

canal, or the works thereof, or for cutting or opening such canal, or for making or erecting any of the locks, dams, reservoirs, or embankments thereof, or for any of the other purposes mentioned and authorised, the Corporation should find it necessary that any lands lying in the course or direction of the Canal or contiguous thereto, or upon the shores or banks of the said river, lakes or streams, should be purchased by, or vested in, the Corporation, to enable them to make and complete and beneficially use the said canal; then it should be lawful for the Corporation to adopt and take such course and proceedings in regard to such lands and the obtaining the same for its use as by any present or future law of this Province, were or should be enacted or in force, touching the making or altering any public highway through the lands of any private person in the Province; and such proceedings as were or might be requisite for divesting the right and interest of the individual owner of the land required for a public highway, and appropriating such land for the use of the public should be used for divesting the estate and interest of the respective proprietors of the lands required for the use of the Corporation, and vesting such lands in the Corporation. And in every such case, after such proceedings had, and after verdict of a jury taken and confirmed, and the damages assessed in favor of the proprietor paid and satisfied, and all other provisions and requisites in force as respects highways in all particulars observed and confirmed, the said lands and tenements described in, and forming the subject matter of, such proceedings, should be vested in and appropriated to the use of the said Corporation, and should be and remain to, and be enjoyed by, the said Corporation in fee simple.

By Letters Patent 1st June, 1826, these powers were expressly given to the Company, which had then been formed. Also such powers as had previously been granted to Canal Companies in Great Britain, or which might be reasonable and necessary. The Letters Patent also provided that their provisions should be "taken, construed and adjudged in the most favorable and beneficial sense for the best advantage of the Company."

The principal parts of the line of water communication, (as regards extent and value), were the First and Second Dartmouth Lakes; the locus in dispute is part of the First and Second Lakes and also part of the shore of both.

In August, 1826, the Company desired to put in force the provisions above recited, in reference to the expropriation of lands, and accordingly presented to the Custos and other Justices of the Peace of the County of Halifax the petition set forth in the case, and obtained the certificate of three persons who were appointed by the Court of Sessions to report upon their petition, to the effect that the pieces and parcels of land therein described were necessary to be vested in the Company to enable them to complete the canal. The statutory provisions then in force in the Province relating to the expropriation of property for highways are to be found in chapter 2 of the Provincial Acts of 1826, and are as follows:

Section XIII.—And be it further enacted, That where any new highway or common road from town to town, or place to place in any County or District in this Province, shall be wanting, and where old highways or roads with more conveniency may be altered upon application being made to the Court of General Sessions of the Peace within the said County or District, the said Court is hereby authorized and required to appoint three persons, being freeholders of the adjoining Townships, having most occasion for the said highway, to enquire into the necessity and conveniency thereof, and to make their report thereon, and the same being judged to be of common necessity or conveniency, the said Court shall issue a warrant to the