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[No. 183.]

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4th Session, 8th Parliament, 29 Victoria, 1865.

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**B I L L .**

**An Act to extend and amend the Acts  
respecting Public Works, to and with  
respect to Works connected with the  
defence of the Province.**

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**Received and read first time, Friday, 25th  
August, 1865.**

**Second reading, Tuesday, 29th August, 1865.**

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**The Hon. Atty. Genl. MACDONALD,**

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**Printed by G. E. Desbarats,**

An Act to extend and amend the Acts respecting  
Public Works, to and with respect to Works con-  
nected with the defence of the Province.

**W**HEREAS it is necessary to amend the chapter twenty-  
eight of the Consolidated Statutes of Canada, respecting  
the Public Works, and the Act twenty-fourth Victoria, chapter  
four, amending the same, so as to extend the same to works  
5 required for the defence of the Province, and also amend the  
Act chapter thirty-six of the said Consolidated Statutes,  
respecting lands and real property held or required by the  
Imperial Government for the Military defence of this Province:  
Therefore, Her Majesty, by and with the advice and consent  
10 of the Legislative Council and Assembly of Canada, enacts as  
follows:

1. All works connected with the defence of this Province,  
shall be Public Works within the meaning of the tenth section  
of the Act first cited in the Preamble of this Act, and the said  
15 Act and the Act secondly cited in the Preamble, shall apply to  
such works as if they had been mentioned in the said section:  
subject to the provisions of this Act.

2. The powers of the Commissioner of Public Works, and  
all the provisions of the Acts firstly and secondly cited in the  
20 preamble to this Act, not inconsistent with this Act, shall extend  
to the demolition or removal of all such buildings, walls; woods,  
trees, fences or other obstructions, natural or artificial, and to the  
filling up of such hollows, natural or artificial, as would, in the  
opinion of the engineers, civil or military, employed on any  
25 such work as is mentioned in the next preceding section,  
impair the effect of such work, and being on any lands within  
a distance not exceeding \_\_\_\_\_ miles of such work,  
without acquiring the land itself, and to the preventing the  
construction or existence of any such obstruction thereafter;  
30 and if the owner or occupier of any such land refuses or  
fails to agree with the Commissioner as to the compensation  
to be paid for the exercise of any powers hereby given, the  
Commissioner may tender a reasonable compensation in his  
estimation for the same, with notice that the question will be  
35 submitted to the Official Arbitrators mentioned in the Act firstly  
and secondly cited in the preamble to this Act; and in such  
case, at any time after three days after such tender and notice,  
the Commissioner may enter upon such land and cause the work  
mentioned in such notice to be performed, and may, at any time  
40 or times thereafter, again enter upon such land after like notice,  
and remove any such obstruction as aforesaid, so as to restore

Preamble.

Works for de-  
fence to be  
Public Works.Powers of  
Commissioner  
extended in re-  
spect of lands  
required for  
defensive pur-  
poses.How amount  
of compensa-  
tion for lands  
taken shall be  
ascertained.

such land to the state in which it was after the performance of the work mentioned in the first notice ; and the compensation agreed upon, or awarded by the said Arbitrators, shall include the exercise of the power last mentioned, and if the renewal of any such obstruction has been caused by the fault of the owner of the lands, or of those through whom he claims, the cost of removing it may be recovered from him by the said Commissioner. 5

Limitation of right of entry.

3. The right of entry given by the next preceding section shall be exercised within six months from the giving of the notice thereof, and not afterwards, except after new notice. 10

Similar powers conferred on the War Department.

4. Her Majesty's Principal Secretary of State for the War Department shall have the same powers and rights with regard to the taking or taking possession of lands or materials required for any work connected with the military defence of the Province, and with regard to lands required to be cleared and kept clear of obstructions as aforesaid, as are vested by the preceding sections of this Act and the Acts therein cited, in the Commissioner of Public Works ; and the price to be paid for such lands or the compensation to be paid for the exercise of such powers and rights, if not agreed upon by the parties, shall be determined by the said Official Arbitrators. 15 20

Powers only to be exercised with respect to lands duly certified to be required for defence.

5. The powers vested by this Act in the Commissioner of Public Works and in the said Principal Secretary of State, respectively, shall be exercised only in respect of lands, the necessity of acquiring or taking which for the defence of the Province has been or shall be certified by the Commander of Her Majesty's Forces in this Province, under his hand and seal, or with respect to which he shall have certified in like manner that the exercise of any other of such powers is necessary for such defence, unless the consent of the owner of the lands has been obtained or an enemy has actually invaded this Province ; nor shall any such power be exercised by the Commissioner of Public Works, except with respect to such works as shall be designated for the purpose, by the Governor in Council. 25 30 35

Proceedings in case of resistance to the taking possession.

6. If, in any case where the said Principal Secretary of State has given the requisite notice, any resistance be offered or feared to his taking possession of the lands mentioned in such notice, or to his entering thereon and performing the work mentioned in such notice, then on application on behalf of the said Principal Secretary of State, any Judge of the Superior Court in Lower Canada, or any Judge of the County Court in Upper Canada, may command the Sheriff of the district, county, or place, where the lands lie, to put the said Secretary of State in possession thereof, or to enforce such right of entry, which such Sheriff, taking with him sufficient assistance, shall accordingly do. 40 45

7. So much of the Act thirdly cited in the preamble to this Act, as requires any Sheriff to summon a Jury to enquire of and determine, or as authorizes any jury to enquire of and determine the price or compensation to be paid by the said Principal Secretary of State, for the absolute purchase or for the possession or use of any lands or real estate, of which such Sheriff has put or shall put the said Principal Secretary of State into possession, is hereby repealed as to any case in which a verdict has not been given; and such price or compensation shall be enquired of and determined by the Official Arbitrators *aforsaid*, (whose award shall stand in the place of the verdict of a Jury for all the purposes of the said Act,) in the manner prescribed by and subject to the provisions of the Acts firstly and secondly cited in the preamble to this Act, except that the testimony of witnesses shall not be taken down in writing; And the Sheriff who has given or shall give possession of any lands or real property to the said Principal Secretary of State shall certify to the Official Arbitrators his doings in that behalf when by them required so to do; And in any case where an appeal from a verdict heretofore rendered has been or shall be granted, and no second verdict has been rendered, the Court shall refer the case to the said Official Arbitrators for determination.

Compensation for lands taken under Con. Stat. Can. cap. 36, to be determined by Official Arbitrators.

8. And inasmuch as the twenty-first section of the Act thirdly cited in the Preamble to this Act applies only to the case where the party conveying any property to the said Principal Secretary of State could not have legally conveyed the same without the said Act, or has not the absolute interest therein, and not to the case where there are merely hypothecs or incumbrances on such property, and the ordinary proceedings for confirmation of title cannot be applied in such case: therefore the said section is hereby repealed, and the following section shall be substituted therefor and shall be read as part of the said Act as hereby amended:

Recital.  
Con. Stat. Can. cap. 36, see 21, repealed.

“21. In Lower Canada the sum of money determined by the verdict of a Jury or by the award of the Official Arbitrators, or agreed upon by the said Principal Secretary of State and any party who could under this Act validly convey any real estate, or lawfully in possession, as owner of any real estate, which could be lawfully taken under this Act without the consent of the owner thereof, as the price or compensation to be paid for such real estate, shall stand in the stead of such real estate, and any claim to, or hypothec or incumbrance upon such real estate shall be converted into a claim to or upon the said price or compensation:”

Price of land taken to stand instead of the land, in respect of incumbrances.

“2. If the said Principal Secretary of State believes that any such claim to, or hypothec or incumbrance upon such real estate exists, or if any party to whom such price or compensation or any part thereof is payable refuses to execute the proper

Proceedings when party refuses to execute conveyance, &c.

conveyance and warranty, or is unknown to the said Principal Secretary of State, or cannot be found, or if for any other reason the said Principal Secretary of State deems it advisable,—he may deposit with the Prothonotary of the Superior Court in the district in which such real estate lies, an authentic copy of the deed of conveyance of such real estate to the said Principal Secretary of State, or of the verdict or award fixing such price or compensation if there be no such conveyance, (and such verdict or award shall then be the title of the said Principal Secretary of State to the real estate therein mentioned,) and proceedings shall be thereupon had upon application on behalf of such Principal Secretary of State, for confirmation of such title, in like manner as in other cases of confirmation of title,—except that no biddings shall be allowed on such real estate, nor shall any Registrar's certificate be required, and except also that in addition to the usual contents of the notice in the Official Gazette the Prothonotary shall state that such title, (that is, the conveyance, verdict or award) is under this Act, and shall call upon all persons or parties entitled to or to any part of such real estate, or representing or being the husband, tutor or curator of any such person or party so entitled, to file their oppositions for their claims to such price or compensation or any part thereof; and all such oppositions shall be received and adjudged upon by the Court; and the judgment of confirmation shall be granted as of course if the requirements of this section have been complied with, and shall for ever bar all claims to or upon the said real estate or any part thereof (including dower not yet open) as well as all hypothecs or incumbrances upon the same, and shall have the effect of a Sheriff's title ;”

Proceedings for confirmation of title in such cases.

Payment of price if there be no opposition.

Proceedings if there is opposition.

Costs.

Notice of entry upon lands may be desisted from.

“ 3. If there be no opposition, or if every opposition be withdrawn before the judgment of confirmation, the price or compensation shall be paid to the party who executed the conveyance, but if there remains any opposition not withdrawn, then, before the judgment of confirmation shall be rendered, the price or compensation shall be paid into Court, with interest until the day of such payment, and the Court shall make such order for the distribution, payment or investment of such price or compensation, and for securing the rights of all parties interested, as to right and justice may appertain, according to this Act and to law; and the costs of the said proceedings shall be borne by the said Principal Secretary of State, if there be no opposition; but if there be any opposition, then only such part of the costs as would be incurred if there were no opposition shall be payable by him.”

§. The said Principal Secretary of State may desist from any notice given under the fifteenth section of the Act thirdly cited in the Preamble to this Act; any notice given under the said section before the passing of this Act, shall be held

to be a sufficient notice to enable the said Principal Secretary of State to take or to be put into possession of the lands therein mentioned, either under this Act or under the said 5 section, and to refer the question of price to the said Official Arbitrators ; no notice of entry to survey shall hereafter be requisite under the said Act, but the said Principal Secretary shall have same powers as the Commissioner of Public Works to make surveys ; And any written offer made by the said Principal Secretary of State to pay any sum of money, shall be held 10 to be a legal tender thereof.

**10.** No change in the ownership of any real estate after notice under this Act or the Act thirdly cited in the Preamble to this Act, that such real estate is required for the defence of the Province, 15 shall affect the said notice or the proceedings consequent upon it, or the verdict or award in the case, or the possession or title of the said Principal Secretary of State ; nor shall any improvement made on any real estate after such notice, be taken into consideration in determining the price or compensation to be 20 awarded.

**11.** Nothing in this Act shall impair or affect any right or power given to the said Principal Secretary of State by the Act thirdly cited in the preamble to this Act or any provision of the said Act not expressly repealed by or inconsistent with this 25 Act which shall be construed as forming part of the said Act, the provisions whereof as hereby amended shall apply to lands taken under this Act ; and the compensation to be paid for the exercise of the powers mentioned in the second section of this Act may be agreed upon, and the requisite covenants to keep the 30 land for ever clear of the obstructions mentioned in the notice in that behalf may be entered into, so as to bind all future owners and possessors of the land, by any party who could, under the said Act, convey such lands to the said Principal Secretary of State,—and such compensation shall be paid to 35 such party on his entering into such covenant, saving any just claim of any other party against him for such compensation or any part thereof.

**12.** Any authority given by the said Principal Secretary of State to any person to exercise any of the powers given by the 40 Act thirdly cited in the preamble to this Act, shall extend to the exercise of the powers given for like purposes by this Act ; and the authority of any officer in Her Majesty's army to exercise any power given to the said Principal Secretary of State by the said Act or by this Act, shall not be called in question, 45 except by some superior officer in Her Majesty's army or by the said Principal Secretary of State.

**13.** The word "lands" or "real estate" in this Act includes 5 all houses, buildings, or real property of any kind ; the

Change in ownership of land after notice given.

Rights of the War Department not affected by this Act.

Delegation of authority to exercise powers given under this Act.

Interpretation.

citation of the Act first cited, or of the Act thirdly cited in the preamble to this Act, shall be a sufficient citation of the Act so cited as amended by this Act; and the expression "this Act" in either of the said Acts, shall mean the Act wheroin it occurs as amended by this Act.