enable him to attend the same, shall be deemed to be the award or act of the Arbitrators aforesaid, and shall be as valid to all intents and purposes as if it had been made or done by all three of them.

VI. And be it enacted, That every award of the said Arbitrators, or any two of them, made as aforesaid, shall be final and conclusive, and no such award shall be set aside for any defect or want of form, provided the parcel of land for which compensation is awarded and the amount of such compensation, be thereby ascertained.

VII. And be it enacted, That the party to whom the sum awarded as compensation, for any parcel of the said land shall be paid by the Principal Officers, shall be that party who could, under the provisions of the Ordnance Vesting Act aforesaid, have conveyed such parcel to the said Principal Officers, if the said land had never been set out, ascertained and taken under the provisions of the Rideau Canal Act aforesaid, and the receipt of such party shall forever discharge the said Principal Officers from all claims whatsoever to or upon such land or the compensation for the same; any law, usage or custom to the contrary notwithstanding; and the sums so awarded shall respectively be paid to the parties entitled to the same, within three months after the making of the said award, except in the case hereinafter mentioned, and if any sum so awarded shall not be so paid within three months as aforesaid, then the land for which the same shall have been awarded shall be, forthwith after the expiration of the said period, restored to the said Nicholas Sparks, or the parties claiming under him as aforesaid, and shall be and is hereby vested in him or them by the mere fact of such non-payment within the said period, without any other proceeding being requisite for that purpose: Provided always, that if such compensation be claimed by two or more parties, each of whom shall have notified his claim to the said Principal Officers before such

compensation shall have been paid to any other party, they shall then, within the time aforesaid, pay the said compensation into Court, in the manner provided in like cases by the Ordnance Vesting Act, and the receipt of the proper Officer shall have the same effect as the receipt of the party entitled to the compensation: Provided also, that this Act shall be deemed sufficient notice to require all parties entitled to the compensation for any parcel of the said land to notify their claims to the said Principal Officers, and any such party who shall not have notified his claim to such compensation to the said Principal Officers within two months after the passing of this Act, or before they shall have paid the same to some other party having a colorable title thereto, shall have no claim whatever for such compensation against the said Principal Officers, saving, nevertheless, his recourse against the party who may have unjustly received such compensation. Provided always, and be it enacted, that if the said Principal Officers shall fail to obtain the said certificate of the Officer commanding Her Majesty's Forces in this Province within the time hereinbefore limited for that purpose, or shall negligently fail to comply with any of the other requirements of this Act, or if, through any non-attendance or other wilful neglect of the said James Sutton Elliot, or other person appointed to act in his stead by the said Principal Officers, the other Arbitrators shall be prevented from proceeding, and such wilful default or neglect shall continue for three months, then at the expiration of the said period the land to which the said Proviso is hereby made applicable shall be absolutely re-vested in the said Nicholas Sparks, or those claiming under him as aforesaid, by the mere fact of the expiration of such period, and without any other proceeding being requisite for that purpose; any law to the contrary notwithstanding.

VIII. And be it enacted, That the words "The Ordnance Vesting Act" wherever they occur in this Act, shall be construed as meaning the Act first cited in the Preamble to this Act, and the words "The Rideau Canal Act," shall be construed as meaning the Act first cited in the first section of this Act; and all other words and expressions herein shall be construed as having the same meaning as they have in the said Ordnance Vesting Act, which is hereby explained and amended as aforesaid, and with reference to that Act.