

Laws of Her Majesty's Province of Upper Canada, passed in the year 1849. Montreal: Stewart Derbishire & George Desbarats, 1849.

12 Victoria – Chapter 155

An Act to provide for the improvement of the River du Chêne, in the County of the Two Mountains. 30th May, 1849.

Whereas the Inhabitants of the Parishes of St. Eustache, St. Augustin, St. Benoit, and St. Scholastique, in the County of the Two Mountains, holding lands on the banks and in the neighbourhood of the River du Chêne [Rivière du Chêne], in the said County, suffer considerable damage in their meadows and the cultivation of their lands, which they find it impossible properly to work, by reason of the overflowing of the waters of the said River, which on account of its shallowness and numerous sinuosities, is not sufficient for the large quantity of water received from the great number of drains and streams discharging themselves into it during its course; And whereas the only remedy for those evils is to remove all obstructions from the said River, to deepen and widen its bed in the rapids thereof and other places, and more especially to straighten its course by a Canal to be cut in a more direct line, and more sufficient for the easy flowing of its waters, provided such Canal be not considered by the Commissioners hereinafter mentioned, to be too expensive, and do not in their opinion interfere too much with the division of property, to the injury of the proprietors thereof; And whereas a considerable number of the Inhabitants of the above mentioned Parishes, interested in the said works have, by their Petition, represented the hardships under which they labour, and also that the costs and expenses already incurred, and the attempts made by them in order to attain so desirable an object have been useless, as being on too limited a scale, in consequence of the insufficiency of the laws now in force to provide for an improvement of such importance, and have prayed that a law be passed to enable them to proceed with the said works, and it is expedient to grant the prayer of the said Petition: 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 at any time within six months from the date of the passing of this Act, on a requisition signed by at least ten Proprietors of lands in the Parishes above mentioned, interested in the said Canal or water course, such requisition being published and posted up in both languages at the Church doors of the said Parishes after Morning Service, on two consecutive Sundays, the Inhabitants of the said Parishes interested in the said Works, that is to say: the Proprietors of lands the waters from off which flow into the said River du Chêne shall meet on the day and at the place mentioned in the said requisition, (with power to any ten of them to adjourn or to call another meeting in case at least twenty-five Proprietors be not assembled to elect Commissionners as hereinafter provided,) and a majority of Proprietors present at such meeting, or at any adjourned or subsequent meeting, shall elect from among the said Proprietors twelve Commissioners, whose duty it shall be to proceed with the Works mentioned in the Preamble to this Act, in the manner hereinafter mentioned, and who for the purposes of this Act are hereby authorized to sue and be

sued under the name of The Commissioners of the River du Chêne Canal, without otherwise naming them or any of them.

II. And be it enacted, That the said Commissioners shall elect from among themselves a President, and shall also appoint from among themselves or the other interested parties, a Secretary-Treasurer, who shall be paid a reasonable salary at the discretion of the Commissioners, and shall give good and sufficient security to the satisfaction of the majority of the said Commissioners; and any Writ, Process or Notice that may require to be served upon the said Commissioners shall be served upon the Secretary-Treasurer of the said Commissioners, and such service thereof shall be deemed good and valid in law; and seven of the said Commissioners shall form a *quorum*, and may exercise all the powers of the said Commissioners, and may, in case of any vacancy among the said Commissioners, appoint another or others in their stead from among the Proprietors interested as aforesaid; but the non-filling up of any such vacancy shall not in any way invalidate or affect any proceeding by or against the said Commissioners; and ail questions which shall arise at any meeting of the said Commissioners shall be decided by a majority of the voices of such Commissioners as shall be present, other than the President; and when the voices shall be equal the President shall have the casting vote.

III. And be it enacted, That the said Commissioners shall cause the said River du Chêne to be explored by a Sworn Surveyor from its mouth at River Jesus or Milk Isles, in the Parish of St. Eustache, to its source, together with its tributaries and the streams which discharge themselves into it in its course through the North and South Concessions of the Petite Rivière de la Grande Fresnière, the Parish of St. Eustache, north and south of the Petit Bride, the Parishes of St. Augustin, St. Benoit, St. Joachim, and on the north and south side of la Belle Rivière, in the Parish of Ste. Scholastique, and shall cause a plan to be made of the works necessary for the straightening and deepening of the said River, together with an estimate of the probable cost of the said undertaking.

IV. And be it enacted, That the said Commissioners shall give notice in both languages during at least three weeks, in the Canada Gazette, and also in two newspapers published, the one in English and the other in French, in the City of Montreal, of the time and place at which they will be ready to give out the said works in part or in whole, and they are hereby authorized to contract for the performance of the said works with the Contractors and Workmen whose tender shall to them seem most advantageous for the interests of the parties concerned in the said undertaking; and the said Commissioners are hereby authorized to require the said interested parties to furnish such assistance in labour as they shall deem necessary for the purpose of conducting the undertaking with as great economy as possible, making such labour part of the charge placed upon such parties respectively by the Repartition.

V. And be it enacted, That the said Commissioners shall make an exact estimate of all the expenses to be incurred in the construction of the said works, and of the work to be done by the parties interested as aforesaid, and shall assess the interested parties for the payment of the same, and assign them respectively portions of the said work, according to the advantages to be derived by each one, and the obligations under which he may lie with regard to the other

proprietors interested, according to the situation of his property, and the laws and customs in force in the country, and not merely according to the value of the properties assessed: the whole in such a manner as to the said Commissioners shall appear most equitable; and the said Commissioners or a *quorum* thereof shall make a Repartition and *procès-verbal* accordingly, which shall bind all the parties mentioned therein or their *ayants* cause respectively Proprietors of the same lands, upon which the sums assessed upon them and the value of the work allotted to them in respect of such lands, (such value being mentioned in the Repartition and *procès-verbal*) shall be a charge bearing hypothec, dating from the time of registration of the Repartition and *procès-verbal*, which after being confirmed as hereinafter provided shall not be controvertible or liable to be set aside or questioned in any Court of law or elsewhere.

VI. And be it enacted, That after the said estimate of the expenses, and the assessment or repartition and *procès-verbal* shall have been made by the Commissioners, they shall give notice by an advertisement in both languages, to be posted up and published at the Church doors of the said Parishes, after morning service during two consecutive Sundays, of the time and place at which they will hear the claims of such parties as shall consider themselves aggrieved by the said assessment or repartition.

VII. And in order that all parties interested in the performance of the said works may take cognizance of the assessment or repartition and *procès-verbal* aforesaid, a copy thereof signed by the President, Secretary, and Treasurer of the said Commissioners, shall be deposited in some public office to be designated in the said Notices, and whereat all or any of the interested parties may take free communication thereof, and make such observations thereon, or oppositions thereto, as they may think fit and reasonable.

VIII. And be it enacted, That the Commissioners shall give their final decision with respect to the said assessment or repartition and *procès-verbal* within a period of not less than fifteen days from the last publication thereof, and shall then confirm the same with such alterations (if any) as they may think proper to make thereto.

IX. And be it enacted, That the said assessment or repartition and *procès-verbal*, when finally confirmed as aforesaid, shall be deposited by the said Commissioners, or a *quorum* of them, in the hands of some Notary in one of the said Parishes, who may deliver authentic copies or extracts, and shall be bound at all reasonable hours to give communication thereof to all parties interested, and shall be registered at full length in the Registry Office of the County; and the said Commissioners shall immediately give notice, by an advertisement in both languages, to be posted up and published at the Church doors of the said Parishes after morning service, during two consecutive Sundays, of the said assessment or repartition and *procès-verbal* having been deposited in the hands of such Notary.

X. And be it enacted, That every person who shall be assessed in and by the said assessment or repartition and *procès-verbal*, as finally amended and confirmed by the Commissioners shall pay into the hands of the Treasurer of the said Commissioners within the delays by them therein prescribed, the amount for which he shall be assessed, and in default thereof such payment may

be recovered before any Court having jurisdiction in civil cases to the amount, and he shall perform the work by them assigned to him at the times appointed by the assessment, or repartition and *procès-verbal* aforesaid, or in default the value of such work, as therein fixed, may be recovered from him as aforesaid.

XI. Provided always, and be it enacted, That any such person who may feel aggrieved by the final decision of the said Commissioners as aforesaid, may appeal therefrom by petition to any one Circuit Judge in and for the District of Montreal setting forth the grounds of his objection to the said decision, and praying that the same may be reversed; which petition must be presented within fifteen days at most from the last publication of the notice of deposit of the said assessment or repartition and *procès-verbal*; and upon proof of a copy of the said petition, together with notice of the time and place, when and where the same would be so presented, having been served upon the Secretary-Treasurer of the said Commissioners three clear days at least before the presentation thereof, it shall be lawful for the said Circuit Judge to fix a time and place, either in Term or in vacation, in Court or out of Court, in the City of Montreal, or at some convenient place within the said County, or at the sitting of any Circuit Court that may be held within the limits thereof, when and where he will proceed, and then and there to proceed in a summary manner to hear the said appellant, and the said Commissioners, and adjudicate upon the said appeal; and the decision of such Circuit Judge shall be final and conclusive; and in case any alteration shall be thereby made in the said assessment or repartition and *procès-verbal*, it shall be the duty of the Registrar of the said County, on a copy of such decision, certified by the said Circuit Judge, under his hand and seal, being brought to him forthwith, to register the same at full length, or to enter and file the same, as the case may require.

XII. And be it enacted, That the said Commissioners are hereby authorized to make such rules and regulations as they shall deem necessary for the preservation and keeping in order of the said Canal, and from time to time to alter and amend the same; and such rules and regulations, and amendments, or repeal thereof, shall be deposited with some Notary in one of the said Parishes: Provided always, that as soon as the said intended works shall be completed and paid for, the powers and authority hereby granted to the said Commissioners shall cease and determine; and the said River and Canal shall thereafter be and remain under the direction of the local authorities established for the making of ditches and water courses in the country parts of Lower Canada, saving always that the said works shall always continue to be kept up and repaired according to the rules and regulations then last made by the said Commissioners an authentic copy whereof shall be deposited in the office of the Municipal Council of the County, and any copy thereof certified by the Clerk or Officer having the custody of such authentic copy, shall be deemed authentic, and received in evidence accordingly, and for any certified copy thereof, the said Clerk or Officer shall be paid at the rate of six pence currency per one hundred words.

XIII. And be it enacted, That as soon as the said Canal shall be completed, the said Commissioners shall render a true and faithful account of the moneys levied by them, and of the application thereof, before a Committee of twelve members to be chosen from among the interested parties, at a General Meeting to be called in the manner provided for the calling of the first above mentioned Meeting; And the said Committee shall have authority to bring any action *en redition*

de compte or for any matter relative to the administration of the said Commissioners under the name of The Committee for auditing the Accounts of the Commissioners of the River du Chêne Canal.

XIV. And be it enacted, That all papers relative to the rendering of the above mentioned accounts, plans, estimate, assessment, and other documents which shall have been in the possession of the Commissioners, and more especially the rules and regulations made for the keeping in repair of the said Canal, shall be deposited by them in the office of the Municipal Council of the County of the Two Mountains for the use of all persons interested in the said work.

XV. And be it enacted, That the works above mentioned for the construction of the said Canal shall be completed within six years from the passing of this Act, otherwise the persons so interested as aforesaid shall not be entitled to any of the advantages granted by this Act.

XVI. And be it enacted, That this Act shall be a Public Act, and judicially noticed accordingly.