

No. 246.

1st Session, 6th Parliament, 22 Victoria, 1858.

(LOCAL BILL.)

BILL.

**An Act for the protection of Bridges over
the River Welland.**

Received and read first time, Monday, 5th July,
1858.

Second reading, Wednesday, 7th July, 1858.

MR. McMICKEN.

TORONTO :

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An Act for the protection of Bridges over the River Welland.

WHEREAS the River Welland forms the boundary line between a portion of the County of Lincoln and a portion of the County of Welland, and also forms the boundary line between certain Townships in the said County of Welland; And whereas the Municipal Council of the County of Welland have recently erected several substantial bridges over the said river, within the limits of the said County, and have taken the charge and care of other bridges previously erected over that stream also within the said limits, and are about to erect, jointly with the Municipality of the County of Lincoln, other bridges over the said river, all of which are and will be a great convenience to the inhabitants generally in the vicinity thereof; And whereas doubts have arisen whether that part of the said river above the Welland Canal Aqueduct at Merrittsville is a "navigable stream," within the proper and legal meaning of the expression "navigable stream," and whether penalties can be lawfully enforced against persons damaging or removing such bridges; And whereas the Municipal Council of the County of Welland aforesaid have by their petition prayed that the said doubts may be removed, and it is expedient to grant their prayer; Therefore Her Majesty, &c., enacts as follows:

20 I. All bridges now erected or hereafter to be erected over that part of the River Welland extending above the Welland Canal Aqueduct at Merrittsville, in the said County of Welland, which shall by a By-law or By-laws of the Municipal Council of the County of Welland or of the Municipal Council of the County of Lincoln, be declared to be public bridges and to be under the charge and care of either of the said Municipal Councils, or under the charge and care of the said Municipal Councils conjointly, (which By-law and By-laws the said Municipal Councils and their successors are hereby severally authorized from time to time to pass, as occasion shall require, and again at their pleasure to repeal,) shall be deemed and taken to have been and to be lawfully erected bridges, and such of them, with the approaches thereto, as are or shall be situate wholly within the limits of either of the said Counties shall be the property of the County within the limits of which it or they may be so situate, and such as are or shall be over that part of said stream forming the boundary line between the said Counties shall be the joint property of the Counties of Lincoln and Welland: Provided always, that every bridge hereafter to be erected over the said river, between the said aqueduct and the bridge called "Tisdale's Bridge" upon the Town Line dividing the Townships of Caistor and Gainsborough, shall have an opening between the bents in the channel of the stream of not less than feet, in the clear, to admit of the passage of

Preamble.

Certain Bridges declared to be Public Bridges and the property of the Counties of Lincoln and Welland respectively or jointly.

Proviso: as to certain of the said Bridges.

vessels, boats, scows, or other craft and rafts navigating the said stream, and shall be of the uniform height of not less than fifteen feet at such opening above the ordinary level of the water in the said stream.

Penalty on persons destroying or injuring such bridges.

II. Any person or persons whosoever who shall, after the passing of a By-law or By-laws as mentioned in the preceding section of this Act, with a vessel, boat, scow, or other craft or raft, or by any other means howsoever, destroy, remove, or damage, or break, cut, or alter any bridge or bridges, or any part thereof, or of the approach or approaches thereto, named and declared in such By-law or By-laws to be a public bridge, shall be liable to a penalty equal to the value of such bridge or bridges at the time the same may have been so destroyed or removed, or equal to the amount of damage done to such bridge or bridges, as the case may be, and to a further penalty not exceeding the sum of *twenty dollars*, together with the costs of suit, to be recovered in the summary way hereinafter provided.

Summary proceedings against persons destroying or injuring such bridges.

III. When any such bridge or bridges shall be destroyed, removed, or damaged, broken, cut, or altered, in the manner hereinbefore mentioned, it shall be lawful for any person or persons to make information and complaint thereof before some Justice of the Peace having jurisdiction in either of the said Counties of Lincoln or Welland, upon oath, setting forth the facts, in so far as they have come to his or their knowledge, and thereupon such Justice shall issue a summons against the person or persons named or described in such information and complaint, requiring him or them to appear at a time and place to be mentioned therein, to answer to such information and complaint before such Justice and such other Justice or Justices as may then be assembled to hear the same; or if the said Justice shall see fit, he may issue his warrant in the first instance to apprehend such person or persons in the like manner and with like effect as a Justice of the Peace, may issue a warrant with respect to cases of summary convictions and orders generally, and may also at the time of issuing such summons or warrant, issue a warrant in the nature of an attachment under his hand and seal in the form of the schedule to this Act annexed marked A, directed to some constable or other Peace Officer within his jurisdiction, commanding him to levy upon, detain, and safely keep, any such vessel, boat, scow, or other craft, which may have been in the charge or custody of the person or persons named or described in such information and complaint at the time the offence or offences shall be therein alleged to have been committed; and upon receiving such warrant it shall be lawful for such constable or other officer to seize and detain such vessel, boat, scow, or other craft, and the cargo therein, or raft, until the hearing of such information and complaint shall be concluded and an order be made by the Justices hearing the same in relation thereto: Provided always, that any summons, warrant, or other process issued under authority of this Act, may be executed and enforced within the limits of either of the said Counties of Lincoln or Welland without "endorsement," anything in any law or any usage to the contrary notwithstanding.

Attachment of vessels, &c., by which the injury is done.

Proviso.

How the amount of damage done shall be ascertained.

IV. Every information and complaint made under this Act shall be heard before at least two Justices of the Peace; and for the better enabling such Justices equitably to assess the value of or damages done to any such bridge or bridges, it shall be lawful for them in their dis-

- cretion, to issue a summons in the form of the Schedule hereto annexed marked B. or to the like effect, and directed to three freeholders by name, other than the complainant or complainants and defendant or defendants in such suit, forthwith to go upon such bridge or bridges or upon the site thereof, if wholly destroyed and removed, and estimate the value thereof at the time so destroyed or removed, or if only partially destroyed or removed, or injured in any manner, to estimate the damage done to the same, and to make a return in writing under their hands at a time and place to be named therefor by such Justices in such summons, of the amount of such value or damage as the case may be; and before proceeding to estimate such value or damage, the said Justices or some one of them, shall administer to each of such freeholders an oath, (or affirmation in cases where the person by law is entitled to affirm,) to the following effect:
- “You solemnly swear (or affirm) that you will truly and impartially according to the best of your judgment and ability, estimate the value of the bridge (or bridges) named in the summons to you directed in this cause, at the time the same was destroyed or removed (or the damage done to the same, *as the case may be*) and a true return make thereof in writing at the time and place named in said summons. So help you God.” And in case a summons shall be issued to such freeholders to assess value or damages in the manner in this section provided, it shall be lawful for such Justices to adjourn the hearing of such information and complaint from time to time until such freeholders shall make their return in the manner herein mentioned: Provided firstly, that nothing in this Act contained shall prevent such Justices from adjourning the hearing of such information and complaint from time to time whenever they shall see cause for doing so, stating in the hearing of the parties the time when and the place where the hearing of the case will be resumed: And provided secondly that if such freeholders cannot all agree upon the value of such bridge or bridges at the time when so destroyed or removed, or upon the amount of damage done thereto, each of them may make a separate return in manner aforesaid, and such Justices shall thereupon, and after hearing such witnesses as may be brought before them on the part of the complainant or complainants and on the part of the defendant or defendants, proceed to decide and adjudge the matter, and shall convict or make an order upon the defendant or defendants or dismiss such information and complaint as to them shall seem proper: And provided thirdly, that the failure of such freeholders or any of them to make such return within the time limited therefor in such summons shall not prevent such Justices from deciding and adjudging the matter of such information and complaint in manner aforesaid, upon the evidence which may be adduced: And provided fourthly, that each freeholder who may be summoned under this Act to assess value or damages, and who shall make a return as herein provided, shall receive and be paid the sum of *one dollar* for each day he may be engaged under such summons, and the further sum of *fifty cents* each for drawing up, signing and delivering such return, the same to be and form part of the costs of the suit: And provided fifthly, that each freeholder who shall be summoned as aforesaid, and who shall refuse or neglect to obey such summons or to make such return within the time limited therefor in such summons, shall be liable to a penalty of not less than *one dollar* nor more than *twenty dollars*, which penalty shall

Three freeholders to be appointed—

And sworn.

The oath.

Adjournment until report is made.

First proviso.

Second proviso.

Third Proviso.

Fourth Proviso.

Fifth Proviso.

and may be levied and collected by warrant of distress against and sale of the goods and chattels of the person or persons so offending, to be issued summarily by the Justices who issued such summons, upon their own knowledge of the default and without other information or trial.

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How penalties under this Act shall be levied and collected.

V. All and every penalty and penalties imposed under authority of this Act, and all costs attending proceedings had in virtue hereof, shall be levied and collected by distress and sale, in the discretion of the Justices making the conviction and adjudging such penalty or penalties, of such vessel, boat, scow, or other craft or raft as may have been attached and detained in manner hereinbefore provided, or by distress and sale of any goods and chattels belonging to the party or parties convicted, or if necessary, by distress and sale of such vessel, boat, scow, or other craft or raft, and such goods and chattels, in the manner pointed out for the levying and collecting of a pecuniary penalty or compensation to be paid, in and by the Act of Parliament of this Province, passed in the sixteenth year of Her Majesty's reign, and intituled "An Act to facilitate the performance of the duties of Justices of the Peace, out of Sessions, in Upper Canada, with respect to summary convictions and orders," and in default of sufficient distress being found to satisfy such penalty or penalties and costs, or if any part thereof shall not be satisfied, it shall be lawful for the Justices making the conviction or adjudging such pecuniary penalty or compensation to be paid, or any two of them, to commit the person or persons convicted of the offence, or against whom such penalty or compensation to be paid shall be adjudged, to the common gaol of either of the said Counties of Lincoln or Welland, for any period not exceeding thirty days.

Committal in case of non-payment.

Application of such penalties.

VI. All pecuniary penalties or compensation to be paid which shall be recovered under authority of this Act, shall, in case the bridge or bridges in respect of which the same shall be recovered, be situate wholly within the County of Welland, be immediately paid over by the Justice or Justices recovering the same to the Treasurer of the said County of Welland; and in case such bridge or bridges are situated partly within the County of Welland and partly within the County of Lincoln, then the one half thereof shall be paid over as aforesaid, to the said Treasurer of the County of Welland, and the other half thereof to the Treasurer of the said County of Lincoln, and shall form part of the general funds of said Counties respectively.

Costs to defendant in case of malicious complaint.

VII. If it shall appear to any such Justices, upon the trial of any such information and complaint, that the same has been made from malicious motives, it shall be lawful for such Justices to award to the defendant or defendants full costs, and to levy and collect such costs from the complainant or complainants by distress or sale of his and their goods and chattels, and in default of finding sufficient distress to satisfy the same, the said Justices shall and may commit the complainant or complainants to the common gaol of either of the said Counties of Lincoln or Welland, for any period not exceeding thirty days, unless such costs and the costs of such distress be sooner paid; And further, if it shall appear on any such trial, to the satisfaction of such Justices, that the damage done to such bridge or bridges arose from inevitable cause or causes which the defendant or defendants

Abatement if the damage was inevitable.

could not control, then it shall be lawful for such Justices to take the circumstances thereof into consideration in making their conviction or order, and to abate such sum from the actual damage done, as to them shall seem just and equitable ; And in cases where any such vessel, 5 boat, scow or other craft or raft, shall have been attached and detained as hereinbefore provided, if it shall appear to such Justices at any time during the proceedings, or at the close thereof, that there is no longer occasion to keep such vessel, boat, scow or other craft or raft in custody, it shall be lawful for such Justices by an order under their 10 hands directed to the Constable or other person in charge of the same, to release such vessel, boat, scow or other craft or raft. Release of vessel, &c., detained.

VIII. The forms for summons, warrant, warrant of distress, warrant of commitment, summons to witness, conviction, order of dismissal, and all other forms in the Schedule to the said hereinbefore in part 15 recited Act, may be used in proceedings under this Act, and the provisions of the said Act in respect of costs and all other provisions of the said Act, with regard to proceedings to be had thereunder generally, shall be held and construed to apply to this Act, except in so far as the same may be inconsistent with this Act. Forms under 16 V., c. 178, may be used.

20 IX. This Act shall be a public Act, and shall take effect immediately upon the passing thereof. Public Act, &c.

SCHEDULE A.

County of _____ } To A. B., of _____ in the
 to wit. } County of _____ Constable.

Whereas information and complaint have this day been made upon oath, before me; one of Her Majesty's Justices of the Peace in and for the County of _____, for that *(Here state briefly the nature of the offence and the name or other description of the person or persons complained against, also the name of the vessel, boat, scow, or other craft, or the kind of raft as a raft of hewed pine or oak timber, or of saw logs, or of both, as the case may be, which it may be alleged in such information and complaint has caused the damage).*

These are therefore to command you to attach, seize, take and safely keep, the said (vessel, boat, scow, or other craft or raft) until the matter of such information and complaint shall be heard and adjudged, or until you shall be otherwise or further directed in relation thereto ; and to return this Warrant with what you shall have done in the premises to me, or to the Justices who shall hear the matter of said information and complaint forthwith : and herein fail not.

Witness my hand and seal at _____ in the County
 of _____ this _____ day of _____ 18____
 C.D. [L.s.]
 Justice of the Peace.

SCHEDULE B.

County of _____ } To A. B., C. D., and E. F., of the Township
 to wit. } of _____ in the County of
 Freeholders.

Whereas information and complaint have been made, upon oath, before G. H., one of Her Majesty's Justices of the Peace in and for the County of _____, for that (the bridge over the Welland River generally called "Beckett's Bridge," or *as the case may be*, or the approaches thereto, hath been destroyed, removed, broken, cut, altered, or damaged by I. J. and others, with a vessel, boat, scow, or other craft or raft, or otherwise, *as the case may be*.)

These are therefore to require you, and each of you, forthwith to go upon said bridge or upon the site thereof, and to estimate impartially, according to the best of your judgment, (the value thereof when so destroyed or removed, or the damage done to the said bridge, *as the case may be*) and a true return make thereof to us in writing under your hands at _____ in the Township of _____ on the _____ day of _____ 18____, at the hour of _____ of the clock in the _____ noon, or to such Justices as shall be then and there assembled to hear the matter of such information and complaint; you and each of you being first duly sworn, or affirmed, in the manner provided in and by the Act of the Parliament of this Province, intituled, (*here give the title of this Act*); and herein fail not, under the penalty imposed for default thereof, in and by the said hereinbefore in part recited Act.

Witness our hands and seals at _____ in the County of _____
 this _____ day of _____ A. D. 18____.

K. L., [L.S.]
 M. N., [L.S.]
 Justices of the Peace.