

No. 150.

3d Session, 3d Parliament, 13 and 14, Vict., 1850.

BILL.

An Ordinance to continue and amend the Ordinance concerning the erection of Parishes; and the construction and repairing of Churches, Parsonage houses and Churchyards.

Received and Read a first time, Thursday, 4th July, 1850.

Second Reading, Monday, 8th July, 1850.

Mr. POLETTE.

TORONTO : PRINTED BY LOVELL AND GIBSON.

BILL.

An Ordinance to continue and amend the Ordinance concerning the erection of Parishes, and the construction and repair of Churches, Parsonage houses, and Churchyards.

WHEREAS it is expedient to amend the Ordinance of the Governor and Special Council of the late Province of Lower Canada, passed in the third Session of the said Council, held in the second year of Her Majesty's reign, and intituled, "*An Ordinance concerning the erection of Parishes and the building of Churches, Parsonage Houses, and Churchyards,*" and to continue the said Ordinance as amended: Be it therefore enacted, &c.

Preamble.

L. C. 2 V. (3)
c. 29.

And it is hereby enacted by the authority of the same, That so much of the twelfth Section of the said Ordinance as regulates the manner of proceeding for filling a vacancy among the Trustees shall be, and is hereby repealed; and in case of the death, serious illness, madness or lunacy, removal of domicile out of any Parish or Mission, legal excuse or incapacity of any of the Trustees, the surviving Trustees or those remaining in office, or the majority thereof, may present a petition to the Commissioners appointed by the Governor for the purposes of the said Ordinance, alleging the death, serious illness, madness or lunacy, removal of domicile out of the Parish or Mission, legal excuse or incapacity of any Trustee, and on sufficient proof of any such fact, the said Commissioners may appoint a Trustee in the place and stead of the one whose it shall have become necessary to fill up: Provided always, that the Trustee so appointed shall be qualified in the manner required by the eleventh Section of the said Ordinance.

Part of sect. 12
repealed.Filling vacancies among the
Trustees.

Proviso.

II. And be it enacted, That if the amount of the assessment levied be not sufficient to meet the necessary expenses of construction and repairs of any Church, Sacristy, Parsonage house or Churchyard, or to reimburse any loans effected in order to pay the said expenses, or for one or the other, the Trustees or the majority of them, shall render to the said Commissioners a faithful account of the receipts and expenditure, work to be done, and probable expense to be incurred, to be sworn to by one or more of them to the best of their knowledge and belief, before a Justice of the Peace, who is hereby authorised to administer the oath; and shall at the same time present a petition to the said Commissioners, alleging the want of

Assessment.

Petition.

money to complete the works or reimburse the loans, or for one or the other, and praying authority to make a supplementary assessment; which said account, accompanied by vouchers and the said petition, shall be previously deposited, announced and made public at the place, 5 during the time and in the manner prescribed by the fourteenth Section of the said Ordinance, in relation to the statements and acts of assessment, and with the same formalities.

Homologation
of the petition.

III. And be it enacted, That on the day appointed for 10 proceeding to the consideration of the said account and petition, the Trustees, or the majority of them, shall present the said account and petition with the vouchers in support thereof, to the said Commissioners for homologation and the granting of the conclusions of the petition, 15 and shall accompany them by a sufficient certificate of the deposit thereof, and of the publication of the notice thereof which shall have been given; and the said Commissioners shall have full jurisdiction, power and authority to hear, adjudge and determine, between the Trustees and the parties 20 interested, by rejecting, modifying, or confirming the said account altogether or in part, or by rejecting, modifying or granting the conclusions of the petition, altogether or in part, as they may find it just and reasonable to do.

Levying the
assessment,
&c.

IV. And be it enacted, That so soon as the Commis- 25 sioners shall have made an order authorizing the Trustees to make a supplementary assessment, the said Trustees and Commissioners shall then proceed in the manner and with the formalities prescribed for the first assessment, as regards the making and drawing up, depositing, publish- 30 ing and posting up, rejecting, modifying or confirming, and levying such supplementary assessment, and with the same powers, authority and jurisdiction: Provided always, that the Trustees shall not be required to include, in the supplementary assessment, such lands, grounds or 35 lots of ground the value whereof may be insufficient to warrant the incurring of costs of suit and bringing them to sale under a writ of execution, when the proprietors of these lands, grounds or lots of ground are notoriously insolvent; but they shall make a separate statement thereof which 40 they shall attach to the statement of the lands, grounds and lots of ground subject to assessment, and both shall form one Act.

Proviso.

Assessment to
be a privileged
debt.

V. And be it enacted, that the amount of any assess- 45 ment to defray the expenses of the construction or repair of any church, sacristy, parsonage-house or churchyard shall be the first charge on the land, ground or lot of ground and the first privileged debt which shall affect and bind the said land, ground or lot of ground, without its 50 being necessary to enregister the act of assessment or the judgment of confirmation or homologation in the whole

or in part, in the Registry Office; and any such land, ground or lot of ground may be seized and sold under execution, whatever be the amount of the assessment due thereupon or recovered by the judgment, and such
 5 seizure and sale shall take place in the manner and with the formalities by law prescribed in cases in which judgment is rendered for any sum exceeding *ten pounds* currency: Provided always, that no such seizure and sale
 10 have been rendered by a Commissioners' Court for the summary trial of small causes. Proviso.

VI. And be it enacted, That within the six months next after the completion of the construction or repairs, the Trustees shall render to the parish or mission at a
 15 meeting called together by the *curé* or missionary, and held in the ordinary place and manner, a faithful account shewing the receipt and expenditure and the management of the affairs for which they shall have been elected and appointed, which said account shall be supported by
 20 vouchers and sworn to by one or more of the said Trustees to the best of their knowledge and belief, before a justice of the Peace, who is hereby authorized to administer the said oath, and they shall pay, return and hand over to the *Curé* and Churchwardens of the *fabrique* of
 25 the Parish, or to the ministering *Curé* or Missionary and Churchwardens or Trustees managing the temporal affairs of the mission, as the case may be, every thing remaining in their possession of the moneys, materials and effects, with the act of assessment, judgments, decrees,
 30 account books, deeds, documents and papers touching the constructions and repairs conducted and the affairs managed by them; and the said *Curé* and Churchwardens, or the *Curé* or Missionary, and the Churchwardens or Trustees conducting the temporal affairs of
 35 the church of the mission, as the case may be, may sue the Trustees elected or appointed for the construction or repair of the church, sacristy, presbytery or churchyard for the rendering of the said account if the same has not been voluntarily rendered, contest any account rendered
 40 and compel the payment of the balance in either case; and they may at the same time receive what is remaining due of the assessment and sue for the recovery of that which has not yet been paid; and so much as they shall thus receive either from the Trustees elected or appointed for the said
 45 construction or repairs, or from parties indebted on account of their assessment, shall be deposited with the funds of the *fabrique* or mission and applied in the same manner as the other moneys of the said *fabrique* or mission. Account to be rendered by the Trustees.

VII. And be it enacted, That so much of the twenty
 50 second section of the said Ordinance as empowers the Commissioners appointed under the Act or Ordinance of Lower Canada passed in the thirty first year of the Part of sect. 22 of the Ordinance 31 G. 3, c. 6 repealed.

Reign of his late Majesty King George the Third, and intituled, "*An Act or Ordinance concerning the building and repairing of Churches, Parsonage houses, and Churchyards,*" to continue proceedings commenced before them until final judgment, be and the same is hereby repealed; and that the said proceedings commenced before the said Commissioners shall be conducted and continued until final judgment before the Commissioners appointed under the provisions of the Ordinance continued and amended by this Act. 5 10

Provisions of Ordinance as amended to apply to proceedings commenced before its passing.

VIII. And be it enacted, That the provisions of the said Ordinance as amended by this Act, shall be applicable to proceedings commenced before the passing of the said Ordinance; and all proceedings had before the Commissioners appointed under the authority of the said Ordinance, and the orders, judgments and decrees given and rendered by them in the said affairs are hereby confirmed and declared valid, saving in cases where their validity may have been contested in any Court of Justice before the day of the passing of this Act. 15 20

The said Ordinance to extend to Churches, &c. authorized by canonical decree issued before the passing thereof.

IX. And whereas the provisions of the said Ordinance continued and amended by this Act, do not extend to Churches, Sacristies, Parsonage houses and Churchyards, the construction or repairing whereof is allowed or ordered by a canonical decree rendered and issued before the passing of the said Ordinance; be it enacted, that all the provisions of the said Ordinance as amended by this Act, concerning the construction and repair of Churches, Sacristies, Parsonage houses and Churchyards, and all the powers, authority and jurisdiction conferred by the same and by this Act upon the said Commissioners, shall be and are hereby extended to Churches, Sacristies, Parsonage houses and Churchyards the construction and repairing whereof may have been allowed or ordered by a canonical decree rendered and issued according to the Ecclesiastical Laws and forms followed and in use in the diocese of Quebec or of Montreal, before the passing of the said Ordinance, and may be exercised in as full, ample and beneficial a manner to all intents and purposes, as if such canonical decree had been made and rendered after the passing and under the provisions of the said Ordinance. 25 30 35 40

Obligations of Fabriques.

X. And whereas in certain parts of Lower Canada, it has been the custom to construct and repair Churches, Sacristies, Parsonage houses and Churchyards, in conformity with canonical decrees given and rendered by the Ecclesiastical authorities, without having recourse to the authority of the said Commissioners, and to a forced assessment, but by means of voluntary contributions, often insufficient to pay all the expenses of construction or repair, so that sums of money have remained due to the con- 45 50

structors of such buildings, or to the persons who have repaired the same, or to persons who had lent or advanced moneys to pay the said expenses, altogether, or in part; and whereas doubts have arisen whether the *Fabriques* of the Parishes in which such constructions and repairs have been made, are responsible for the payment of the said sums remaining due, although they have taken possession of the said Churches, Sacristies, Parsonage houses and Churchyards, and the said buildings and erections are applied to the uses for which they had been constructed; be it therefore declared and enacted, and it is hereby declared and enacted, That whenever the ecclesiastical authorities of the diocese of Quebec, or of Montreal, shall have made and rendered a canonical decree conformably to the provisions of the said Ordinance continued and amended by this Act, or of the Act or Ordinance specially cited in the seventh section of this Act, allowing or ordering the construction or repair of a Church, Sacristy, Parsonage house or Churchyard, and the same shall have been respectively constructed or repaired, without the inhabitant householders of the Parish having had recourse to the authority of the said Commissioners, and to a forced assessment, and the *Fabrique* shall have taken possession thereof, and shall have used the same for the purpose for which it shall have been constructed and repaired, and moneys shall be remaining due to the Builder or Contractor for any such edifice or erection, or to any one who shall have advanced moneys to pay the expenses of construction and repair, altogether or in part, or to both, in all such cases the *Fabrique* of the Parish in which the construction and repair shall have taken place, is and shall be responsible for the sums so due, and shall pay the same to such Builder or Contractor, or to the party who shall have lent or advanced money, or to both, as the case may be, or to their respective heirs, representatives or assigns.

XI. And be it enacted, That the Bailiffs of the Superior Court in and for Lower Canada, shall, at the same time, be Bailiffs of the said Commissioners, and no special affidavit shall be necessary to prove any service, advertisement, posting up, publication or deposit, when the same shall have been done and performed by a Bailiff, but the certificate or return in due form, drawn up by a Bailiff under his oath of office, shall be considered as proof of the facts therein mentioned.

Bailiffs of Superior Court to be those of the Commissioners.

XII. And be it enacted, That the Ordinance first above mentioned, and hereby amended, shall be continued and remain in force as amended by this Act, until the same be altered or repealed by competent authority.

Amended Ordinance made permanent.