



CHAPTER 62.

An Act for the supply of Water to the City of Nanaimo.

[21st February, 1895.]

WHEREAS the Council of the Corporation of the City of Nanaimo Preamble.
have resolved that the Corporation of the City of Nanaimo should construct water-works, and have power to take water from Nanaimo River above the Falls:

And whereas, by the "Municipal Act, 1892," and amendments thereto, the Corporation of the City of Nanaimo have power to construct and operate water-works for the purpose of supplying the inhabitants of the City with water:

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

1. That it shall be lawful for the Corporation of the City of Nanaimo, their agents, servants, and workmen, from time to time, and at all such times hereafter as they shall see fit, and they are hereby authorized and empowered, to enter into and upon the lands of any person, bodies politic or corporate, lying between the place or places where they shall take water from the Nanaimo River above the Falls and the City of Nanaimo, and to survey, set out, and ascertain such parts thereof as they may require, and also to divert and appropriate such of the waters of the said Nanaimo River above the Falls as they shall consider necessary, and to contract with the owners or occupiers of the said lands, and those having an interest or right in the said water, for the purchase thereof, or any part thereof, or of any privilege that may be required; and in case of disagreement between the Corporation of the City of Nanaimo and the owners or occupiers of the said lands, or any persons or corporations having an interest in the

Power to Corporation of Nanaimo to take water from Nanaimo River.

said water or the natural flow thereof, or any such privilege or privileges, right or rights, as aforesaid, respecting the amount of purchase money, or value thereof, or as to the damages such appropriation shall cause to them, or otherwise as to the amount of damages arising from the construction of any dam, the same to be decided by three arbitrators, to be appointed as hereinafter mentioned, namely:—The Council of the Corporation of the City of Nanaimo shall appoint one, and the owner or owners shall appoint another, and such two arbitrators shall, within ten days, appoint a third arbitrator, but in the event of such two arbitrators not appointing a third arbitrator within the time aforesaid, one of the Judges of the Supreme Court of British Columbia shall, on application of either party, appoint such third arbitrator.

Arbitration.

In case of refusal or inability to appoint arbitrator.

2. In case any such owner or occupier shall be an infant or insane or absent from the Province, or shall refuse to appoint an arbitrator in his behalf, then it shall be the duty of one of the Judges of the Supreme Court of British Columbia, on application being made for that purpose by the Corporation of the City of Nanaimo, to nominate and appoint three indifferent persons as arbitrators. The arbitrators, as hereinbefore mentioned, shall award, determine, adjudge, and order the respective sums of money which the said Corporation of the City of Nanaimo shall pay to the respective persons entitled to receive the same, and the award of the majority of the said arbitrators shall be final, and the said arbitrators shall be and they are hereby required to attend at some convenient place at or in the vicinity of the said City, to be appointed by the Corporation of the City of Nanaimo, after ten days' notice given for that purpose by the Corporation of the City of Nanaimo, then and there to arbitrate and award, adjudge and determine, such matters and things as shall be submitted to their consideration by the parties interested; and each arbitrator shall be sworn before some one of Her Majesty's Justices of the Peace in and for the City of Nanaimo well and truly to assess the value of damages between the parties to the best of his judgment: Provided, always, that any award under this Act shall be subject to be set aside on application to the Supreme Court of British Columbia, in the same manner and on the same grounds as in ordinary cases of arbitration.

Duties of arbitrators.

Award.

Proviso.

By-law not to be passed until estimates published.

3. No by-law for the purpose of constructing any water-works for the City of Nanaimo shall be passed, Firstly, until estimates of the intended expenditure have been published once a week for one month; Secondly, until the same shall have received the assent of the electors, as provided by the "Municipal Act":

If rejected, no other to be submitted.

(a.) If the proposed by-law is rejected by the electors, no other by-law for the same purpose shall be submitted to the electors for a period of twelve months.

4. In case there be any water company incorporated and carrying on their business within the limits of the said City, the Council shall not pass any by-law for the purpose of constructing any such works, or by virtue of which the City will become a competitor in the business carried on by such companies, or any of them, or in any other manner exercise the powers conferred by the two preceding sections, until such Council has by by-law fixed the price which they will offer for the property of the company or companies whose operations will be interfered with, nor until thirty days have elapsed after notice of such price has been communicated to such company or companies :

In case of other companies carrying on like business.

By-law to fix price.

(a.) Upon such by-law being passed, and notice thereof given to the said company or companies, who may either accept or refuse the same, or give notice to the Council that they will require the purchase price of their property to be submitted to arbitration :

If by-law passed, company may refuse to accept or require arbitration.

(b.) In case the notice referred to in the preceding clause is given by such company or companies, the price to be paid for such property shall be referred to the award of three arbitrators, one to be appointed by the parties giving the notice, one by the Council, and the third to be either agreed upon between the arbitrators appointed by the parties, or to be named by a Judge of the Supreme Court of British Columbia; and thereupon the arbitration shall proceed, and the provisions of the "Arbitration Act, 1893," shall apply to such arbitration in all matters not herein specifically provided for :

Mode of reference.

(c.) In the event of the company or companies to whom such notice is given accepting the price fixed by the said by-law, or in the event of any award being made under the arbitration hereinbefore referred to, such price shall be paid or secured before any further proceedings are taken by the Council under the powers contained in the preceding five sub-sections of this Act:

On acceptance of price fixed by by-law.

(d.) If such company or companies refuse the price offered by the City, or if, at the expiration of thirty days from the time that notification of the price offered has been delivered, they fail to accept such price, or require an arbitration as aforesaid, then the Council may proceed forthwith to exercise the powers conferred upon them by the preceding five sub-sections of this Act.

If company refuse price,

Or require arbitration.

5. The powers and privileges conferred by this Act, and the provisions hereof in so far as they affect the rights of the Crown, are hereby declared to be granted subject to the rights of the Crown, and also subject to any future legislation regarding the subject-matter of this Act, or of the powers and privileges hereby conferred, which the Legislature may see fit to adopt; and this Act is passed upon the

Rights of the Crown.

express condition that the Lieutenant-Governor in Council may from time to time impose and reserve to the Crown, in right of the Province, such rents, royalties, tolls, and charges in respect of the waters or of the lands of the Crown (if any), rights and privileges which shall be set out, appropriated, or enjoyed by the company, or are conferred by this Act, as by the Lieutenant-Governor in Council shall be deemed to be just and proper; and may likewise make and pass such regulations and rules as may be deemed necessary and advisable for the collection and enforcement of such rents, royalties, tolls, and charges, or any of them, but so that no increase in the amount of any such rents, royalties, &c., fixed by any such Order in Council shall be made within the space of five years from the passage of the Order in Council fixing the same.

Short title.

6. This Act may be cited for all purposes as the “Corporation of the City of Nanaimo Water-works Act, 1895.”

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