

No. 69.

4th Session, 3rd Parliament, 14 Victoria, 1851.

BILL.

**An Act to encourage and protect the
erection of Water Power for manu-
facturing purposes in Upper Canada.**

**Received and read a first time, Thursday, 5th
June, 1851.**

Second Reading, Tuesday, 10th June, 1851.

Mr. MEYERS.

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BILL.

An Act to encourage and protect the creation of Water Power for manufacturing purposes in Upper Canada.

WHEREAS it is desirable to encourage and protect the creation of water power for manufacturing purposes in Upper Canada: Be it therefore enacted, &c.,

Preamble.

That if any action shall hereafter be commenced against any person or persons, or body corporate, for damages done by overflowing land, caused by the erection of any dam or dams for the creation of water power, it shall and may be lawful to and for the defendant in such suit to sue out from the Court in which such action shall have been commenced, a rule or summons to the defendant, to shew cause why the matters in dispute in such suit should not be referred to arbitrators to be appointed by the parties, which rule or summons, upon service thereof, shall operate as a stay of proceedings in such suit until cause shewn therein; and if no sufficient cause shall be shewn to the contrary, an order or rule shall be made therein, referring the matters in dispute in such suit to arbitrators, according to the terms of the rule or summons so issued, or varied as shall seem proper to the said Court or the Judge presiding; and upon order or rule made therein for such reference, the said parties shall appoint arbitrators, who, in case of difference, between them, shall appoint an umpire, and in case either party shall not, within one month from the making of such rule or order, appoint an arbitrator, or the said arbitrators shall not agree in appointing an umpire, it shall be lawful for any Judge of the Court out of which such rule or summons issued, upon application to him, of which sufficient notice shall be given to the opposite party, to appoint such arbitrator or umpire, by whom the matters in dispute shall be considered; Provided always, that claims for damages to any dwelling house or occupied buildings erected before the construction of the dam complained of, shall not come within the meaning of this Act.

Mode of proceeding in suits for damages occasioned by the overflowing of lands from dams.

Arbitrators to be appointed.

How appointed if the parties do not agree, &c.

Proviso.

Form in which the award shall be made: division of damages.

II. And be it enacted, That such arbitrators or umpire shall estimate separately the damages, if any, already sustained by the plaintiff in such suit, to be paid by the defendant to him, and the value of the land overflowed or damaged by reason of the erection of such dam, or the value of the interest of the plaintiff therein, if the

When the award shall be made. same shall not be owned in fee by him, and the award or umpirage shall be made within one month from the appointment of such arbitrators or umpire, and shall state the value of the damages then already sustained by the plaintiff, if any, and the value of the land overflowed or damaged, or of the plaintiff's interest therein as aforesaid, and shall set out by sufficient boundaries the land so overflowed or damaged, and direct costs to be paid by either party at the discretion of such arbitrators or umpire: 5

Proviso. Provided always, that the time for making such award or umpirage may be extended by the arbitrators or umpire, by any memorandum in writing expressing such intention, or by consent of parties. 10

Defendant may offer the value of the land. III. And be it enacted, That it shall and may be lawful to and for the defendant in such suit, at any time within 15

And obtain a conveyance thereof. *three* months after the making of such award or umpirage, to tender to the plaintiff the value of the land so overflowed or damaged, together with such other sum, if any, as shall or may have been found against him by such award, and the defendant shall and may thereupon demand from 20

Proviso: as to applications to set aside award. the plaintiff, and the plaintiff shall thereupon execute to the defendant, a sufficient conveyance in fee, or of his interest if not held by him in fee. of or in the said land so overflowed or damaged: Provided always, that any application made against the award of such arbitrators or umpire, shall be made at the term of the Court in which such proceedings shall be had, which shall commence next 25

after the expiration of *two* weeks from the day of publication of such award; and that in case a rule *nisi* shall be granted for setting aside such award, which rule shall 30

afterwards be discharged, it shall be lawful for the defendant to make such tender as aforesaid within *one* month after such rule shall have been so discharged. 30

As to lands overflowed before they were granted by the Crown. IV. And be it enacted, That no person or persons who shall acquire land by grant or purchase from the 35

Crown, shall maintain an action for or by reason of the overflowing of any portion of such land, or for or by reason of the penning back the water of any such stream between the banks thereof, by the erection of a dam as aforesaid, if such dam shall have been erected and such 40

land overflowed prior to such grant or purchase being made.