

Laws of Her Majesty's Province of Upper Canada, passed in the year 1850. Toronto: Stewart Derbshire & George Desbarats, 1850.

13 & 14 Victoria – Chapter 44

An Act to continue and amend the Ordinance concerning the erection of Parishes, and the construction and repairing of Churches, Parsonage Houses, and Church-yards. 10th August, 1850.

Whereas it is expedient to amend the Ordinance of the Governor and Special Council of the late province of Lower Canada, passed in the third Session of the said Council, held in the second year of Her Majesty's Reign, and intituled, *An Ordinance concerning the erection of Parishes and the building of Churches, Parsonage Houses, and Church-yards*, and to continue the said Ordinance as amended: 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 so much of the twelfth Section of the said Ordinance as regulates the manner of proceeding for filling a vacancy among the Trustees shall be, and is hereby repealed; and in case of the death, serious illness, madness or lunacy, removal of domicile out of any Parish or Mission, legal excuse or incapacity of any of the Trustees, the surviving Trustees or those remaining in office, or the majority thereof, may present a petition of the Commissioners appointed by the Governor for the purposes of the said Ordinance, alleging the death, serious illness, madness or lunacy, removal of domicile out of the Parish or Mission, legal excuse or incapacity of any Trustee, and praying that a meeting may be called of the inhabitants of the Parish or Mission for the purpose of proceeding to the election of a Trustee, in the place and stead of the Trustee whose place it shall have become necessary to fill up; and upon sufficient proof of the fact alleged the said Commissioners may make an order allowing the meeting and election prayed for, which meeting shall be called, presided over and held, and the election shall be had in the manner under the provisions and subject to the formalities prescribed by the said Ordinance, as to the election of the first Trustees; and the confirmation of the said election shall be required by the trustees surviving or remaining in office, or by a majority of them, by petition presented to the Commissioners for that purpose; and the Commissioners shall proceed in the manner and according to the formalities prescribed as to the confirmation of the election of the Trustees first elected: Provided always, That if the said inhabitants neglect or refuse to elect such Trustee, then the Commissioners may appoint one in their default: Provided also, that the Trustees so appointed shall be qualified in the manner required by the eleventh Section of the said Ordinance.

II. And be it enacted, That if the amount of the assessment levied be not sufficient to meet the necessary expenses of construction and repairs of any Church, Sacristy, Parsonage House or Church-yard, the Trustees or the majority of them, shall render to the said Commissioners a faithful account of the receipts and expenditure and of the work to be done, and probable expense to be incurred if the work be not completed, to be sworn to by one or more of them to

the best of their knowledge and belief, before a Justice of the Peace, who is hereby authorized to administer the oath; and shall at the same time present a petition to the said Commissioners, alleging the want of money to complete the works or to pay for them if they are completed, and praying authority to make a supplementary assessment; which said account, accompanied by vouchers and the said petition, shall be previously deposited, announced and made public at the place, during the time and in the manner prescribed by the fourteenth Section of the said Ordinance, in relation to the statements and acts of assessment, and with the same formalities.

III. And be it enacted, That on the day appointed for proceeding to the consideration of the said account and petition, the Trustees, or the majority of them, shall present the said account and petition with the vouchers in support thereof, to the said Commissioners for homologation and the granting of the conclusions of the petition, and shall accompany them by a sufficient Certificate of the deposit thereof, and of the publication of the notice thereof which shall have been given; and the said Commissioners shall have full jurisdiction, power and authority to hear, adjudge and determine, between the Trustees and the parties interested, by rejecting, modifying, or confirming the said account altogether or in part, or by rejecting, modifying or granting the conclusions of the petition, altogether or in part, as they may find it just and reasonable to do.

IV. And be it enacted, That so soon as the Commissioners shall have made an order authorizing the Trustees to make a supplementary assessment, the said Trustees and Commissioners shall then proceed in the manner and with the formalities prescribed for the first assessment, as well as regards the making and drawing up, depositing, publishing and posting up, rejecting, modifying or confirming, as the levying of such supplementary assessment, and with the same powers, authority and jurisdiction: Provided always, that the Trustees shall add to the total amount of all the expenses to be raised by the first assessment or by the supplementary assessment if any there be fifteen per cent, over and above the said amount, to cover deficiencies, which said fifteen per cent shall be assessed, levied and paid in like manner with the total amount of the said expenses.

V. And be it enacted, That the amount of any assessment to defray the expenses of the construction or repair of any Church, Sacristy, Parsonage House or Church-yard shall be the first charge on the laud, ground or lot of ground and the first privileged debt which shall affect and bind the said land, ground or lot of ground, without its being necessary to enregister the Act of assessment or the judgment of confirmation or homologation in the whole or in part, in the Registry Office.

VI. And be it enacted, That within the year next after the completion of the construction or repairs and the payment therefor, the Trustees shall render to the parish or mission at a meeting of the inhabitants of such parish or mission called together by the *Curé* or missionary, and held in the ordinary place and manner, a faithful account shewing the receipt and expenditure and the management of the affairs for which they shall have been elected and appointed, which said account shall be supported by vouchers and sworn to by one or more of the said Trustees to the best of their knowledge and belief, before a Justice of the Peace, who is hereby authorized to administer the said oath, and they shall pay, return and hand over to the *Curé* and Church-wardens of the *fabrique* of the parish, or to the ministering *Curé* or Missionary and Church-

wardens or Trustees managing the temporal affairs of the Church of the Mission, as the case may be, every thing remaining in their possession of the moneys, materials and effects, with the acts of assessment, judgments, decrees, account books, deeds, documents and papers touching the constructions and repairs conducted and the affairs managed by them; and the said *Curé* and Church-wardens, or the *Curé* or Missionary, and the Church-wardens or Trustees conducting the temporal affairs of the Church of the mission, as the case may be, may sue the Trustees elected or appointed for the construction or repairs of the church, sacristy, presbytery or church-yard for the rendering of the said account if the same has not been voluntarily rendered, contest any account rendered and compel the payment of the balance in either case; and they may at the same time receive what is remaining due of the assessment and sue for the recovery of that which has not yet been paid; and so much as they shall thus receive either from the Trustees elected or appointed for the said construction or repairs, or from parties indebted on account of their assessment, shall be deposited with the funds of the *fabrique* or mission and applied in the same manner as the other moneys of the said *fabrique* or mission.

VII. And be it enacted, That so much of the twenty-second section of the said Ordinance as empowers the Commissioners appointed under the Act or Ordinance passed in the thirty-first year of the Reign of His late Majesty King George the Third, and intituled, *An Act or Ordinance concerning the building and repairing of Churches, Parsonage Houses, and Church-yards*, to continue proceedings commenced before them until final judgment, be and the same is hereby repealed; and that the said proceedings commenced before the said Commissioners shall be conducted and continued until final judgment before the Commissioners appointed under the provisions of the Ordinance continued and amended by this Act.

VIII. And be it enacted, That the provisions of the said Ordinance as amended by this Act, shall be applicable to proceedings commenced before the passing of the said Ordinance; and all proceedings had before the Commissioners appointed under the authority of the said Ordinance, and the orders, judgments and decrees given and rendered by them in the said affairs are hereby confirmed and declared valid, saving in cases where their validity may have been contested in any Court of Justice before the day of the passing of this Act.

IX. And whereas the provisions of the said Ordinance continued and amended by this Act do not extend to Churches, Sacristies, Parsonage Houses and Church-yards, the construction or repairing whereof is allowed or ordered by a Canonical Decree rendered and issued before the passing of the said Ordinance; Be it enacted, that all the provisions of the said Ordinance as amended by this Act, concerning the construction and repairs of Churches, Sacristies, Parsonage Houses and Church-yards, and all the powers, authority and jurisdiction conferred by the same and by this Act upon the said Commissioners, shall be and are hereby extended to Churches, Sacristies, Parsonage Houses and Church-yards the construction and repairing whereof may have been allowed or ordered by a Canonical Decree rendered and issued according to the Ecclesiastical Laws and forms followed and in use in the diocese of Quebec or of Montreal, before the passing of the said Ordinance, and may be exercised in as full, ample and beneficial a manner to all intents and purposes, as if such Canonical Decree had been made and rendered after the passing of and under the provisions of the said Ordinance.

X. And whereas in certain parts of Lower Canada, it has been the custom to construct and repair Churches, Sacristies, Parsonage houses and Church-yards, in conformity with canonical decrees given and rendered by the Ecclesiastical authorities, without having recourse to the authority of the said Commissioners, and to a forced assessment, but by means of voluntary contributions, often insufficient to pay all the expenses of construction or repairs so that sums of money have remained due to the constructors of such buildings, or to the persons who may have repaired the same, or to persons who had lent or advanced moneys to pay the said expenses, altogether, or in part; and whereas doubts have arisen whether the *Fabriques* of the Parishes in which such constructions and repairs have been made, are responsible for the payment of the said sums remaining due, although they have taken possession of the said Churches, Sacristies, Parsonage houses and Church-yards, and the said buildings and erections are applied to the uses for which they had been constructed; Be it therefore declared and enacted, and it is hereby declared and enacted, That whenever the ecclesiastical authorities of the diocese of Quebec, or of Montreal, shall have made and rendered a canonical decree conformably to the provisions of the said Ordinance continued and amended by this Act, or of the Act or Ordinance specially cited in the seventh section of this Act, allowing or ordering the construction or repair of a Church, Sacristy, Parsonage house or Church-yard, and the same shall have been respectively constructed or repaired, without the inhabitant householders of the Parish having had recourse to the authority of the said Commissioners, and to a forced assessment, and the *Fabrique* shall have taken possession thereof, and shall have used the same for the purpose for which it shall have been constructed and repaired, and moneys shall be remaining due to the Builder or Contractor for any such edifice or erection, or to any one who shall have advanced moneys to pay the expenses of construction or repairs, altogether or in part, or to both, in all such cases the *Fabrique* of the Parish in which the construction and repair shall have taken place, is and shall be responsible for the sums so due, and shall pay the same to such Builder or Contractor out of its revenues only, or to the party who shall have lent or advanced money, or to both, as the case may be, or to their respective heirs, representatives or assigns.

XI. And be it enacted, That the Bailiffs of the Superior Court in and for Lower Canada, shall, at the same time, be Bailiffs of the said Commissioners, and no special affidavit shall be necessary to prove any service, advertisement, posting up, publication or deposit, when the same shall have been done and performed by a Bailiff, but the Certificate or Return in due form, drawn up by a Bailiff under his oath of office, shall be considered as proof of the facts therein mentioned.

XII. And be it enacted, That the Ordinance first above mentioned, and hereby amended, shall be continued and remain in force as amended by this Act, until the same be altered or repealed by competent authority.