



No. 245.

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4th Session, 6th Parliament, 24 Vic., 1861.

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**BILL.**

**An Act Respecting the Toronto Esplanade.**

**(PRIVATE BILL.)**

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Received and read, first time, Thursday, 2nd  
May, 1861.

Second Reading, Saturday, 4th May, 1861.

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**Mr. MORRISON.**

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**QUEBEC:**  
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An Act respecting the Toronto Esplanade.

WHEREAS it is desirable to amend the Act passed in the Sixteenth year of Her Majesty's Reign, chapter two hundred and nineteen—and the Act passed in the twentieth year of Her Majesty's Reign, chapter eighty.

Preamble.

5 Therefore, Her Majesty by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:—

I. All matters, claims and demands, between the Corporation of the City of Toronto of the one part, and the respective Water lot owners and lessees of the City of Toronto of the other part—for or in respect of or in any way concerning the construction of the Toronto Esplanade, and the filing in to the north of the same, and the other works done upon the same—which are mentioned in the Instruments in writing under the said recited Acts, which are required to be served or given by the City Surveyor to the said Water Lot owners and lessees, or other parties interested—and which are not yet settled between the said Corporation and the said respective parties, shall be referred to and be adjudicated upon by any one or more of the Judges of either of the Superior Courts of Common Law, or of the Court of Chancery, at Toronto, whom the Corporation and the parties in each case respectively may, with the consent of the said Judge or Judges, agree upon.

Matters yet in dispute may be settled by a Judge or Judges.

II. The reference, if made by consent, shall be by a writing under the seal of the Corporation, and the signature of the Head thereof, and under the hand and seal of the opposite party—and shall be to the effect, that the matters between the Corporation and the party under the said recited Statutes and this Act—according to the said Instrument of the City Surveyor respecting the said Esplanade, shall be referred to for final adjudication.

How the reference shall be made by consent.

III. If the Judge or Judges cannot be mutually agreed upon, either party may, by a writing stating such fact, apply to the presiding Judge in Chambers for a Summons, to the other party to show cause why the said Reference and adjudication should not be made to and by the said presiding Judge; and if upon the return of the Summons before the Judge who granted the same, no cause or no sufficient cause be shown thereto, the said Judge shall by an order under his hand direct such Reference and adjudication between the parties to be had and made to and before himself, and such order shall be the Reference.

And if the parties do not agree.

IV. In case the owner, lessee, or other party be an infant—*non compos mentis*, or under any disability, or be absent from this Province or unknown, and there is no person in this Province known to be legally authorized to act for him in the matter, upon or to whom a copy of the Instrument made by the City Surveyor could have been or can be

If the owner, etc., be absent or under disability.

served or sent, or upon whom the notice of application for a Reference can be served or sent, then the Judge in Chambers, upon the notice in writing of the Corporation under the Corporation Seal and signed by the Head thereof, and upon an affidavit of the facts as aforesaid, shall make his order of Reference and adjudication, which shall be as binding to all intents and purposes as if made upon the hearing of the other party, and as if such party had been under no such incompetency or disability. 5

Proceeding  
*ex parte* in  
case of de-  
fault to ap-  
pear.

V. The Judge shall fix the time and place for the parties and their witnesses to appear before him; but if for any of the causes aforesaid, the owner, lessee, or party interested cannot be notified to attend or cannot attend, the adjudication shall proceed *ex parte*—with all due consideration for the party not represented, and the Reference and adjudication so held and made shall, notwithstanding such absence of the party, be as final and binding as if the party had been actually notified and present. 10 15

Parties may  
be examined,  
etc.

VI. The Judge shall have power to administer an oath to all witnesses produced before him, and the parties may be examined as witnesses.

Award, how  
made.

VII. The award shall be by an Instrument in writing under the hand of the Judge or Judges who made the adjudication. 20

Award not  
subject to for-  
mal objec-  
tions and  
amendable.

VIII. The award need not be in any particular form, nor shall it be subject to any exception whatever for any alleged irregularity or want of form; and all objections of substance to the same shall be amendable and be amended at any time by the Judge who made the award on the application of the parties or of either of them, or by any of the said Courts, in like manner as a Judge's order may be amended. 25

Re-hearing.

IX. If it be necessary for the Justice of the case that the same should be reheard or re-opened, the Judge who made the award may order such rehearing at any time within one month from the making of the award, but not afterwards. 30

Acts to apply.

X. The said recited Acts shall apply in all cases when not inconsistent with this Act.

Term "Esplanade," how construed.

XI. The term "Esplanade," in the recited Acts and in this Act, shall for the purposes of Reference, adjudication and settlement, extend to and include not only the Esplanade proper, but the filling in to the north of the same, and all and singular other the works done upon the same or either of them, or included in the said Instrument of the City Surveyor. 35

Public Act.

XII. This Act shall be deemed a Public Act. 40