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No. 198.

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

(LOCAL BILL.)

BILL.

An Act to authorise the City of Toronto to
erect Water Works, and to levy a Water
Rate.

Received and read, first time, Wednesday, 1st
April, 1857.

Second reading, Thursday, 2nd April, 1857.

Mr. BOWES.

TORONTO:

PRINTED BY JOHN LOVELL, YONGE STREET.

An Act to authorise the City of Toronto to erect Water Works, and to levy a water rate.

WHEREAS the construction of Water Works to afford a good supply of pure water, would conduce to the health and comfort of the inhabitants of the City of Toronto: Therefore Her Majesty, &c., enacts as follows: Preamble.

- 5 I. The persons hereafter to be appointed in the manner provided in this Act, and their successors, shall constitute a Board to be called and known as the Water Commissioners of the City of Toronto. Board of Water Commissioners.
- 10 II. It shall be the duty of the said Commissioners to examine, consider, and decide upon all matters relative to supplying the said City of Toronto with a sufficient quantity of pure and wholesome water, for the use of its inhabitants, and the amount of money necessary to effect that object. Duties of Commissioners.
- 15 III. The said Commissioners shall have power to employ engineers, surveyors, and such other persons as in their opinion may be necessary to enable them to fulfil their duties under this Act. May employ engineers, &c.
- 20 IV. It shall and may be lawful for the said Commissioners, their agents, servants, and workmen, from time to time, and at such times hereafter as they shall see fit, and they are hereby authorized and empowered, to enter into and upon the land of any person or persons, bodies politic or corporate, in the City of Toronto, or within _____ miles of the said City, and to survey and set out such parts thereof as they may require for the purposes of the said Water Works, and also to divert and appropriate any spring or stream of water thereon, as they shall judge suitable and proper, and to contract with the owners and occupiers of the said lands, and those having an interest or right in the said water, for the purchase thereof, or of any portion thereof, or of any privilege that may be required for the purposes of the said Commissioners; and in case of any disagreement between the said Commissioners and the owners and occupiers of such lands, or any person or persons having an interest in the said water or the natural flow thereof, or any such privilege as aforesaid, respecting the amount of purchase or the value thereof, or as to the damage such appropriation shall cause to them or otherwise, or in case such owner or occupier, or person having an interest as aforesaid, in the said water or privilege as aforesaid, shall be an infant, married woman, or insane, or absent from the Province, or in case such lands or water privilege may be mortgaged or pledged to any person or persons, it shall be the duty of the Public Valuator to be appointed as hereinafter named, on application being made to him by the said Commissioners or the party or parties interested as aforesaid, to ascertain, determine, adjudge, and order the respective sums of money which the said Commissioners shall pay to the respective Power to Commissioners to survey and take lands, water courses, &c.

Valuations in case of difference as to compensation.

Public Valuator to determine the same.

persons entitled to receive the same, and such Public Valuator shall and is hereby required to attend at some convenient place at or in the vicinity of the said City of Toronto, to be appointed by the said Commissioner after eight days' notice given for that purpose by the said Commissioner, then and there to ascertain, determine, order, and adjudge, such matters and things as shall be submitted to his consideration by the parties interested. 5

Appointment of Public Valuator.

To be sworn.

V. Such Public Valuator shall be appointed by the Governor of this Province, when requested so to do by the Mayor of the said City of Toronto, and before entering upon the duties of the said Office shall be sworn before one of the Judges of one of the Superior Courts of Common Law for Upper Canada, well and truly to assess the value or damage between the parties to the best of his judgment. 10

Minutes of proceedings before him.

Proviso; for appeal.

Valuator to certify proceedings to Court.

Powers of the Court.

Award to be paid within a certain time.

VI. Such Public Valuator shall keep a record of all proceedings taken and held before him, in which shall be entered the time and place of all meetings, the parties attending, and the names of all witnesses giving evidence before him; and he shall transcribe in such record the testimony given by the said witnesses, and retain and file all documents and maps produced and used as evidence before him,—and shall also enter therein his valuation or award in the premises, and forthwith send copies thereof to all parties concerned therein: Provided always, that if any of the parties interested in such valuation or award shall be dissatisfied therewith, he she, or they, may appeal therefrom to either of the said Superior Courts of Common Law, notice thereof in writing being given to the other party or parties concerned therein, and to the said Valuator, within one week after the same shall have been sent to the parties concerned, and upon such notice it shall be the duty of the said Valuator to make a true and faithful Copy of all entries on the said Book of Record, relating to the matter so appealed from, which he shall certify and return to the said Court mentioned in the said notice of appeal, together with all documents and maps filed by him during the progress of the said investigation, on the first day of the term of the said Court next succeeding the said notice; and the said Court shall have power, after hearing the said parties, on motion by their Attorneys to increase or decrease the said valuation or award, as in their judgment they shall think right; and any sum so awarded by the said Valuator, or fixed by the said Court on motion as aforesaid, shall be paid within three months from the date of the entry in the said Book of record, or from the date of the rule of Court made upon such appeal, and in default of such payment, the proprietor shall resume the possession of his property, and all his right thereupon revive; and the award or valuation of such Valuator as aforesaid, so entered in the said Book of record, shall be binding on all parties concerned, subject as aforesaid. 15 20 25 30 35 40

Witnesses to be sworn.

Costs how taxed.

Fees of Valuator.

How paid.

VII. The said Valuator shall have power to swear all witnesses produced before him, and the expenses of the said valuation shall be in his discretion, and the expenses of the appeal hereinbefore provided for, shall be in the discretion of the Court to whom such appeal shall be made; Provided always, that such Valuator shall be entitled to a fee of for each and every day he shall be employed in such valuation, and the sum of per folio of every one hundred words for all copies of entries in the said book of record furnished to the said parties or the said Courts: and the said fee shall in the first instance be paid by the said Commissioners, who shall deduct the proportion if any, to be paid by the other parties from the amount to be paid to them. 45 50

- VIII. The lands and water which shall be ascertained, set out and appropriated by the said Commissioners for the purposes aforesaid, shall thereupon and for ever thereafter be vested in the Mayor, Aldermen and Commonalty of the City of Toronto, and their successors; and it shall
- 5 and may be lawful for the said Commissioners and their successors to construct, erect and maintain upon the said lands, all such reservoirs, water works and machinery requisite for the said undertaking, and to convey the said water thereto and therefrom, in, upon and through any of the premises and lands lying intermediate between the said reservoir and
- 10 water works, and the springs, streams, rivers or lakes from which the same are procured, and the City of Toronto, by one or more lines of pipes or mains, as may from time to time be found necessary; and for the better effecting the purposes, the said Commissioners, their successors and servants, are hereby empowered to enter and pass upon and over the
- 15 said grounds and lands intermediate as aforesaid, and the same to cut, trench and dig up if necessary, and to lay down the said pipes or mains through the same, and upon, over, under and through the highways, railways and roads of and in the Townships of the County of York, and through the public ways, streets, lanes, or other passages of the said City
- 20 of Toronto, and in, upon, through or under the lands, grounds and premises of any person or persons, bodies politic, corporate or collegiate whatsoever, and to set out, ascertain, use and occupy such part or parts thereof, as the said Commissioners or their successors shall think necessary and proper for the making and maintaining of the said works, or for taking
- 25 up, removing or altering or repairing the same, and for distributing water to the inhabitants of the City of Toronto, or for the uses of the Corporation of the said City, or of the proprietors or occupiers of the lands through or near which the same may pass, and for this purpose to sink and lay down pipes, mains, tanks, reservoirs, and other conveniences, and from
- 30 time to time to alter all or any of the said works, as well in the position as in the construction thereof, as to the said Commissioners or their successors shall seem meet, doing as little damage as may be, in the execution of the powers hereby granted to them, and making reasonable and adequate satisfaction to the proprietors, to be ascertained, in case of disagreement,
- 35 by the Valuator hereinbefore named, with the like appeal from his valuation thereof; Provided always, that nothing herein contained shall be construed to authorize the said Commissioners, or any person acting under their authority, to take for the purposes of the said works any house, garden or orchard, without the consent of the owner.
- 40 IX. If any person shall wilfully or maliciously hinder or interrupt or cause or procure to be hindered or interrupted the said Commissioners or their managers, contractors, servants, or agents, or workmen, or any of them, in the exercise of any of the powers and authorities in this Act authorized and contained, or if any person shall wilfully or maliciously let
- 45 off or discharge any water, so that the same shall run waste or useless out of the said works, or if any person shall throw or deposit any thing or noisome or offensive matter into the said water or water works, or in any way foul the same or commit any wilful damage or injury to the works, pipes, or water, or encourage the same to be done; any person so offending
- 50 shall, besides being subject to an action at law for the damages done thereby, be held guilty of a misdemeanor, and upon conviction thereof before any of the Courts of criminal jurisdiction in the United Counties of York and Peel, or a Magistrate of the said United Counties or of the City of Toronto, shall be punished by the said Court or Magistrate, by fine or
- 55 imprisonment or either, at the discretion of the Court or Magistrate, as in other misdemeanors at common law or by summary conviction.

Lands set out and taken vested in the City of Toronto.

Commissioners may lay mains and other pipes for conveying the water.

Their powers in so doing.

Compensation to be made for damages.

Proviso.

Punishment of persons hindering the Commissioners, wasting the water, &c.

Materials for water works to be exempt from execution against contractor.

X. All materials procured or partially procured under contract with the Commissioners, shall be exempt from execution, but it shall be the duty of the Commissioners to pay the money due to such contractor for such materials, to the judgment creditor of the contractor, under whose execution such materials would otherwise have been sold, upon his producing to them any proof that his execution would have so attached, and such payment shall be held as valid payment on the contract. 5

Commissioners to keep books and account and report to the Corporation of Toronto.

XI. The Commissioners shall keep regular books of account and books recording the whole of their official proceedings; and the said Commissioners and clerks employed in the service shall be sworn to the faithful performance of their duties, and all such books shall be open to the examination of any person or persons appointed for that purpose by the Mayor, Aldermen and Commonalty of the City of Toronto: The Commissioners shall also on the 30th day of June and 31st day of December, in each and every year, make a report to the said the Mayor, Aldermen and Commonalty of the City of Toronto of the condition of the works under their charge, accompanied by a statement of their receipts and expenditure on account of the same. 10 15

Commissioners to regulate the distribution of water, and price to be paid for it.

XII. The said Commissioners for the time being shall regulate the distribution and use of the water in all places and for all purposes where the same may be required, and from time to time shall fix the prices for the use thereof and the terms of payment, and they may erect such number of public hydrants and in such places as they shall see fit, and direct in what manner and for what purposes the same shall be used, all which they may change at their discretion: Provided always, that all hydrants, conduits or other appliances required and furnished for the purpose of extinguishment of fires shall be placed as the Mayor, Aldermen and Commonalty of the City of Toronto shall direct and shall be under their exclusive control and direction. 20 25

Proviso.

Commissioners may contract for furnishing water to any party.

XIII. From and after the completion of the said works the said Commissioners shall have power to contract with parties willing to take water from them at a rate to be fixed by them in the same manner as any private company or companies can or may now contract and charge for the same; and when the water works now erected and in use in the said City belonging to the any such private Company shall have been acquired by the said City or are otherwise disposed of, then the owner and occupier of each and every house, tenement or lot in the said City of Toronto, in any street or streets in which the said water shall be laid, shall each be liable for the payment of a special water rate to be fixed by the Commissioners, and such water rate so fixed shall be lien upon the said house, tenement or lot, in the same way or manner as other taxes assessed on real property in the said City of Toronto are liens, and shall be collected in like manner if not previously paid to the said Commissioners. 30 35 40

When the works belonging to any private Company shall be purchased by the City, a water rate may be levied.

Quorum of Commissioners: their acts to bind the Corporation of the City.

XIV. A majority of the said Commissioners shall constitute a quorum for the transaction of any business allowed or required by the powers or duties of the office, and all contracts and requirements, acts and doings of the said Commissioners within the scope of their duty or authority shall be obligatory upon and in law considered as done by the Mayor, Aldermen and Commonalty of the City of Toronto. 45

Commissioners may bring and defend actions, &c.

XV. The said Commissioners may prosecute or defend any action or proceeding at law or in equity by the name of "The Water Commissioners 50

of the City of Toronto," against any person or persons for money due for the use of the water, for the breach of any contract, express or implied, touching the execution or management of the works, or the distribution of the water, or of any promise or contract made to or with them, and also for any injury, or trespass, or nuisance done or suffered to the water courses, pipes, machinery, or any apparatus belonging to or connected with any part of the works, or for any improper use or waste of the water; And any vacancy or the filling any vacancy in the Board of Commissioners either before or after any cause of action arises or suit is commenced, shall not change the right of the said Commissioners as a body to commence and maintain any such action or process at law or in equity, but in all such cases they shall be considered from the time of the organization of the Board as a corporation.

Change of Commissioners not to affect proceedings.

XVI. The Commissioners and their officers shall have the like protection in the exercise of their respective offices and in the execution of their duties, as Justices of the Peace may have under the laws of this Province.

Commissioners to be protected as Justices of the Peace are.

XVII. For the purpose of constructing the said Water Works and paying the expense attending thereon, it shall and may be lawful to and for the Mayor, Aldermen and Commonalty of the City of Toronto, (any Act of the Parliament of this Province to the contrary notwithstanding,) and they are hereby required from time to time, as the amounts may be required by the said Commissioners, to raise by loan, upon the credit of the debentures hereinafter mentioned, from any person or persons, body or bodies corporate, either in this Province, Great Britain or elsewhere, who may be willing to lend the same, a sum of money not exceeding in the whole three hundred thousand pounds of lawful money of Canada, and for the Mayor of the said City of Toronto for the time being to cause to be issued debentures or bonds of the said City, under the Corporation seal, signed by the Mayor and countersigned by the Chamberlain of the said City for the time being, in such sum not exceeding in the whole the said sum of three hundred thousand pounds, authorized to be borrowed under this Act, as the Commissioners shall direct and appoint; and the principal sum secured by the said debentures shall be payable within twenty years from the issuing thereof, and the interest accruing thereon shall be made payable semi-annually, either in sterling or in currency, in this Province, Great Britain or elsewhere, as the Common Council of the said City of Toronto shall deem expedient or necessary.

Corporation of Toronto may borrow a sum not exceeding £300,000, for defraying the cost of the water works.

Debentures to be issued.

XVIII. The funds derived from the negotiation of the debentures to be issued under this Act, shall, when received by the said Commissioners for the time being, be deposited by them in some one or more of the chartered banks of the Province, on such conditions as the said Commissioners shall from time to time agree upon, and only be withdrawn therefrom as they may from time to time be required for the payment and discharge of the liabilities that may be incurred in carrying out the improvements contemplated by the Act; and any check for the withdrawal of any part of such funds shall be signed by the Chairman of the said Commissioners, and also by the Mayor of the said City of Toronto for the time being.

Deposit of monies so raised, and in what manner and for what purposes it shall be used.

XIX. This Act shall not have any force or effect until the Mayor, Aldermen and Commonalty of the City of Toronto shall pass a By-law authorizing the construction of the said Water Works; and at the first

When this Act shall take effect.

meeting of the Common Council of the said City of Toronto, after the said By-law shall have been passed, it shall be the duty of the Mayor of the said City for the time being to submit to the Council the names of three persons to be appointed the Water Commissioners for the said city, and the said Common Council shall forthwith proceed to confirm or re- 5
ject such nomination; and if the said Council shall not confirm such persons in the said appointment, but shall reject them, or any of them, the Mayor shall forthwith nominate another or others and submit the same to the said Council, until three persons named by him for the said office shall have been confirmed therein by the said Council. 10

Mode of appointing the Commissioners.

Terms of office of the Commissioners. XX. The said Water Commissioners shall at their first meeting after their nomination and confirmation in the said office as aforesaid, determine by lot or otherwise, the terms during which they shall respectively hold their offices, and these shall be as follows: one of them shall remain in office one year, one two years, and one three years, to be computed 15
from the time of their confirmation in the said office by the said Council; and as their terms of office severally expire, or vacancies may occur by death, resignation or removal from the city or otherwise, it shall be the duty of the Mayor for the time being to nominate a person or persons to fill such vacancy or vacancies and for the said Common Council to 20
confirm the same in manner aforesaid: Provided always, that any retiring member of the said Board shall be eligible for re-appointment; and further, that it shall at all times be competent for the Common Council of the said City of Toronto to remove the said Water Commissioners or any or either of them from office by a vote of two-thirds of the members 25
of the said Common Council.

Vacancies how filled.

Proviso.

Proviso: how Commissioners may be removed.

Remuneration of Commissioners.

XXI. The Chairman of the said Commissioners and the said Commissioners shall be paid for their services by an annual vote of the said Common Council, and shall also be paid all reasonable travelling expenses while employed upon or about the work. 30

Public Act.

XXII. This Act shall be deemed and taken as a public Act.