

Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1862. Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1862.

25 Victoria – Chapter 53

An Act to provide for the drainage and protection of the Great Marsh in the City of Saint John, and the Parishes of Portland and Simonds in the City and County of Saint, John, and the maintenance of an Aboideau across the Marsh Creek near the City of Saint John. Passed 23rd April 1862.

Section.	Section.
1. Appointment of Commissioners.	10. Commissioners to distrain in certain cases.
2. Meetings of Commissioners.	11. Sheriff's Deed evidence of legal seizure, &c.
3. Appointment of Clerk.	12. Record of Commissioners, how kept.
4. Duty of Commissioners.	13. Renumeration of Commissioners.
5. Meetings of proprietors, where held.	14. Vacancy, how filled.
6. Work done by Contract or by the day.	15. Commissioners under former Act to be reimbursed out of first assessment.
7. When work may be done without consent of owners.	16. Should Government contribute, assessment to be reduced.
8. Obstructions to drainage, how removed.	
9. Expenses of building and repairing Aboideau, how defrayed.	

Whereas the Aboideau across the Marsh Creek on the Great Marsh near the City of Saint John, has become very much dilapidated, and is in danger of being carried away by the sea, and requires immediate repair;—

Be it therefore enacted by the Lieutenant Governor, Legislative Council, and Assembly, as follows:—

1. The Lieutenant Governor in Council shall appoint three fit and competent persons to be Commissioners of Sewers for the said Great Marsh, which Commissioners on receiving their appointment shall be sworn to the faithful discharge of their duties.
2. It shall be the duty of the said Commissioners, and they are hereby authorized to meet together as occasion shall require, to devise means and methods for building, erecting or repairing Aboideau dykes, and wears, and such other erections and works as may be necessary for draining the said Great Marsh, and preventing it being inundated by the sea or by freshets.
3. That the Commissioners at the first of their meetings shall appoint a Clerk, not being a Commissioner, whose duty it shall be to keep a record of all such meetings, and of the doings of the said Commissioners, and to sign all entries, notices and other documents necessary or authorized by virtue of this Act; and said Commissioners shall also at said first meeting appoint one

of their number Chairman, whose duty it shall be to preside at all meetings of proprietors and Commissioners.

4. That such Commissioners shall proceed to build, erect or repair such Aboideau dykes, wears and other works they may deem to be necessary for the drainage and protection of the said Great Marsh, provided that no new work shall be constructed, and no repairs whose estimated costs shall exceed the sum of one hundred dollars (except in case of emergency) shall be commenced and proceeded with without the consent of the owners of at least one half the land contained in the said Great Marsh.

5. That the Commissioners are authorized, for the purpose of obtaining such consent, to call a meeting of the owners of land on said Great Marsh at any time, on giving six days' notice of the time and place of such meeting in one or more of the newspapers published in the City of Saint John, such meeting to be held in all instances at some place on said Marsh adjacent to the site of the contemplated work, or else in the City of Saint John.

6. That the Commissioners at their option, as they may deem most expedient for the interests of the owners of the said Marsh land, either let the said work by contract to some responsible person or persons, or shall cause it to be done by workmen employed by them for reasonable wages; and they may, if they deem it expedient, retain the services of some competent Civil Engineer to devise and plan schemes for drainage and protection, and if they so think fit, may employ an overseer or inspector of the work and pay him reasonable remuneration therefor.

7. That in cases of emergency or sudden danger arising from any cause, or in ordinary cases of repair, where the estimated expenditure shall not exceed the sum of one hundred dollars, the Commissioners, or any one of them, may cause the work to be done immediately without the consent of the owners of one half the land on said Great Marsh as before mentioned.

8. That in any case where the natural course of drainage on the said Great Marsh shall have been obstructed or may hereafter be obstructed by any person or persons or body corporate whomsoever, the Commissioners are authorized to call on such person or persons, or body corporate, or the person in occupation of the land where such obstruction exists, to remove such obstruction so far as may be necessary for the free flow of water for drainage purposes; and if such person or persons or body corporate shall, after ten days' notice, neglect or refuse to remove such obstructions, it shall be lawful for the said Commissioners, or any of them, with their employees and workmen, to enter on any land and remove such obstruction sufficiently to accommodate the free flow of water for drainage, and to charge the expense of such work to the person or persons or body corporate so neglecting or refusing, and to recover the same from such person or persons or body corporate by suit, in the name of such Commissioners, in the Supreme Court when the sum exceeds twenty dollars, and when it is less than twenty dollars before any Justice of the Peace.

9. That for the purpose of defraying the said costs and expenses of such building, erecting and repairing of the Aboideau dykes and wears, and other works as before mentioned, and

maintaining the present Aboideau and roadway in its present dimensions, and the expenses of the Commissioners, and all other expenses incident to the performance of the powers and duties vested in them by this Act, including the salary of the Clerk, which shall be a reasonable remuneration, to be settled by the Commissioners, the Commissioners shall make an assessment on the several owners of land on the said Great Marsh, assessing them according to the value and benefits accruing to the land held by each, provided that no assessment shall be made on any land which the Commissioners shall consider not to be benefited by such works or repairs; and on such assessment being made, the said Commissioners shall cause a notice (A) to be published for the space of twenty days, which said notice shall be signed by the Chairman and Clerk, in one of the newspapers published in the City of Saint John, which notice shall contain a list of the said owners, the amount assessed on each, and the quantity of land on which such assessment is made.

10. In case any owner of land shall not within thirty days after the first publication of such notice as aforementioned, pay the amount for which he, she or they are so assessed, to the Chairman of the said Commissioners, the said Commissioners shall thereupon issue a Distrain Warrant (B) signed by all of said Commissioners and said Clerk, directed to the Sheriff of the City and County of Saint John, under which Warrant the Sheriff shall levy on the goods and chattels of the party or parties, or body corporate, against whom the same shall be issued; and in case there shall not be sufficient goods and chattels in his bailiwick to satisfy the same, the Sheriff shall levy on the land of the said party or parties, or body corporate, situate on the Great Marsh aforesaid, on which such assessment was made, and shall sell the same to satisfy such Warrant; but no sale shall take place until the time and place of such sale shall be advertised by the Sheriff at least three months continuously in some newspaper published in the City of Saint John; the sale to be made between the hours of twelve and five in the afternoon; and the Sheriff shall execute to the purchaser or purchasers of such land a Deed of such land (C), which shall be sufficient to convey all the interest of the person or persons, or body corporate, against whom the said Warrant was issued; and the Sheriff shall return the said Warrant to the Chairman of the said Commissioners, who shall cause the same to be filed in the office of the Clerk of the Peace in and for the City and County of Saint John; and if there shall be any surplus after paying the amount for which such Warrant was issued, and the Sheriff's fees thereon, the Sheriff shall pay over the same to the person or persons against whom the Warrant was issued.

11. That the Deed of the Sheriff duly proved and registered, or a certified copy thereof, shall be evidence that the said property so conveyed was regularly seized, advertised and sold; and in case of the death or going out of office of the Sheriff who has seized, advertised, or sold any lands, the sale or conveyance thereof, or both, may be completed by his successor without any new warrant or any alteration in the proceedings, who shall prove to the regularity of the proceedings taken by him, and that on diligent enquiry he verily believes that the proceedings taken by his predecessor were regular.

12. The record to be kept by the Clerk of the said Commissioners, shall contain a record of all the meetings of the owners of land called by them, and of all meetings of the said Commissioners, and of all work done by them, and of all contracts entered into, and all assessments made by them; which said record shall (except when the same is in use at such meetings) be kept on file in the

office of the Clerk of the Peace for the County of Saint John; and the said Commissioners shall annually on the second Monday in January in each year, file with the said Clerk of the Peace a detailed account of all moneys expended by them as such Commissioners during the year previous; which said record and account shall be open to the inspection of any owner of land on the said Great Marsh, upon payment of the fee of twenty cents to the Clerk of the Peace for such inspection.

13. The Commissioners shall be entitled to receive out of the moneys to be raised by such assessment, one dollar each for each day's attendance at such meetings, and two dollars for each day's attendance when superintending the workmen employed in dyking or draining, provided that not more than one Commissioner shall be paid for attendance as superintendent on the same day.

14. In case of any vacancy in the said Commissioners by death or otherwise, the Governor in Council may from time to time appoint another Commissioner to fill any such vacancy; and in case a vacancy by the death or resignation of the Chairman of Commissioners, the Commissioners may appoint one other of their number Chairman, and in case of the absence of the Chairman at any meeting, the Commissioners may appoint a Chairman *pro tem* to act at such meetings.

15. The Commissioners to be appointed under this Act shall, at the first assessment to be made by virtue of this Act, assess such additional sum as may be required to reimburse the present Commissioners of Sewers the amount expended by them, and the expenses incurred by them in and about the draining and protecting the Great Marsh, and incident to their duties as such Commissioners, and which may not at that time have been reimbursed to them, and shall pay the same to the said present Commissioners on being satisfied of the correctness of the account rendered by them.

16. That said Commissioners shall be and are hereby empowered to make an agreement with the Executive Government for the time being of the Province of New Brunswick, in order that the said Executive Government may contribute towards the building, erecting or repairing said Aboideau across said Great Marsh, upon such terms as may be agreed upon between the said Commissioners and the said Executive Government; and in case such agreement shall be made by and between said Commissioners and said Executive Government, then the amount to be assessed and levied by said Commissioners on and against the proprietors of said Great Marsh, shall be less the amount to be paid by the said Executive Government as aforesaid.

SCHEDULE A

Notice.

To the owners of Lands on the Great Marsh in the City and County of Saint John.

The following persons, owners of land on the Great Marsh in the City and County of Saint John, have been assessed in the sums set opposite their respective names, and they will pay such sums

respectively to the undersigned, Chairman of Commissioners of Sewers, on or before the ____ day of _____ next, or proceedings will be taken to collect the same.

Name of owner of Land.	Sum assessed.	No. of Acres.	Rates per Acre.

Dated Saint John, ____ day of _____ A.D. 18 ____.

(Signed)

A. B., Chairman of Com'rs of
Sewers on Great Marsh.

B

To the Sheriff of the City and County of Saint John.

By virtue of the power and authority in us vested, under and by virtue of the Act of Assembly twenty fifth Victoria, Chapter ____, we hereby direct you to levy on the goods and chattels of C. D. in your bailiwick, the sum of _____; and in case you shall not find within your bailiwick sufficient of the goods and chattels of the said C. D. whereon to levy the same, you are hereby required to levy on the lands of the said C. D. on the Great Marsh in the City and County of Saint John, the said sum of _____, and to proceed thereon according to law; and I further direct you to pay the said sum of _____ when so levied, to the Chairman of the Commissioners of Sewers for the said Great Marsh, and to return this execution to the Chairman of the said Commissioners, on or before the ____ day of _____ A. D. 18 ____.

Dated this ____ day of _____ A. D. 18 ____.

A. B. }
C. D. } Commissioners.
E. F. }

G.H., Clerk.

C

To all to whom these presents shall come, I, _____, Sheriff of the City and County of Saint John, send greeting.

Whereas by a certain execution under the hands of the Commissioners of Sewers of the Great Marsh of the City and County of Saint John, issued under and by virtue of the provisions of the Act of Assembly twenty fifth Victoria, Chapter _____, I was directed to levy on the goods and chattels of C. D. in my bailiwick, the sum of _____; and in case I should not find within my bailiwick sufficient of the goods and chattels of the said C. D. whereon to levy the same, I was required to levy on the lands of the said C. D. on the Great Marsh in the City and County of Saint John, the said sum of _____; and whereas for want of sufficient goods and chattels, I have levied on certain lands of the said C. D. situate on the Great Marsh in the City and County of Saint John, described as follows—[set forth description]—and after advertising and selling the same according to law, E. F. becomes the purchaser thereof, for the sum of _____: Now know ye, that I, the said Sheriff, in pursuance of the power in me vested, and in consideration of the said sum of _____ do grant, bargain and sell unto the said E. F. all the said lands and tenements, together with all buildings and appurtenances thereon being, to hold the same unto the said E. F., his heirs and assigns, for ever. In witness whereof, I have hereto set my hand and seal, this ____ day of _____, in the year of our Lord one thousand eight hundred and ____.

Signed, sealed and delivered }
in presence of }

City and County of Saint John.

On this ____ day of _____ A. D. 18____, before me, personally appeared the above named Sheriff, and made oath that all the acts required by law for sale of the lands and tenements mentioned in the within Deed, were truly performed by him, the said Sheriff, and that the within conveyance is his act and deed, executed by him for the purposes in the same mentioned and set forth.

G. H., Justice of the Peace
for the City and County of Saint John.