

*Laws of Her Majesty's Province of United Canada*, passed in the year 1852. Quebec: Stewart Derbyshire and George Desbarts, 1852.

16 Victoria – Chapter 219

**An Act conveying to the City of Toronto certain Water Lots, with power to the said City for the construction of an Esplanade. Assented to 14th June, 1853.**

Whereas by Letters Patent, under the Great Seal of the Province of Upper Canada, bearing date the twenty-first day of February, in the year of our Lord, one thousand eight hundred and forty, certain water lots or tracts of land covered with water, situate in front of the said City of Toronto, and certain parcels or slips of land situated between the top of the bank and the water's edge of the Bay, in the said City of Toronto, adjoining to the said water lots, were under the direction of an Order in Council of the 17th August, 1837, granted to the Mayor, Aldermen and Commonalty of the said City of Toronto, and their successors for ever, upon trust, to lease the said water lots, or apply them to and for the public purposes of the said City, as the Common Council of the said City of Toronto, from time to time, might think fit to order or direct: And upon the further trust that within three years from the time the said City of Toronto should occupy any of the said water lots for the uses of the said City, or lease the same, an Esplanade of one hundred feet in width, of such materials and plan as the said City of Toronto, by Act of Common Council, might order and direct, should be erected and built in front of the said lots by the said City, or the lessees of the. said lots respectively, at the place designated by the letter C, on the Record maps of the Crown Land Department, and designated by the letter O upon a plan of the said City and water lots annexed to the said Letters Patent, subject also to the condition that the said Esplanade shall be kept in repair by the City or its lessees, as provided for by Order in Council of 17th August, 1837; and upon the further trust, that so soon as the proprietors of such water lots, in front of the said City of Toronto, as had been granted previously to the date of the Letters Patent hereinbefore in part recited, should comply with the terms of the said Letters Patent, and build the said Esplanade in front, of their respective lots, according to the said plan adopted by the said City of Toronto, and in the place designated on the map annexed to the said Letters Patent, to convey to such proprietors the extension of the water lots adjoining to their respective lots, as by the said Letters Patent, and the map annexed thereto is provided and described, and also to convey to the owners of the water lots, according to their respective estates, pieces of land at the foot of the bank, subject to such general regulations, as to buildings and general improvements under the direction of the Corporation, as may be devised by the Corporation of the said City; And whereas most of the said - water lots so granted to the said City of Toronto, have been leased by the said City, and the said leases contain a covenant on the part of the lessees, to build the said Esplanade within the time in the said Letters Patent mentioned, and according to the plan adopted by the Common Council; And whereas by a certain license of occupation issued by His Excellency the Governor General, and bearing date the 29th day of March, 1853, which said license of occupation was so issued in conformity with the Orders in Council of the 9th day of December, 1852 and 29th March, 1853, His Excellency gave and granted to the said Mayor, Aldermen and Common Council of the said City of Toronto, and their successors in office, license to occupy certain other parcels of land covered with water and strips of land lying in front of the said City and in the said license of occupation

described, with certain reservations in the said license of occupation set forth, to have and to hold to the said Mayor, Aldermen and Common Council of the said City and their successors in office, for and during pleasure, subject nevertheless to the stipulations, terms and conditions therein mentioned; And whereas the Corporation of the City of Toronto have, by their petition, prayed that authority may be given to the Common Council of the said City to erect the proposed Esplanade in front of and upon the said water lots, according to the conditions of the said Letters Patent, license of occupation and the leases to the several tenants thereof, and to issue Debentures for the payment thereof, payable within twenty years, redeemable by an annual rate to be levied on such holders of the said water lots, whether freehold or leasehold, as are unwilling or unable to make their respective portions of the said Esplanade at their own expense, within twelve months from the first day of January, one thousand eight hundred and fifty-three; And whereas it would greatly conduce to the prosperity and health of the said City of Toronto, that such an Esplanade should be forthwith built, and it is advisable that the prayer of the said Petition be granted: 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 it shall and may be lawful to and for the Mayor, Aldermen and Commonalty of the said City of Toronto to enter into any contract or contracts with any person or persons who may be willing to undertake the same, to erect and build an Esplanade in front of and upon the water lots in the said City, as described in the Preamble and the Letters Patent and License of occupation therein mentioned, of such materials, and according to such plan as the Common Council of the said City of Toronto may have adopted, or may hereafter adopt regarding the same, according to the provisions of the said Letters Patent.

II. And be it enacted, That notwithstanding any Act of the Parliament of this Province to the contrary, it shall and may be lawful for the Mayor, Aldermen and Commonalty of the said City of Toronto, to pass a By-law to raise a loan for such an amount, not exceeding One Hundred and Twenty Thousand Pounds, as may be necessary for the purpose of constructing the said Esplanade, and to issue any number of Debentures, payable in this Province or elsewhere, in sums of not less than Twenty-five Pounds, which may be requisite and necessary therefor, payable in twenty years from the respective dates thereof; and for the purpose of redeeming the same, and paying the interest thereon, it shall and may be lawful to and for the Common Council of the said City of Toronto, in any By-law to be passed authorizing the said Loan of One Hundred and Twenty Thousand Pounds, or any part thereof, and the issuing of Debentures therefor, to impose a special rate per annum to be called "The Esplanade Rate," over and above and in addition to all other rates to be levied in each year, which shall be sufficient to form a Sinking Fund of two per cent, per annum for that purpose, over and above the interest payable on such Debentures, which Sinking Fund shall be invested in each year, either in the Debentures provided for by this Act, or in Government Debentures or other Provincial securities.

III. And be it enacted, That when the Corporation of the said City shall have built and completed that portion of the said Esplanade fronting upon or crossing the water Lots in the said City, after

the owners, proprietors or lessees of such Lots shall have failed to construct the same within the time and in the manner herein provided, the City Surveyor of the said City, by an Instrument under his hand and seal, shall declare the amount which each of such owners or lessees ought to pay to the said City for the construction of such Esplanade upon and across such water Lots respectively, a copy of which Instrument shall be served on each such owner or lessee respectively, or sent to his address by mail, if his address be known and be within this Province, and not within the said City.

If such owner or lessee shall within one month after such service leave with the Clerk of the Common Council of the said City, a notice in writing that he refuses to pay the amount declared by the said City Surveyor, as the sum payable by him in respect of the improvement made across or in front of his Lot, and shall also name an Arbitrator to act on his behalf for the purpose of deciding the value of the said improvement, the Corporation of the said City shall also name an Arbitrator on behalf of the said City, and the two so chosen shall, within three days after the nomination of a person to act for the said City, select a third Arbitrator, and in case they fail to do so, the County Judge of the County of York, or of any Union of Counties for the time being, of which the County of York may be one, shall appoint such third Arbitrator; and the award or determination of such Arbitrators, or any two of them, shall be final as to the amount chargeable on the said water Lots respectively, and the owners thereof for such improvement; but if such owner or lessee shall not leave such notice as aforesaid with the City Clerk, within one month as aforesaid, then the certificate of the City Surveyor shall be conclusive as to the amount to be paid by such owner or lessee:

Provided always, that if such owner or lessee be an infant, or *non compos mentis*, or under any other disability to act for himself, or be absent from the Province or unknown, and there be no person in this Province known to be legally authorized to act for him in the matter upon or to whom the copy of the Instrument made as aforesaid by the City Surveyor can be served or sent, then the County Judge aforesaid, on the application of the Corporation of the City, and on being satisfied by affidavit of such fact, shall appoint an Arbitrator to act for such owner or lessee, and the said Corporation shall appoint another, and the two Arbitrators so appointed shall before they act as such appoint a third, or if they cannot agree, then the said County Judge on the application of either of them, (after notice to the other of such application) shall appoint the third Arbitrator, and the award of the said Arbitrators or of any two of them, shall be conclusive as to the amount to be paid to the said Corporation by such owner or lessee:

When the amount to be paid as aforesaid shall have been conclusively ascertained by the certificate of the City Surveyor or the award of Arbitrators as hereinbefore provided, then a memorandum of such certificate or award may be registered in the Office of the Register of Deeds for the County, and being so registered, the sum therein mentioned shall thereafter be a charge upon the lands in respect of which it is payable, and the said sum shall be payable to the Corporation of the said City, in twenty equal annual instalments, to become due on the thirty-first day of December in each year, after such registration as aforesaid, with interest from the same date, (or from the day up to which the interest shall have been paid, as the the case may be,) on so much of the said sum as shall be then unpaid, and the said instalments and interest shall and may

be collected, and if not paid may be recovered from the owners or occupiers of the said lands for the time then being, in like manner, with the same accumulations, and subject to the same provisions as local taxes in the said City, and if the same be not so paid or recovered, then the said lands may be sold in like manner as the lands of non-residents may be sold for non-payment of the local taxes thereon, and the said instalments and interest and all lawful charges shall be paid out of the proceeds of such sale, and if the proceeds of the sale be more than sufficient to pay the same, the surplus shall be returned to the owner of the said lands when applied for by him:

Any sums received by the Corporation of the said City under this Section, shall be applied towards the payment of the principal and interest of the Debentures issued under the authority of this Act, and shall be invested and applied in the manner provided in like cases by the Upper Canada Municipal Corporations Acts.

IV. And be it enacted, That the memorandum of the certificate or award hereinbefore mentioned, signed by the said City Surveyor, or any two of the said Arbitrators, (which may be in the form or to the effect mentioned in the Schedule hereunto annexed marked A) shall be registered by the Register of the County of York, without any further evidence of the execution of the said memorandum than the signature of the persons who purport to sign the same, but there shall be produced to such Register at the same time, the original certificate of the said City Surveyor, and the original appointment in writing of the Arbitrators when such memorandum is signed by Arbitrators, together with their award, which papers shall be filed by the said Register with the said memorandum, and for filing such papers and registering such memorandum for each lot or parcel of land, such Register shall receive the sum of Two Shillings and Six Pence, and no more.

V. And be it enacted, That any By-law to be passed under this Act, shall not be repealed until the debt or debts created by this Act, and the interest thereon, shall be paid and satisfied, and that the one hundred and seventy-eighth Section of the Municipal Corporations Act of Upper Canada shall extend to any By-law passed under this Act.

VI. And be it enacted, That it shall be the duty of the Chamberlain of the said City of Toronto, for the time being, to keep a special account of the said Debentures, and to carry the amount received by him arising from the special rate so to be imposed as aforesaid to such account, and to appropriate all and every the sum and sums of money received by him on the said account solely to the liquidation of the principal and interest of the said Debentures.

VII. And be it enacted, That so soon as the said Esplanade shall be completed in the manner above mentioned, and the general regulations as to buildings and improvements under the direction of the Corporation upon the system devised by them, shall have been complied with, the Mayor, Aldermen and Commonalty of the said City of Toronto shall forthwith convey to the several and respective owners of the said water lots entitled to the same under the said Letters Patent, the several and respective pieces, parcels and strips of land set forth and described by the said Letters Patent, and designated on the map or plan thereto annexed: Provided always, that it shall and may be lawful for any of the owners, proprietors or lessees of the said water lots, to erect

and build that portion of the said Esplanade, fronting upon or crossing their said respective premises, upon giving notice in writing to the Chamberlain, for the time being, of the said City of Toronto, within two months after the passing of this Act, of his and their intention so to do, and erecting and building and completing the same, according to the conditions of the said Letters Patent and the said map and plan, within one year from the passing of this Act; And the said special rate authorized to be levied by this Act, shall be rated, imposed and assessed upon such only of the said owners, lessees and proprietors of the said water lots as shall neglect to give the said notice, or refuse to erect and build the said Esplanade as aforesaid; And provided always, that the said Mayor, Aldermen and Commonalty of the said City, shall commence the said Esplanade within one year from the said twenty-ninth day of March, one thousand eight hundred and fifty-three, and shall comply with, observe and perform all and every the reservations, limitations and conditions contained in the said License of Occupation mentioned and in part recited in the Preamble to this Act.

VIII. And whereas by Letters Patent from the Crown, dated the fourteenth day of July, in the year of our Lord, one thousand eight hundred and eighteen, a certain space or strip of land, denominated by the Letter H, on the plan of the then Town of York, commencing at the top of the bank in the western limit of the old Government Buildings reservation, adjoining the south-east angle of the said Town, then, north sixteen degrees west four chains, more or less, to the southern limit of Palace Street, then along the southern limit of the said street, and also following the southern limit of Market Street and Front Street, until it intersects the western limit of Peter Street at the west end of the; said Town; then, south sixteen degrees east five chains, more or less, to the top of the bank, following its several turnings and windings to the place of beginning, containing thirty acres, more or less, with allowance for the several cross streets leading from the said Town to the water, was vested in John Beverly Robinson, William Allan, George Crookshank, Duncan Cameron and Grant Powell, all of the Town of York, Esquires, their heirs and assigns, for ever, in trust to hold the same for the use and benefit of the inhabitants of the then Town of York, as and for a public walk or mall in front of the said Town: Be it enacted, That the said Trustees, or the survivors of them, shall have power to transfer and convey the land so held by them as aforesaid to the Mayor, Aldermen and Commonalty of the City of Toronto, to hold the same upon the same trusts and conditions as are expressed in the Letters Patent above referred to; or the said Trustees may, at their option, surrender and re-convey the said land to Her Majesty, and the Governor of this Province may thereupon, by an Order in Council, or otherwise, transfer and convey the said land to the said Mayor, Aldermen and Commonalty of Toronto, upon the same trusts and conditions as are above expressed; and the said Mayor, Aldermen and Commonalty of the said City of Toronto shall have power by this Act, either to make the public walk contemplated in the original grant to the Trustees aforesaid, or to continue the Esplanade aforesaid through and in front of the said land, or to make such other improvements upon it, for public purposes, as the said City, by its Mayor, Aldermen and Commonalty, may from time to time deem meet; the said Mayor, Aldermen and Commonalty being empowered by this Act to defray the expense of such last mentioned improvements out of the proceeds of the Debentures by them hereinbefore authorized to be issued as aforesaid.

IX. And be it enacted, That all Documents, Securities, or Debentures, *bonâ fide* executed or issued before the passing of this Act, by or to the said Mayor, Aldermen and Commonalty of the said City of Toronto, in the name of the said City of Toronto, or in any other form of words designating the same, and to which the Corporate Seal of the said City has been *bonâ fide* affixed, shall be good and valid, notwithstanding any variation in the use of the Corporation name of the said City in such Instruments from the form of words prescribed by the Upper Canada Municipal Corporations Act of 1849.

X. Provided always, and be it enacted, That nothing in this Act shall apply to or affect any lands or property vested in the Principal Officers of Her Majesty's Ordnance, or shall be construed as giving any power to the Mayor, Aldermen and Commonalty of the City of Toronto, to take, use or occupy any such lands, or to oblige the said Principal Officers to do any thing or allow any thing to be done in respect thereof, or in any way to interfere with or affect the rights of the said Principal Officers.

XI. Provided also, and be it enacted. That nothing herein contained shall be construed to impair or affect the right of Her Majesty to the land in front of the lot now occupied by the Parliament Buildings at Toronto, and extending from Simcoe Street to John Street, but such land shall be and remain vested in Her Majesty for the public uses of the Province, and that part of the said Esplanade along and upon such land shall be made under the superintendence of the Commissioners of Public Works.

XII. And be it enacted, That it shall not be lawful for any Railway Company to carry their Railway along, upon or across the said Esplanade, without the consent of the Governor in Council, nor if such consent be granted shall any such Railway be carried along, upon or across the said Esplanade, except upon such line or lines, upon such level, in such manner, and subject to such regulations and conditions as the Governor in Council shall, upon the Report of the Board of Railway Commissioners think fit to direct and make; and any Railway Company which shall be allowed to carry their Railway along, upon or across the said Esplanade, shall pay such compensation to the said Corporation as shall be agreed upon by the said Corporation and the Company, or if not so agreed upon, shall be fixed by the said Board of Railway Commissioners, and such compensation if so fixed as last aforesaid, may be fixed at a sum payable once for all or at a certain sum payable periodically; and if any Railway Company whose Railway shall be carried along the said Esplanade, shall be desirous of having a terminus upon or in the vicinity of the said Esplanade, then such terminus may be made at such place, and with such extent of ground, and subject to such other conditions as the said Board of Railway Commissioners shall determine.

XIII. And be it enacted, That no Debentures of the said Corporation of the said City of Toronto, to be issued under the authority of this Act, shall be sold by the said Corporation for less than their par value, bearing six per cent, interest per annum.

XIV. And be it enacted, That this Act shall be a Public Act.

Schedule A.

Esplanade Debt.

No. of Lot.	Name of Owner.	Description of Land.	Amount chargeable thereon in favor of the City of Toronto for Esplanade improvement.
1	John Jones.	In front of Water Lot No. 5, granted or leased to Joseph Styles, or described as follows, that is to say: bounded East by, &c.	Forty pounds.  John Doe, } Arbitrators. Richard Roe, } <i>or</i> Wright Line, City Surveyor.