



CHAPTER 64.

An Act to Amend the "Corporation of Victoria U. A., 1888, No. 20. Water Works Act, 1873."

[23rd April, 1892.]

WHEREAS the Corporation of the City of Victoria have by their Preamble. petition represented that the "Corporation of Victoria Water Works Act, 1873," is in many respects inapplicable to the existing condition of affairs in the said City, and have prayed that the same may be amended:

And whereas it is expedient to grant the prayer of the said petition :

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

1. Section 1 of the "Corporation of Victoria Water Works Act, 1873," is hereby repealed, and in lieu thereof it is enacted as follows: Repeals s. 1 and substitutes—

"1 The 'Municipal Act, 1892,' and any Statute which may hereafter be passed by the Legislative Assembly of this Province amending, or as a substitution for the same, shall, as far as possible, govern the classification of property liable to assessment, and the assessment, levy and collection of all rates and taxes hereinafter referred to, except water rates and any and all special rate or rates mentioned in this Act." What Acts to govern collection of certain rates and taxes, etc.

2 Section 5 of the "Corporation of Victoria Water Works Act, 1873," is hereby amended by inserting after the word "appoint" in the second line of said section the words "by resolution the Commissioner and," and in line three by inserting after the word "by" the words "resolution or."

Repeals s. 6 and substitutes—

3. Section 6 of the "Corporation of Victoria Water Works Act, 1873," is hereby repealed, and in lieu thereof the following section and sub-sections shall be enacted:—

Lands, etc., may be entered on and purchased.

"6 It shall and may be lawful for the said Commissioner, his agents, servants, and workmen, appointed as aforesaid, 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 land of any person or persons, bodies politic or corporate, in the said City of Victoria, or within twenty miles of the said City, and to survey, set out, ascertain and appropriate, with or without the consent of the owners or occupiers thereof, such parts thereof as they may require for the purposes of the said water works, and also to divert and appropriate any springs, streams, lakes or bodies of water, which they shall judge proper, and to contract with the owners or occupiers of the said lands, and those having any interest or right in the said water or waters, for the purchase thereof, or of any part thereof, or of any privilege that may be required for the purpose of the said Commissioner, and for the right to take all timber, stone, gravel, sand, and other materials from the same or adjacent lands, for the use and construction of the said works.

Arbitration in case of disagreement.

"(a.) In case of any disagreement between the said Commissioner and the owners or occupiers of the said lands, or any person having an interest in the 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, or as to the amount of damages arising through the construction of any dam, the same shall be decided by three arbitrators to be appointed as herein-after mentioned, namely, the Commissioner shall appoint one, the owner or owners shall appoint another, and such two arbitrators shall, after their appointment, appoint a third.

Failure to appoint arbitrator.

"(b.) Either the Commissioner or the owner or owners may, after making such appointment, serve notice thereof on the other parties, and if within ten days after service of such notice the party so served fails to appoint an arbitrator on his or their behalf, or in the event of the two arbitrators so appointed failing, within ten days after their appointment, to appoint a third arbitrator, then, or in any of such cases, one of the Judges of the Supreme Court of British Columbia shall, on the application of either party, appoint such arbitrator.

Appointment of arbitrators in case owner infant, etc.

"(c.) In case any such owner or occupant shall be an infant, insane, or under any legal disability, or shall be absent from this Province, it shall be the duty of a Judge of the Supreme Court of British Columbia, on application being made to him for that purpose by the Commissioner, to nominate and appoint three indifferent persons as arbitrators.

“(d.) If, before the matter so referred shall be determined, any arbitrator appointed by either party die, or become incapable, or neglect or refuse to act, the party by whom such arbitrator was appointed may nominate and appoint, in writing, some other person to act in his place, and if for the space of seven days after notice in writing from the other party for that purpose, he fail to do so, the remaining or other arbitrator may proceed *ex parte*.

If arbitrator appointed by either party die or refuse to act.

“If an arbitrator appointed by the Court under any of the provisions hereinbefore mentioned, shall die or become incapable, or neglect or refuse to act before the matter so referred shall be determined, the Court may, on the application of either party, appoint some other person to act in his place.

If arbitrator appointed by Court die or refuse to act.

“Every arbitrator so to be substituted as aforesaid, shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death, or disability, or neglect, or refusal to act as aforesaid.

Powers of substituted arbitrator.

“(e.) The arbitrators to be appointed as aforesaid shall award, determine, adjudge, and order whether any, and if so what, sum or sums of money shall be paid by the Corporation of the City of Victoria to the person or persons making claim thereto in respect of any of the matters so referred to the said arbitrators.

Arbitrators to make award.

“(f.) The arbitrators shall be and they are hereby required to attend at some convenient place in the City of Victoria, to be appointed by the Commissioner, after eight days' notice given for that purpose by the Commissioner, then and there to arbitrate, award, adjudge and determine, such matters and things as shall be submitted to their consideration by the parties interested; but no formal agreement or submission in writing shall in any case be necessary.

When and where arbitration to be held.

“The said arbitrators shall, before entering into the consideration of any of the matters so referred to them, each be sworn before one of Her Majesty's Justices of the Peace for British Columbia, or of any County or Electoral District thereof (any of whom may be required to attend the said meeting for that purpose), well and truly to decide between the parties to the best of his judgment.

Arbitrators to be sworn.

“(g.) The arbitrators shall make and publish their award in writing within thirty days after the day on which the last of such arbitrators shall have been appointed, or within such extended time (if any) as shall have been appointed for that purpose by such arbitrators, under their hands.

Award to be in writing, etc.

“(h.) The said arbitrators shall call for the production of any documents in the possession or power of either party which they, or any one of them, may think necessary for determining the question in dispute, and shall examine the parties or their witnesses on oath, and shall have power to administer the oaths necessary for that purpose.

Witnesses.

- Costs of arbitration. “(i.) All the costs of any such arbitration, and incident thereto, including the fees of the arbitrators, shall be borne by the Corporation of the City of Victoria, unless the arbitrators shall award the same or a less sum than shall have been offered by the ‘Commissioner, in which case the owners or occupiers shall bear the said costs incident to the arbitration and the costs of the arbitrators.
- Taxation of costs. “(j.) The costs of any such arbitration may, on the application of either party, be taxed by the Registrar of the Supreme Court at the City of Victoria, and on such taxation the said Registrar shall not be limited by any scale of fees in force in the said Court, or laid down in the ‘Arbitration Act,’ but may allow all such costs and expenses, including fees to arbitrators, witnesses, and counsel, as he shall consider reasonable and proper, having regard to the importance of the matters in dispute and the length of time occupied in the said arbitration.
- Delivery of award. “(k.) After publication of the said award, either party may demand the same from the arbitrators, and upon payment of their proper fees in that behalf the arbitrators shall deliver their said award to the party so requiring the same. The party taking up the said award shall, on demand, forthwith furnish a copy thereof to the other party, and shall at all times, on demand, produce the said award and allow the same to be inspected or examined by the other party, or any person appointed by him for that purpose.
- Setting aside award. “(l.) No award made with respect to any question referred to arbitration under the provisions of this Act shall be set aside for irregularity or error in matter of form, but any such award shall be subject to be set aside or referred back to the arbitrators on application to the Supreme Court of British Columbia, in the same manner and on the same grounds (except irregularity or error in matter of form) as in ordinary cases of arbitration. For the purposes of such application, any award made under this Act shall be deemed to have been so made under a submission which has been duly constituted a rule or order of the said Supreme Court of British Columbia.
- Award to be binding. “(m.) The award of the majority of the said arbitrators shall be binding upon all parties concerned, subject as aforesaid: Provided, however, if a majority of the said arbitrators shall not agree upon an award, the said reference shall be deemed to be abandoned, and the parties may appoint other arbitrators and proceed to a second arbitration in accordance with the provisions of this Act, and so on from time to time until an award shall be made and published.
- Payment of award. “(n.) Any sum so awarded shall be paid within six months from the date of the award, or the determination of any motion to annul the same, and in default of such payment the proprietor may resume possession of his property, and all his rights shall thereupon revive.

“(o.) If the purchase money or compensation so awarded in respect of any lands or any interest therein purchased or taken by the Commissioner, or in respect of any damages, rights, or privileges as aforesaid, shall be payable to a person who for any reason cannot make a conveyance thereof, or who shall be absent from this Province, then the Commissioner may pay the amount awarded (less the amount of any registered charge and less any sum which may be taxed against the other party for costs) into the Supreme Court of British Columbia, and thereupon the said Court may make an order vesting the said lands, or interest therein, or the rights or privileges sought to be acquired, in the Corporation of the City of Victoria, and no further conveyance or grant shall be requisite to perfect the title of the said Corporation or its successors to the said lands, rights, or privileges.

When amount awarded may be paid into Court.

Court may make order vesting lands, etc., in the Corporation.

“(p.) The Court may, on the summary application on behalf of any party interested, make such order as to the disposition of any moneys so paid in as shall be deemed requisite or proper.

Court may make order as to disposition of moneys.

“(q.) In all other cases, upon payment or tender of the amount so awarded, the owners or occupiers of the lands, rights, or privileges aforesaid, shall, at the cost and expense of the Corporation of the City of Victoria, make, do, and execute all such acts, deeds, matters and things necessary on the part of such owners or occupiers, or any of them, to vest a complete and perfect title to the said lands, rights, or privileges in the said Corporation and its successors.”

Deeds to be executed.

4. The following words shall be inserted after clause 13 of the “Corporation of Victoria Water Works Act, 1873,” namely: “In all cases where a main pipe of four inches or over is or shall be laid in any street in the said city, the Council of the Corporation of the City of Victoria shall have power to pass a by-law and thereby to assess and levy a special rate per foot frontage upon the lots (except corner lots) on each side of the portion of the said street in which said pipe or pipes shall from time to time be laid. In case any of such lots are corner lots, then such corner lots shall only be assessed at one-half the said rates.”

Adds after clause 13 of said Act.

5. Section 14 of the “Corporation of Victoria Water Works Act, 1873,” is hereby amended by striking out the words “less disbursements by the Commissioner,” in the first and second lines of said section, and by inserting after the word “monthly,” in the second line of said section, the words “or oftener if the Mayor of the said city shall so direct.”

Amends s. 14.

6. The “Corporation of Victoria Water Works Act, 1873,” shall be so construed as to confer upon the Corporation of the City of Victoria the right to lay down pipes and carry water through, in, and under

Power to carry water through roads in certain districts.

the highways and roads in the Districts of Esquimalt, Highland, Malahat, Goldstream, and Sooke, and through, in, and under the intermediate lands.

Amends s. 15. **7.** Section 15 of the "Corporation of Victoria Water Works Act, 1873," is hereby amended by striking out the words "and to fix their compensation," in the fifth line of said section, and by striking out the words "do now," in the thirteenth line of said section.

Amends s. 24. **8.** Section 24 of the "Corporation of Victoria Water Works Act, 1873," is hereby amended by inserting after the word "otherwise," in the sixth line thereof, the words "or take or appropriate to his own use any water from any public or private tap."

Amends s. 34. **9.** Section 34 of the "Corporation of Victoria Water Works Act, 1873," is hereby amended by striking out in line one the words "after the construction of the works," and in line four by striking out all the words after the word "shall" down to and including the word "works" in the sixth line, and by striking out the words "monthly with the clerk," in the sixth line, and inserting "with the Treasurer" in lieu thereof.

Amends s. 41. **10.** Section 41 of the "Corporation of Victoria Water Works Act, 1873," is hereby amended by striking out the word "Councillor," in the first line thereof, and inserting the words "Mayor or Alderman."

Repeals s. 44. **11.** Section 44 of the "Corporation of Victoria Water Works Act, 1873," is hereby repealed.

Repeals c. 27, 1881. **12.** Chapter 27 of the Acts of 1881, intituled "An Act to amend the 'Corporation of Victoria Water Works Act, 1873,'" is hereby repealed.

By-law to allow contract with Esquimalt Water Works Co. to carry out s. 10 of 1892, c. 51. **13.** Notwithstanding any law to the contrary, the Council of the Corporation of the City of Victoria shall have power from time to time to make and pass by-laws for the purpose of authorizing the Council to enter into a contract, for a period of five years, with the Esquimalt Water Works Company, to carry into effect the provisions of section 10 of the "Esquimalt Water Works Extension Act, 1892;" but every such by-law shall be first submitted to the electors of the municipality, and the assent of the electors shall be obtained thereto in conformity with the provisions of the Statutes for the time being in force respecting by-laws for contracting debts in the municipality.

By-law to be assented to by electors.

As to distribution of water within areas where Esquimalt Water Works Co. have right to distribute water. **14.** Notwithstanding anything contained in this Act or in the "Corporation of Victoria Water Works Act, 1873," the Corporation of Victoria shall not distribute water within the areas where the Esquimalt Water Works Company have the right to distribute water under their Act, unless the said Company shall fail to furnish an adequate supply, or shall demand rates in excess of those charged by the Cor-

poration of the City of Victoria. and it shall also be incumbent upon the Esquimalt Water Works Company as a condition, in default of which the Corporation of Victoria shall be at liberty to distribute water within the areas aforeaid, that the Esquimalt Water Works Company shall from time to time furnish, and place, and maintain in position in the said areas, in such places as may be designated by the Council, and supply with a sufficient quantity of water such number of suitable fire hydrants as may by resolution of the Council from time to time be required for use in case of fire, the Corporation of Victoria paying the said Company for such hydrants at the rate of four dollars per month for each hydrant, without any charge for the supply of water.

VICTORIA, B. C

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