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No. 96.

1st Session, 7th Parliament, 25 Victoria, 1862.

BILL.

An Act to amend an Act, intituled, "An Act to incorporate certain persons under the name of the Richelieu Company."

(PRIVATE BILL.)

Received and read, first time, Tuesday, 20th
April, 1862.

Second reading, Friday, 2nd May, 1862

Mr. MOREN.

QUEBEC :

PRINTED FOR THE CONTRACTORS BY HUNTER,
ROSE & LEMIEUX, ST. URSULE STREET.

An Act to amend an Act intituled, "An Act to Incorporate certain persons under the name of the Richelieu Company."

WHEREAS doubts have arisen as to the powers conferred upon the Preamble.
 said Richelieu Company with respect to the places where they
 have a right to build wharves and landing places beyond the limits of
 the Ports of Montreal, Three Rivers and Quebec, and whereas it is ex-
 5 pedient to increase the value of the landed property which the said
 Company shall be entitled to hold from the sum of five thousand
 pounds currency to the sum of twenty thousand pounds currency, and
 to grant to the said Company the right of acquiring certain real pro-
 perty from certain persons, and the right of creating a special and re-
 10 serve fund and other powers, &c. Therefore Her Majesty, &c., enacts
 as follows :—

1. The words contained in the Preamble of the Act of Incorporation Interpreta-
 of the said Company, 20 Vic., cap. 170, in the eighteenth line after tion of cer-
 the word Quebec, "and the intermediate ports and other places," shall tain words.
 15 mean all places on the River St. Lawrence and the lower ports of the
 same, and on all and every the rivers falling into the said River St.
 Lawrence, and also on the lakes in the western part of this Province.

2. The proviso to the third Section of the said Act is repealed, and Recital.
 the said Company may hereafter hold real estate not exceeding in
 20 value the sum of eighty thousand dollars.

3. And whereas the said Company are desirous that further Power to take
 powers should be granted to them with respect to the acquiring certain real
 and holding of real estate for the construction of wharves and estate.
 the erection of offices, storehouses, and other buildings for the
 25 purposes of their traffic it is enacted, That the said Company
 shall have power at any port or place within the limits of their naviga-
 tion, and at which they are desirous of constructing any wharf or build-
 ing for the purpose of their traffic to designate and establish, take ap-
 propriate hold to and for the use of them and their successors any land
 30 that they may require for the purposes aforesaid; according to the pro-
 visions hereinafter contained for acquiring the same, and for the pur-
 pose aforesaid the said Company and their agents, servants and work-
 men may enter into and upon the lands of any person or body corporate,
 and construct such works and buildings thereon as they may require
 35 for the purposes aforesaid; provided, however, that the powers in this Proviso.
 respect, by this Act granted, shall not extend to or be exercised at any
 port or place where, before the passing hereof, arrangements respecting
 the wharves and lands required for the purposes of the Company already
 existed; and provided further that the value of all the real property so
 40 to be acquired by the company including that already owned by them
 shall not exceed the sum of eighty thousand dollars.

4. All Corporations and persons whatever, tenants in tail or for life, Parties who
grêves de substitution, guardians, curators, executors, administrators, may convey
 real estate.

and all other trustees whatsoever, not only for and on behalf of themselves, their heirs and successors, but also for and on behalf of those whom they represent, whether issue infants unborn, lunatics, idiots, *femes covert*, or other persons seized, possessed, of, or interested in any lands, may contract for, sell and convey unto the Company all or any part thereof; and any contract, agreement, sale, conveyance and assurance so made shall be valid and effectual in law to all intents and purposes whatsoever, and the Corporation or person so conveying is hereby indemnified for what he or it respectively does by virtue of or in pursuance of this Act. 5 10

In case parties may not sell.

5. All Corporations or persons who cannot in common course of law sell or alienate any lands so set out and ascertained, shall agree upon a fixed annual rent as an equivalent, and not upon a principal sum, to be paid for the lands, and if the amount of the rent is not fixed by voluntary agreement or compromise, it shall be fixed and all proceedings shall be regulated in the manner herein prescribed; and for the payment of the said annual rent, and every other annual rent agreed upon or ascertained, and to be paid for the purchase of any lands or for any part of the purchase money of any lands which the vender agrees to leave unpaid, the vessels and other property of the said Company, and the fares and tolls collected thereon, shall be liable and chargeable in preference to all other claims and demands thereon whatsoever, the deed creating such charge and liability being duly registered in the Registry Office of the proper County. 15 20

Case of joint tenants, &c.

6. Whenever there is more than party proprietor of any land as joint tenant or tenants in common or *par indivis*, any contract or agreement made in good faith with any party or parties, proprietor or being together proprietors of one third or more of such land as to the amount of compensation for the same, or for any damages thereto, shall be binding as between the remaining proprietor or proprietors as joint tenant or tenants in common and *par indivis*, and the proprietor or proprietors who have so agreed may deliver possession of such land or empower the entry upon the same as the case may be. 25 30

Notice.

7. After one month's notice in at least one newspaper, if there be any published, in each of the Districts or Counties in which any property required by the Company is situated, application may be made to the owners of lands, or to parties empowered to convey lands, or interested in lands which may suffer damage from the exercise of any of the powers granted to the Company, and thereupon, agreements and contracts may be made with such parties touching the said lands, or the compensation to be paid for the same, or for the damages, or as to the mode in which such compensation shall be ascertained as may seem expedient to both parties, and in case of disagreement between them, or any of them, then all questions which arise between them shall be settled as follows, that is to say: 35 40 45

Its contents.

The notice served upon the party shall contain,

1. A description of the lands to be taken or of the powers intended to be exercised with regard to any lands describing them.
2. A declaration of readiness to pay some certain sum or rent, as the case may be, as compensation for such lands or for such damages, and
3. The name of a person to be appointed as the Arbitrators of the Company, if their offer be not accepted. 50

8. If the opposite party is absent from the District or County in which the lands lie or is unknown, then upon application to a Judge of the Superior Court, or of the County Court, as the case may be, accompanied by an affidavit of some officer of the Company that the opposite party is so absent, or that after diligent enquiry the party on whom the notice ought to have been served cannot be ascertained, the Judge shall order a notice as aforesaid, but without a certificate, to be inserted three times in the course of one month in some newspaper published in the said District or County. In case party
be absent.

10 9. If within ten days after the service of such notice, or within one month after the first publication thereof, as aforesaid, the opposite party does not notify to the Company his acceptance of the sum offered by them, or notify to them the name of a person whom he appoints as Arbitrator, then the Judge shall, on the application of the Company, appoint a sworn Surveyor for Upper or Lower Canada, as the case may be, to be sole Arbitrator for determining the compensation to be paid as aforesaid. Sole arbitra-
tor.

10 10. If the opposite party, within the time aforesaid, notifies to the Company the name of his Arbitrator, then the two Arbitrators shall jointly appoint a third, or if they cannot agree upon a third, then the Judge shall, on the application of the party or of the Company (previous notice of at least one clear day having been given to the other party) appoint a third Arbitrator. Third arbitra-
tor.

11. The Arbitrators, or any two of them, or the sole Arbitrator, being sworn before some Justice of the Peace for the District or County in which the lands lie, faithfully and impartially to perform the duties of their office, shall proceed to ascertain the said compensation in such a way as they or he or a majority of them deem best, and the award of such Arbitrators or any two of them, or of the sole Arbitrator, shall be final and conclusive; but no such award shall be made or any official Act be done by such majority, except at a meeting held at a time and place, of which the other Arbitrator has at least one clear day's notice, or to which some meeting at which the third Arbitrator was present, had been adjourned, and no notice to either of the parties shall be necessary, but each party shall be held sufficiently notified through the Arbitrator appointed by him or whose appointment he required. Duties of ar-
bitrators.

12. If in any case where three Arbitrators have been appointed, the sum awarded is not greater than that offered, the cost of the Arbitration shall be borne by the opposite party, and be deducted from the compensation, but if otherwise, they shall be borne by the Company, and in either case they may, if not agreed upon, be taxed by the Judge aforesaid. Costs.

13. The Arbitrators, or a majority of them, or the sole Arbitrator, may examine on oath or solemn affirmation the parties or such witnesses as voluntarily appear before him or them, and may administer such oath or affirmation, and any wilful false statement made by any witness under such oath or affirmation shall be deemed wilful and corrupt perjury, and punishable accordingly. Witnesses be-
fore arbitra-
tors.

14. The Judge by whom any third Arbitrator or sole Arbitrator is appointed shall, at the same time, fix a day on or before which the award shall be made, at the same time fix a day on or before such day Day for
award.

or some other day to which the time for making it has been prolonged, by the consent of the parties or by the order of the Judge, as it may be for reasonable cause shewn on the application of such sole Arbitrator, or of one of the Arbitrators after one clear day's notice to the others, then the sum offered by the Company as aforesaid shall be the compensation to be paid by them. 5

Case of death,
&c., of arbit-
rator.

15. If the Arbitrator appointed by such Judge, or if any Arbitrator appointed by the parties, dies before the award has been made, or is disqualified, or refuses or fails to act within a reasonable time, then, in the case of the Arbitrator appointed by the Judge upon the application of either party, such judge being satisfied by affidavit or otherwise of such death, disqualification, refusal or failure, may appoint another Arbitrator in his place, and the Company and party respectively may each appoint an Arbitrator in place of his Arbitrator deceased or otherwise not acting as aforesaid: but no recommencement or repetition of prior proceedings shall be required in any case. 10 15

Desistment.

16. Any such notice for lands, as aforesaid, may be desisted from and new notice given with regard to the same or other lands, to the same or any other party, but in any such case the liability to the party first notified for all damages or costs by him incurred in consequence of such first notice and desistment shall subsist. 20

Arbitrator
not disquali-
fied in certain
cases.

17. The Surveyor or other person offered or appointed as valuator or as arbitrator, shall not be disqualified by reason that he is professionally employed by either party, or that he has previously expressed an opinion as to the amount of compensation, or that he is related or of kin to any member of the Company, provided that he is not himself personally interested in the amount of the compensation; and no cause of disqualification shall be urged against any arbitrator appointed by the Judge after his appointment, but the objection must be made before the appointment, and its validity or invalidity shall be summarily determined by the Judge. 25 30

Determina-
tion of dis-
qualification.

18. No cause of disqualification shall be urged against any arbitrator appointed by the Company, or by the opposite party after the appointment of a third arbitrator; and the validity of any cause of disqualification urged against any such arbitrator, before the appointment of a third arbitrator, shall be summarily determined by the Judge, on the application of either party, after one clear day's notice to the other, and if such cause is determined to be valid, the appointment shall be null, and the party offering the person so adjudged to be disqualified, shall be held not to have appointed an arbitrator. 35 40

Award not
invalid for
want of form.

19. No award made as aforesaid shall be invalidated from any want of form or other technical objection, if the requirements of this Act have been complied with, and if the award state clearly the sum awarded, and the lands or other property, right or thing, for which such sum is to be the compensation: nor shall it be necessary that the party or parties to whom the sum is to be paid, be named in the award. 45

On payment
or under of
amount
awarded.

20. Upon payment or legal tender of the compensation or annual rent so awarded or agreed upon as aforesaid, to the party entitled to receive the same, or upon the deposit of the amount of such compensation in the manner hereinafter mentioned, the award or agreement shall vest in the said Company, the power forthwith to take possession of the 50

lands or to exercise the right, or to do the thing for which such compensation or annual rent has been awarded or agreed upon, and if any resistance or forcible opposition be made by any person to their so doing, the judge may, on proof to his satisfaction of such award or agreement, issue his warrant to the Sheriff of the District or County, or to a bailiff, as he may deem most suitable, to put the said Company in possession, and to put down such resistance or opposition, which, the Sheriff or Bailiff taking with him sufficient assistance, shall accordingly do.

21. Such Warrant may also be granted by any such Judge without such award or agreement on affidavit to his satisfaction that the immediate possession of the lands or of the power to do the thing mentioned in the notice is necessary to carry on the operations of the Company, and upon the said Company giving security to his satisfaction, and in a sum which shall not be less than double the amount mentioned in the notice to pay or deposit the compensation, to be awarded within one month after the making of the award, with interest from the time at which possession is given, and with such costs as may be lawfully payable by the Company

Issue of warrant of possession.

22. The compensation for any lands which might be taken without the consent of the proprietor shall stand in the stead of such lands, any claim to or incumbrance upon the said lands or any portion thereof shall, as against the Company, be converted into a claim to the compensation or to a like portion thereof, and they shall be responsible accordingly whenever they have paid such compensation, or any part thereof, to a party not entitled to receive the same, saving always their recourse against such party.

When compensation to stand in place of land.

23. If the Company has reason to fear any claims or incumbrances, or if any party to whom the compensation or annual rent, or any part thereof is payable, refuses to execute the proper conveyance and guarantee, or if the party entitled to claim the same cannot be found, or is unknown to the Company, or if for any other reason the Company deems it advisable, the Company may, if the lands are situated in Upper Canada, pay such compensation into the office of either of the Superior Courts in Upper Canada, with the interest thereon for six months, and may deliver to the Clerk of the Court an authentic copy of the conveyance, or of the award or agreement if there be no conveyance, and such award or agreement shall thereafter be deemed to be the title of the Company to the land therein mentioned.

As to incumbrances on lands in U. C.

24. A notice, in such form and for such time as the said Court appoints, shall be inserted in some newspaper, if there be any, published in the county in which the lands are situated and in the City of Toronto, which shall state that the title of the Company, that is, the conveyance, agreement or award, is under this Act, and shall call upon all persons entitled to the land, or to any part thereof, or representing or being the husbands of any parties so entitled, to file their claims to the compensation or any part thereof, and all such claims shall be received and adjudged upon by the Court, and the said proceedings shall forever bear all claims to the lands, or any part thereof, including dower as well as all mortgages or incumbrances upon the same; and the Court shall make such order for the distribution, payment or investment of the compensation, and for the securing of the rights of all parties interested as to right and justice, and according to the provisions of this Act, and to law appertain.

Notice to be given.

By whom
costs to be
paid.

25. The costs of the proceedings, or any part thereof, shall be paid by the Company, or by any other party as the Court deems it equitable to order.

As to interest.

26. If such order of distribution, as aforesaid, be obtained in less than six months from the payment of the compensation into Court, the Court shall direct a proportionate part of the interest to be returned to the Company, and if, from any error, fault or neglect of the Company, it is not obtained until after the said months have expired, the Court shall order the Company to pay the proper claimants the interest for such further periods as may be right.

If lands taken
are in L.C.

27. If the lands so taken are situate in Lower Canada, and if the Company have reason to fear any such claim, mortgage, hypothec or incumbrance, or if any party to whom the compensation or annual rent or any part thereof is payable, refuses to execute the proper conveyance and guarantee, or if the party entitled to claim the compensation or rent cannot be found, or is unknown to the Company, if for any other reason the Company deems it advisable, the Company may pay such compensation into the hands of the Prothonotary of the Superior Court for the District in which the land is situate, with interest thereon for six months, and may deliver to the said Prothonotary an authentic copy of the conveyance, or of the award, if their be no conveyance, and such award shall thereafter be deemed to be the title of the said Company to the land therein mentioned, and proceedings shall thereupon be had for the confirmation of the title of the said Company, in the like manner as in other cases of confirmation of title, except that, in addition to the usual contents of the notice the Prothonotary, shall state that the title of the Company (that is, the conveyance or award) is under this Act, and shall call upon all persons entitled to the lands or any part thereof, or representing or being the husband of any party so entitled, to file their claims to the compensation, or any part thereof, and all such claims shall be received and adjudged upon the Court.

Effect of
judgment of
reformation.

28. Such judgment of confirmation shall for ever bar all claims to the land, or any part thereof, (including dower not yet open) as well as any mortgage, hypothec or incumbrance upon the same; and the Court shall make such order for the distribution, payment, or investment of the compensation, and for the security of the rights of all parties interested, as to right and justice, and according to the provisions of this Act and to law shall appertain.

By whom cost
to be paid.

29. The costs of the said proceedings or any part thereof shall be paid by the Company, or by any other party as the Court deem it equitable to order, and if judgment of confirmation be obtained in less than six months from the payment of the compensation to the Prothonotary, the Court shall direct a proportionate part of the interest to be returned to the Company, and if from any error, fault or neglect of the Company it is not obtained until after six months have expired, the Court shall order the Company to pay the Prothonotary the interest for such further period as may be right.

Lands be-
longing to H.
M., &c.

30. Whenever it is necessary for the Company to occupy any part of the lands belonging to the Queen, reserved for naval or military purposes, they shall first apply for, and obtain the license or consent of Her Majesty, under the hand and seal of the Governor, and having obtained such license and consent, they may at any time or times enter into and

enjoy any of the said lands for the purposes of the Company, but in the case of any such naval or military reserves, no such license or consent shall be given, except upon a report first made thereupon by the naval or military authorities in which such lands are for the time being vested, 5 approving of such license and consent being so given as aforesaid.

31. At the end of the ninth Section of the said Act the following words shall be added :—“ And before paying and liquidating such annual dividends of the profits of the said Company, and out of such dividends the said Company shall have a right to keep and retain a special 10 and reserve fund to be employed for all acquisitions and building of steamboats, the expenses and repairs of the steamboats of the said Company, a clear statement whereof shall be submitted and retained by the Directors of the said Company, to form part of the minutes of their deliberations.” Addition to section 9 of 20 Vic., cap. 170.

32. After the last word “ transfer” of the tenth Section of the said Act the following words shall be added :—“ And provided that the said transferor shall not be able to transfer, cede and alienate any part of 15 all such shares by him subscribed for until he shall have paid to the said company all and every the sums of money which he may owe to such Company, either for the whole or any part of the shares by him 20 subscribed for, and for which he shall be indebted at the time of such transfer, cession or alienation, or which he shall owe to the said Company upon old accounts, promissory notes and otherwise. section 10 of 20 Vic., cap. 170.

33. This Act shall be deemed a Public Act.

Public Act.