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No. 237.

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

(LOCAL BILL.)

BILL.

An Act to amend the Act conveying to the City of Toronto certain water lots, with power to the said City for the construction of an Esplanade.

Received and read, first time, Tuesday, 21st April, 1857.

Second reading, Wednesday, 22nd April, 1857.

MR. BOWES.

TORONTO:
PRINTED BY JOHN LOVELL,
YONGE STREET.

An Act to amend the Act conveying to the City of Toronto certain Water Lots, with power to the said City for the construction of an Esplanade.

WHEREAS, under and by virtue of the Act 16 Victoria, chapter 219, the Mayor, Aldermen and Commonalty of the City of Toronto have contracted with the Grand Trunk Railway of Canada for the building and construction of an Esplanade in front of the said City according to a certain plan to the said contract annexed, and it has become necessary to grant further and other powers to the said the Mayor, Aldermen and Commonalty of the City of Toronto, to enable them to complete the said Esplanade according to the said contract, and certain other work connected therewith: Therefore Her Majesty, &c., enacts as follows:

I. It shall and may be lawful for the said Mayor, Aldermen and Commonalty of the City of Toronto, and for their contractors, workmen, servants and agents, to enter in and upon all lands and water lots, and to cross all wharves, docks, piers and premises lying within the limits of the said Esplanade, as laid down on the said plan annexed to the said contract, and take possession thereof, and use and occupy the same to the width of one hundred feet for the purposes of the said Esplanade, and to take down and remove all buildings and erections now being upon the said line of the said Esplanade, as laid down on the said plan so annexed to the said contract, and to locate the Roadway of the said Grand Trunk Railway and other Railways to the width of 40 feet thereon, or upon such other line to the south of Front street, between the Queen's wharf and Yonge street, as may hereafter be determined upon, doing no unnecessary damage and interfering with and interrupting the approach to and the use of the said wharves, docks and piers upon any of the water lots crossed for the purpose of the said Esplanade as little as possible:

The Corporation of Toronto may enter upon and take lands to a certain extent for the Esplanade.

II. It shall and may be lawful for the said Mayor, Aldermen and Commonalty of the City of Toronto, to contract with the said Grand Trunk Railway Company of Canada, or any person or persons, company or companies forthwith (and during the construction of the said Esplanade under the said contract) to fill up and grade to the level of the said Esplanade, as laid down on the said plan, the whole space lying between the northern limit of the said Esplanade as laid down on the said plan annexed to the said contract and now in the course of construction and the present shore of the Bay of Toronto, and extending from the said Esplanade eastward to Cherry street, and westward to the Queen's wharf, and to enter in and upon and pass over and along all the water

The said Corporation may contract for filling the whole space from the northern limit of the Esplanade to the Bay, and enter upon property for purpose of filling up the said space.

How the cost
of filling shall
be paid.

lots in front of the said City for that purpose, interfering with and interrupting the approach to all wharves, docks and piers, and the enjoyment of the same by their respective owners and occupiers as little as possible, and the expenses of filling up and grading the same shall be ascertained in manner hereinafter mentioned, and shall be repaid to the said the Mayor, Aldermen and Commonalty of the City of Toronto by the owners and other persons having estates in the land on which such grading, levelling and filling shall be done, such persons being charged in an equitable proportion according to the nature and extent of their estate in said lands, and any contract or contracts for the like purpose that may heretofore and before the passing of this Act have been entered into by the Mayor of the said City of Toronto on the behalf of the said City, under the sanction and authority of any resolution of the Common Council of the said City, shall be legal, valid and binding on all parties named in the said contract, and shall be taken and considered for all intents, purposes, and uses whatsoever, as a contract made under the authority and provisions of this Act.

The said Corporation may
forthwith borrow
money for
defraying the
cost of the said
filling.

III. For and notwithstanding any Act of the Parliament of this Province, or any clause, matter or thing therein contained to the contrary, it shall and may be lawful for the Mayor, Aldermen and Commonalty of the City of Toronto, forthwith, and without further notice or other proceeding, to pass a By-law to raise a Loan for such an amount not exceeding _____, as may be necessary for the purpose of filling in, grading and levelling the said space between the north line of the Esplanade and the shore of the Bay, and the extensions thereof as aforesaid, and to issue any number of Debentures payable in this Province or elsewhere in sums of not less than _____ which may be requisite and necessary therefor, payable in twenty years from the respective dates thereof, and for the purpose of redeeming the same and paying the interest thereon, a special rate may be imposed as provided in the Act hereinbefore mentioned, and shall be applied in payment of interest and in forming a sinking fund for principal in like manner as therein provided.

Mode of ascer-
taining the
share of the
cost to be paid
by each party
interested.

IV. The amount to be paid to the City for the said filling in, grading and levelling of such vacant space shall be ascertained in the first instance by the City Surveyor in manner as provided in the said Act in respect to the said Esplanade, and so much of the said Act hereinbefore mentioned as refers to the settlement of claims arising out of or under the said Act by arbitration is hereby repealed, and all sums to be paid to the owners of water lots in fee, their assignees, lessees or representatives, in respect of the land or lands covered with water taken by the said the Mayor, Aldermen and Commonalty of the City of Toronto for the purposes of the said Esplanade, as well as the amounts to be paid to the said the Mayor, Aldermen and Commonalty of the City of Toronto by the lessees or occupants of the water lots belonging to the City of Toronto for the construction of the said Esplanade, or by any party or parties whomsoever for the filling up, grading and levelling of the said space north of the Esplanade hereinbefore mentioned; if the same cannot be agreed upon and adjusted between the said parties interested therein, shall be ascertained and settled by the Commissioner to be appointed as hereinafter provided, anything in the said Act hereinbefore mentioned to the contrary notwithstanding.

V. The Governor of this Province may upon request made by the said the Mayor, Aldermen and Commonalty of the City of Toronto, appoint some fit and proper person to act as Commissioner between the said the Mayor, Aldermen and Commonalty of the City of Toronto, and all owners, proprietors, lessees and occupants of the said water lots, in all matters connected with the said Esplanade and the construction thereof, and the filling, grading and levelling of the space north of the said Esplanade as aforesaid, and arising out of or under the provisions of the said former Act or this present Act; and such Commissioner shall before entering upon the duties of his said office be sworn before one of the Judges of the Superior Courts of this Province, well, truly and faithfully, and without partiality to fulfil the duties thereof to the best of his judgment.

Governor to appoint a Commissioner to mediate between the Corporation and owners of water lots, in case of difference, &c.

VI. The said Commissioner shall settle, order, and direct the method of proceeding before him, and shall appoint persons to act for minors or parties *non compos mentis* or under any other inability to act for themselves, and may direct substitutional service in case of the absence of parties from the Province, or in any other case he shall think reasonable and just, and shall keep a book of record of all proceedings taken before him relative to the said matters, in which shall be entered the time and place of all meetings, the names of parties attending, and the testimony given upon oath by the witnesses produced before him, which oath the said Commissioner is hereby empowered to administer, and he shall also have the power of summoning before him any party or witnesses, and of requiring them to give evidence on oath, and to produce such documents and things as he shall deem requisite, and shall have the same power to enforce the attendance of such witnesses, and to compel them to give evidence as is vested in any Court of Law in civil cases, and any wilful false statement made by any such witness on oath or solemn affirmation shall be a misdemeanour, punishable in the same manner as wilful and corrupt perjury; Provided always that such witness shall be entitled to the like payment as for attendance at any Court; And it shall be the duty of the said Commissioner to make his decision in the premises, and enter the same in the said book of record, and sign the same, and furnish copies of such decision to all parties concerned.

How the said Commissioner shall proceed.

Evidence before him.

Proviso.

Record of proceedings.

VII. And whereas the property directed by the Letters Patent of the 21st February, 1840, mentioned in the said Act to be conveyed to the said water lot owners therein referred to was intended as a compensation for the land which might be taken from them respectively for the Esplanade, and for the expense of making so much thereof as should be made on the lands taken from them respectively: Be it enacted, that the owners be respectively charged with their respective shares of such expense, and if any such water lot owners or persons having estate in any such water lot shall be dissatisfied with any such compensation, his claim to a further allowance shall, if not agreed upon, be determined by the said Commissioner, and in coming to such decision the said Commissioner shall take into consideration the increased value of the lots by means of the improvements contemplated by this Act as well as all other matters connected therewith, and also the value of the strips of land between the same and the top of the bank, and of the land covered with water in front thereof to be conveyed to the owners in fee of the said water lots under the provisions of the Act first above mentioned, and if such increased value of the said water lots and the value of the said strips of land and portions of land covered with water together with the expense of constructing the said Esplanade

Recital.

Appeal to Commissioner from parties dissatisfied as to satisfaction for land taken from them.

shall equal the value of the land taken for the Esplanade, it shall be the duty of the Commissioner to decide in favor of the city generally, and if it shall exceed the value of the land taken, then to decide that such excess shall be paid to the city by the said water lot owners in manner provided by the said Act hereinbefore mentioned for payments to the city for the construction of the said Esplanade, and the said Commissioner shall have all the power of an arbitrator, except as herein provided, both in reference to an appeal and otherwise: In case any of the parties shall be dissatisfied with the decision of the said Commissioner, he, she, or they, may appeal therefrom to any of the Superior Courts of Law or Equity of the Province, provided notice of such appeal shall be served upon the other party and the said Commissioner within ten days after such decision shall be given, and upon the receipt of such notice of appeal by the said Commissioner he shall cause copies of all the proceedings entered of record in the said book together with the testimony given therein and the decision itself, and all maps and plans produced and used before him to be returned to the said Court mentioned in the said notice of appeal on or before the first day of the term next succeeding the date of the said notice, and the said Court shall, upon motion made, hear the said parties by their attorneys, and increase or decrease the amount mentioned in the said decisions, or vary the same in other respects, or take any evidence that may be necessary for the satisfaction of the Court, and thereupon vary and affirm the said decision or order that the same shall stand, and the costs incurred before the said Commissioner shall be in his discretion, and he shall in his decision name his own fees and how the same shall be paid, as between the said parties and upon appeal such costs shall be in the discretion of the said Court.

Appeal from Commissioner to superior Courts of law or equity.

As to costs.

As to payment of sums coming to the said Corporation from owners of water lots.

IX. All sums of money ordered to be paid by the said the Mayor, Aldermen and Commonalty of the City of Toronto to the owners of the said water lots in fee shall be paid within from the date of the decision of the said Commissioner or from the date of the rule of Court ordering the same, and the sum to be paid to the Mayor, Aldermen, and Commonalty of the City of Toronto by the lessees of water lots belonging to the said City of Toronto and by all parties whomsoever, for the filling up, grading and levelling between the Esplanade and the shore of the Bay shall be a charge upon the lands in respect to which the same is payable in the manner provided as to the Esplanade by the first mentioned Act from the time a certificate of the said decision of the said Commissioner, signed by him, or a certificate of the rule on appeal under the seal of the Court from whence it issues shall be registered in the registry office of the County of York, for the purpose of which registry no other proof shall be required than proof by affidavit of the handwriting of the said Commissioner or the seal of the said Court; and such moneys last mentioned shall be payable, and recoverable if not paid, in the manner provided for in the Act first above mentioned, and shall be applied as by the said Act also directed.

Remuneration to Commissioner.

X. The said Commissioner shall be paid five pounds per day for each and every full day he shall be engaged upon the said matters, and so in proportion for part of a day, a full day being deemed to be seven hours, and his fee for each day shall be equitably divided amongst the different cases he may be engaged in during such day; and for all copies of the said proceedings and decision required, either for the Court or the parties, he shall be allowed the sum of one shilling per folio of one hundred words, and which said

costs shall be paid to the said Commissioner, in the first instance, by the party in whose favor the decision may be, and shall be recoverable from the other party, in part or in whole, as the decision of the said Commissioners may direct.

6 XI. For and notwithstanding any matter or thing contained in the Patent from the Crown, dated the 14th day of July, A.D., 1818, mentioned in the 8th section of the Act hereinbefore referred to, it shall and may be lawful for the said Mayor, Aldermen, and Commonalty of the City of Toronto to lease for any term or terms of years, or to agree for the sale of and absolutely to sell and dispose of the space or strip of Land in the said patent and section of the said Act, described, freed, and discharged from any and all of the said trusts, conditions, and restrictions in the said Patent contained; and all monies received therefor, whether by way of rent or otherwise, shall be carried to a special account by the Chamberlain of the 15 City of Toronto, and shall be expended by the said Mayor, Aldermen, and Commonalty of the City of Toronto in the purchase, planting, ornamenting, and care of some other piece or parcel of land to be held by the said Mayor, Aldermen, and Commonalty of the City of Toronto, upon similar trusts as are in the said patent contained and set forth.

The said Corporation may lease or sell a certain strip of land, notwithstanding any condition in the patent granting it.

20 XII. This Act shall be taken to be a public Act.

Public Act.