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No. 7.

3rd Session, 5th Parliament, 20 Victoria, 1857.

BILL.

An Act to authorize the formation of Mutual Associations against fire and storms by the Local Municipalities in Lower Canada.

Received and read, first time, Tuesday, 3rd March, 1857.

Second reading, Friday, 6th March, 1857.

MR. BUREAU.

TORONTO:

PRINTED BY JOHN TOWSE

**An Act to authorize the formation of Mutual Associations
against Fire and Storms, by the Local Municipalities
in Lower Canada.**

HER Majesty, &c., enacts as follows :

I. Hereafter it shall be lawful for any local Municipality to form a Mutual Association and insure houses, buildings, moveables, cattle and harvested crops, and other property, against all damages by fire and storms, which
5 said damages shall be set forth and enumerated in a By-law of the local Municipality so forming itself into a Mutual Association.

Local municipalities may form mutual insurance associations.

II. To enable a local Municipality to form such Mutual Association, it shall be requisite that the said By-law be passed by the said local Municipality and ratified by a majority at least of the qualified municipal electors ;
10 the said By-law shall fix the period of duration of the said Mutual Association.

Proceedings for its formation.

III. The By-law shall be published for the information of those liable to assessment at least one month before being submitted to the municipal electors, in a newspaper published within the District in which the local
15 Municipality shall be situate, and the said By-law shall also be posted up in at least four frequented places within the local Municipality, and each of the said publications and notifications shall contain a notice signed by the Clerk of the Municipality in the Council of which such By-law shall have originated, certifying that it is a true copy of the By-law to be sub-
20 mitted for the ratification or rejection of the municipal electors, and it shall be at the same time stated, that on a certain day and at a certain hour and place specified in the notice, which shall have been previously determined by the said Council, a general meeting of the qualified municipal electors of the local Municipality will be held for the purpose of taking the said
25 By-law into consideration, and ratifying or rejecting the same.

A by-law to be published one month previously.

IV. Upon the day and at the hour and place fixed by the said notice as aforesaid, the qualified municipal electors or such of them as shall be present at the meeting shall proceed to the consideration of the said By-law, and shall ratify or reject the same, and the Mayor of the local municipality,
30 or in his absence some other member of the Council of the Municipality to be chosen by the meeting, and in the absence of any such member, any other person present being an elector shall preside at the said meeting, and the Clerk of the Municipality shall act as Secretary, and it shall be the duty of the said Clerk to bring with him the Assessment Rolls of the
35 Municipality then in force or certified copies thereof ; the only question to be decided at such meeting shall be whether the majority of the municipal

A meeting of the electors to take place to consider the said By-law.

electors present at such meeting do approve or disapprove of the said By-law, and when the question shall have been put, the person presiding shall declare whether, in his opinion, the majority approves or disapproves of the By-law, and his decision, unless immediately appealed from, shall be final, and it shall forthwith be communicated to the Council of the Municipality in which the said By-law shall have originated, by a certificate under the seal of the Chairman or Secretary of the meeting. 5

Appeal from the decision of the President.

V. Any three qualified municipal electors present at the said meeting may appeal from the decision of the person presiding and may demand a poll, and such poll shall be granted by the person presiding at the said meeting, and the votes shall be forthwith taken by him, the Clerk of the Municipality acting as Poll-clerk; each elector shall present himself in turn to the person presiding, and shall give his vote,—“yea” or “nay,”—the word “yea” shall signify that he approves of the proposed By-law, the word “nay” shall signify that he disapproves of the said By-law; but no person shall be permitted to vote unless it appears by the Assessment Rolls, that he is duly qualified to vote as a municipal elector. 10 15

How the voting &c. shall be conducted.

VI. The voting for the approval or rejection as aforesaid of the said By-law, shall be proceeded with in the manner prescribed by the Lower Canada Municipal and Road Act of 1855 as regards the time and hour of voting and the closing of the poll, and the officer who shall preside at the meeting of the municipal electors for the purposes aforesaid, shall be invested with the powers conferred by the said Act for the preservation of the peace, and the maintenance of good order. 20

Certificate of decision.

VII. Upon the closing of the Poll the person presiding shall count the yeas and nays, and shall declare and certify for the information of the Council in which the By-law has originated, whether the majority approve or disapprove of the said By-law, and such certificate shall be countersigned by the Clerk of the Municipality who shall have acted as Secretary of the meeting, and shall be preserved by him with the poll-book among the archives of his office. 52 30

In case of approval of By-law.

VIII. In case the By-law shall be approved by a majority of the municipal electors, it shall have force and effect from the day of such approval.

Power to exclude certain properties.

IX. The local municipality so constituting itself into a Mutual Association for the purposes hereinbefore enumerated, may exclude certain properties, houses, buildings, effects and articles from the benefit of the assurance authorized by this Act, which such property shall in no case however, be assessed for the purposes of this Act. 35

By-law to be passed as to description of property admissible to the benefits of assurance.

X. So soon as any local Municipality shall have constituted itself into a Mutual Association in conformity with this Act, it shall be the duty of such Municipality by Resolution or By-law to declare what properties, houses, buildings, effects and articles shall not be admissible to the benefits of insurance by the Mutual Association of the local Municipality; and the By-law or Resolution so passed shall be published and posted up in the manner provided for the publication of By-laws in the Lower Canada Municipal and Road Act of 1855. 40 45

Insurance not to cover more than two

XI. The insurance shall in no case cover more than two-thirds, or less than two-thirds if the local Council think proper, of the value of the pro-

party insured and for which indemnification shall be claimed, and the sums required to cover the losses occasioned as aforesaid shall be payable by the local Municipality, to the person who shall have suffered the said losses, or to his lawful representatives, three months after notice thereof shall have been given to the local Municipality.

thirds of value of property insured.

XII. The Municipality shall then proceed to assess, according to the last assessment-roll, or according to the special valuation provided for by the next Section the share of each contributor upon the property liable to such assessment in the Municipality in which such Mutual Association shall exist, and such contributor shall be bound to pay and release his share of the amount required to cover the said losses, and in default of payment, the said sum shall be recovered in the manner provided by the 74th section of the Municipal and Road Act of 1855, and by the 25th section of the Municipal and Road Amendment Act of 1856.

Municipality to assess share of each contributor upon property liable to assessment.

Contributor bound to pay his share of loss.

XIII. Whenever any local Municipality shall find that the mode of assessment mentioned in the foregoing Section is unjust or defective, it shall be lawful in such case for the said Municipality to make a declaration to that effect by By-law or Resolution, and such Municipality may forthwith proceed to make a special valuation of the properties within the said local Municipality, liable to be assessed for the purposes of this Act, including therein, only the houses, barns, outhouses and other buildings with or without the other articles and perishable property, which might be insured against fires and storms: The said valuation shall be made by the assessors of the local Municipality, or by three other persons to be appointed by the Council of the said Municipality, after a By-law or Resolution shall have been passed for the purpose, by the said Municipality, adopting the system prescribed by this Section; and the said valuation shall serve as the basis of the assessment of the said Municipality for the recovery of the said losses and damages, so to be provided for under the operation of this Act. The said valuation shall be so made as soon as possible after the formation of the said Mutual Association, and shall be renewed annually, or at such longer period as the local Municipality by the advice of its Council shall deem expedient, but with respect to the collection of the sums required to cover the said losses and damages in any of the cases mentioned in this Act, such collection shall be made in the manner prescribed by this Act.

Special valuation may be made.

Valuation to be made by assessors of Municipality, or three persons appointed by Council of Municipality.

XIV. It shall be the duty of any person in a local Municipality who shall have suffered any loss, and who shall be entitled to indemnification in virtue of this Act to address his claim to the office of the said local Municipality, within thirty days after suffering the loss for which he claims the said indemnification.

Claim to be sent to office of local Municipality within thirty days.

XV. In case any disputes shall arise with respect to the amount of compensation claimed for loss and damage by fire and storms, the said disputes shall be submitted to two experts, one of whom shall be chosen by the local Municipality, and the other by the party claiming the said compensation, and in case of disagreement a third expert shall be appointed, and the decision of any two experts shall be binding and obligatory upon all parties.

Two experts to be appointed in case of dispute.

In cases of disagreement a third expert to be appointed.

XVI. It shall be lawful for any person who shall have sustained any loss or damage as aforesaid, within ten days after the signification of his

Notice to be given to Municipality of

name of *expert*.

claim for indemnification to the said local Municipality, if the said claim be not then accepted, give notice to the said local Municipality of the name of the person whom he shall have appointed as *expert*, and it shall be the duty of the said local Municipality to proceed to the appointment of their *expert* within the ten days after the said notice; and in case the said Municipality shall fail to appoint an *expert* or neglect to give the name of such *expert* to the party claiming the said compensation for loss or damage, it shall be lawful for the Judge of the Superior Court, upon the requisition of the party claiming the said compensation, to appoint an *expert* to determine the amount of compensation to be granted to the party who shall have sustained the said loss or damage.

In case of *experts* not agreeing a to choice of third *expert*, Judge may appoint.

XVII. In any case in which the *expert* appointed by the Municipality or in default of their having so done, by the Judge of the Superior Court, and the *expert* appointed by the party claiming compensation do not agree as to the choice of a third *expert*, it shall be lawful for any Judge of the Superior Court at the request of one of the parties interested, to appoint the said third *expert*.

Duties of *experts*.

XVIII. It shall be the duty of the said *experts* or any two of them, after having taken an oath before a Justice of the Peace, in the local Municipality, to faithfully and impartially fulfil the duties of their charge, to proceed to determine the amount of compensation the said local Municipality shall pay, and this in such manner as the *experts* or any two of them shall decide upon; and the judgment of the said *experts*, or

Proviso.

of any two of them shall be final and conclusive: Provided, however, that no judgment shall be rendered, nor any official act passed by the majority of them, unless at a meeting held at a time and place of which the third *expert* shall have received at least one entire day's previous notice, or to which the meeting at which the third *expert* was present shall have adjourned; and it shall not be necessary to serve any notice thereof upon the party claiming the said compensation, as he shall be held to have been sufficiently notified through the intervention of the *expert*

Proviso: judgment of *experts* not to be for sum less than that offered by Municipality.

whom he shall have appointed: Provided always that the judgment of the *experts* shall in no case be for any sum less than that offered by the local Municipality, and if, in any case in which *experts* shall have been named, the amount adjudged as compensation shall not exceed the amount tendered by the local Municipality, if any such tender have been made, then the party claiming the said compensation shall pay the costs of the *expertise*, and such costs shall be deducted from the amount of the compensation; otherwise the costs shall be paid by the local Municipality, and in either case if the parties do not agree, the said costs may be taxed on any Judge of the Superior Court.

experts may examine witness on oath.

XIX. Said Experts, or any one of them, may examine upon oath or solemn affirmation the parties or witnesses who shall appear before them, and may administer such oath or affirmation, and any false statement which shall voluntarily be made by any witness under the said oath or affirmation, shall be deemed wilful perjury, and shall be punishable as such.

In case of death of one of *experts*, Judge may appoint another.

XX. In case the person appointed by any Judge as *expert*, or third *expert*, shall die before judgment shall have been rendered, or shall refuse or neglect to act within a reasonable time, then upon the requisition of one or other of the parties, it shall be lawful for any Judge of the Superior

Court, upon proof by affidavit or otherwise, of such incompetence, disqualification, refusal or neglect, in his discretion to appoint another in his stead; in like manner, if, for the same reasons, the person claiming the said compensation shall find himself compelled to appoint another *expert*, it shall be lawful for him to do so; and in each of the above mentioned cases, notice thereof shall be given to the third *expert*, and it shall not be necessary to recommence or repeat any proceedings which may have been previously had or taken.

XXI. No *experts* shall be disqualified from acting on account of his being professionally employed by the local Municipality or by the party claiming the said compensation, or of his having previously expressed an opinion as to the amount of compensation or indemnification to be allowed, and no reason of disqualification shall be held to be valid against any *expert* appointed by a Judge of the Superior Court, after his appointment, but the said objections shall be made previous to the said appointment, and the validity or invalidity thereof be determined in a summary manner, by the said Judge; and no cause of disqualification shall be considered valid against any *expert* appointed by the local Municipality or by the person claiming the said indemnification or compensation after the third *expert* shall have been appointed, and the validity of the objections raised against such *expert* before the said *expert* be appointed, shall be tried by any Judge of the said Court at the request of either of the parties interested, upon giving one full day's notice to the other party, and if the said objections be held valid, the appointment shall be null, and it shall be the duty of the party who shall have named as *expert* the person thus declared disqualified, to name another qualified *expert*.

Expert not to be disqualified on account of being professionally employed by local Municipality.

No objection can be made after appointment of *expert*.

Objections to be tried before any Judge. One day's notice to other party.

XXII. No judgment rendered in duplicate as aforesaid, shall be held to be invalid by reason of any informality or other technical objection; Provided that all the conditions of this Act be complied with, and that the judgment determines in a formal manner the amount adjudged for the said indemnification or compensation so claimed on account of the damage or loss, and it shall not be necessary that the name of the person or persons to whom the said indemnification shall be paid, be mentioned in the said judgment.

Judgment not to be invalid on account of any informality or technical objection.

Proviso.

XXIII. It shall be lawful for the person who shall have obtained the said judgment to claim its execution before any Court of Justice or Equity having competent jurisdiction to order the payment and execution of the said judgment, and the production of a duplicate of the said judgment, duly authenticated, shall be the only proof requisite and necessary to order the payment and execution thereof in favor of the person who shall have obtained the said judgment, together with the costs of suit.

Execution of Judgment before any Court of Justice or Equity.

XXIV. It shall be lawful for the local Municipality constituted into a Mutual Assurance Association to make By-laws with respect to certain risks, which shall be set forth in the said By-laws, and it shall be lawful for any Municipality from which any indemnification is claimed for losses as aforesaid, to set forth as a defence for refusing to pay the said indemnification, that the By-laws of the said local Municipality with regard to the said risks, have been violated, and in such cases any Court of Justice or Equity may release the said Local Municipality from the payment of the said indemnity and give judgment in its discretion as to the costs of suit.

Municipality to make By-Laws.

Not lawful to insure in any other Insurance Office.

XXV. It shall not be lawful for any person or persons insured in virtue of the provisions of this Act, to insure houses, buildings, moveables, cattle, or harvested crops, in any other Insurance Office, under penalty of forfeiting their right to the indemnification which they may claim by virtue of the provisions of this Act.

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Application of Act.

XXVI. This Act shall not apply to Cities, Boroughs, Towns, and Incorporated Villages.

Act to apply to Lower Canada only.

XXVIII. This Act shall apply to Lower Canada only.