

C A P . L X X I I .

An Act to enable the Fabrique of the parish of Notre Dame de Montréal to remove the bodies buried in the old catholic cemetery of Montreal, and to enlarge the new cemetery of Notre Dame des Neiges.

[Assented to 5th April, 1869.]

Preamble.

WHEREAS the fabrique of the roman catholic parish of Notre Dame de Montreal has, by its petition, set forth that, for the reasons in the said petition given, it is important that the said fabrique be authorized to remove the bodies buried in the old catholic cemetery of the city of Montreal, and to enlarge the new cemetery of Notre Dame des Neiges, and for the said reasons it is expedient to grant the prayer of the said petition; Therefore, Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows:

Power to remove bodies from old to new cemetery.

1. The fabrique of the parish of Notre Dame de Montreal may, after a resolution to that effect shall have been adopted at a general meeting duly called of the senior and junior churchwardens, cause all bodies buried in the old roman catholic cemetery of the said parish, situate within the limits of the city of Montreal, or beneath the chapel of the said cemetery, to be disinterred, and may, at its own expense, cause them to be removed and buried in the new cemetery of the said parish, situate at Notre-Dame des Neiges, beyond the limits of the city, or beneath the chapel of the said new cemetery, as the case may be; provided however, that for the burial of the said bodies, the said fabrique shall give and assign, in the said new cemetery, or in the chapel thereof, as the case may be, and free of charge, a space of ground equal in superficies to that occupied by them in the former cemetery, or in the chapel thereof, and in the case of lots or parcels of ground, belonging to parishioners, families, individuals, or the representatives of any of them, in the old cemetery, lots of equal and similar superficies in the said new cemetery.

Proviso: Similar graves to be provided.

Notice of disinterment.

2. Notice in writing of the disinterment of all such bodies shall be given thirty days beforehand, under the signature of the secretary-treasurer of the fabrique. This notice shall be in duplicates, one of which shall be served on the family of the deceased person, or in default of family on any other persons interested, if such there be, by a bailiff, who shall make his return of service on the other duplicate which shall be kept amongst the archives of the fabrique; and upon such notice, the family, or interested party as aforesaid, shall, without delay, come to an under-

standing with the fabrique, acting through its secretary-treasurer, concerning the choice of the ground in which the said bodies are to be buried in the new cemetery.

3. If the family of the deceased person, or in default of family any interested person as aforesaid, fails within the said delay of thirty days to come to an understanding with the fabrique concerning the choice of ground, then the fabrique may proceed alone with the removal of the body; but if the family, or any such interested person, after conferring with the said secretary-treasurer, should be unable to come to an understanding, then any judge of the Superior Court, upon a petition being presented to him, may upon the suggestion of the parties, or of his own choice, name an arbitrator who shall decide finally between the fabrique and the parties interested.

In default of concurrence of parties notified fabrique may act alone.

4. In the case of the family of the deceased person being absent, or in the case of the disinterment of the bodies of unknown persons, the above mentioned notices, instead of being served, shall be published during two months in two Montreal daily newspapers, one French and the other English. After that delay shall have expired, if no interested person has come forward in the meantime, the fabrique may proceed alone with the disinterment of the bodies and their removal to the new cemetery as above mentioned; and if on such notice one or more persons interested come forward, then the parties shall come to an understanding as aforesaid, or shall adopt the proceeding mentioned in the third section of this act. In all cases, one and the same notice shall be sufficient for as many unknown bodies as the fabrique may deem proper to include therein.

Notice in case of absence of interested parties.

5. No indemnity or damages shall be allowed to any person on account of the change of any ground or place of burial as aforesaid, and the decision of the arbitrator shall be final, not only as to the right to any particular ground, but also as to all other claims of the parties interested.

Decision of arbitrator to be final.

6. The said fabrique may, for the purpose of enlarging the said cemetery of Notre Dame des Neiges, after a resolution to that effect shall have been adopted at a general meeting of the senior and junior churchwardens, purchase or acquire within the following radius namely: eight acres in breadth and whatever depth there may be between the Côte des Neiges road and the Mount Royal cemetery, any lands or immovables or any part thereof, adjacent to the said cemetery, whether on the north-west side or on the south-east side of the said cemetery, and of such dimensions as it may deem proper. Such purchases or acquisitions may be made by agreement between the fabrique and the proprietors of such land, or, in case such agreement cannot be had, by adopting the

Power to acquire certain property to enlarge cemetery.

Proviso.

formalities hereinafter mentioned. Provided always that the said fabrique shall not have power to acquire or to trespass upon any part of the land now forming the Mount Royal cemetery adjoining the said cemetery of Notre Dame des Neiges on the north-east.

If property cannot be acquired by agreement the court may be applied to.

7. The said fabrique, after adopting a resolution as aforesaid to enlarge the said cemetery of Notre-Dame des Neiges, may, if an understanding cannot be come to with the parties interested, apply by petition to the Superior Court at the city of Montreal, or to any judge of the said court in chambers, to have three fit and disinterested persons named as commissioners, to determine the price or compensation to be allowed for each and every parcel of land or immovable or part thereof which the fabrique may require for such enlargement, and which shall be designated in the said petition by the boundaries and the approximate superficies thereof; and ten days at least before the presenting of the said petition, copies thereof shall be served upon the parties interested.

Court shall appoint Commissioners.

8. The court or judge, as the case may be, to whom the said petition shall have been presented, shall appoint three commissioners as aforesaid, and fix the day on which the said commissioners shall begin their operations, and also the day on which they shall make their report; and the said court, or the said judge, may extend the said delays upon reasonable grounds being shown to that effect.

Commissioners named bound to serve.

9. The judgment embodying the said appointment shall be served, with as little delay as possible, upon the said commissioners, who shall be held to accept the said office and to perform the duties thereof, under the penalty of a fine of one hundred dollars, which it shall be competent for the said Superior Court to inflict upon each of the said commissioners, upon proof of his refusal or neglect to perform the said duties; but the exemptions provided for, in behalf of certain persons, by the fifth section of the act of the present session, entitled: *An act respecting jurors and juries*, shall apply to any of the said commissioners, who may belong to any one of the classes of persons mentioned in said last cited section.

Certain persons exempted

Plan to be furnished to Commissioners.

10. Immediately after the appointment of the said commissioners, it shall be the duty of the secretary-treasurer of the fabrique to furnish them with a plan or map shewing the proposed enlargement, as also the pieces or parcels of ground or real estate to be expropriated.

Duties and power of Commissioners.

11. The said commissioners, before proceeding, shall be duly sworn before the prothonotary of the said Superior Court in the form specified in the annexed schedule, marked A; and they shall be vested with the same powers and entrusted with the same duties as are conferred by the laws in force in this province upon experts in reference to

appraisements; and they shall be entitled to receive a remuneration not exceeding four dollars per day each, during the whole time they shall of necessity be occupied in the performance of the said duties.

12. The said commissioners may, if they deem proper, call upon the proprietors or parties interested, to give them communication of their title-deeds; and upon their failing to comply with such demands, the said commissioners are hereby authorized to procure copies of the said title-deeds at the cost of the said proprietors or parties interested; and the amount of said costs shall be deducted from the price or compensation to be finally awarded to the said proprietors or parties interested in the expropriation.

Power of Commissioners to obtain title deeds.

13. It shall be the duty of the said commissioners to diligently proceed to appraise and determine the amount of indemnity or compensation which they shall deem just and reasonable for each of the pieces or parcels of land or real estate, the expropriation whereof shall have been resolved upon by the fabrique or for the damages caused by such expropriations; and the said commissioners are hereby authorized and required to hear the parties and to examine and interrogate their witnesses, as well as the churchwardens of the said fabrique and their witnesses; but the said examination and interrogatories shall be made *vivâ voce* and not in writing, and shall consequently not form part of the report to be made by the said commissioners, any law, usage or custom to the contrary notwithstanding; provided always, that if in the discharge of the duties devolving on the said commissioners by virtue of the present act, there should occur a difference of opinion between them as to the value of the piece of land or real estate about to be expropriated, or upon any other question within their province, the decision of two of the said commissioners shall have the same force and effect as if all the said commissioners had concurred therein.

How Commissioners shall act.

Decision of two Commissioners to suffice.

14. If one or more of the said commissioners, at any time after their appointment, shall fail in the due performance of the duties assigned to him or them in and by the present act, or shall not fulfil the said duties in a faithful, diligent, and impartial manner, it shall be lawful for the said fabrique or any party interested in the said expropriations, personally or by attorney, to apply, by summary petition, to the said Superior Court, or to a judge thereof, as the case may be, to stay the proceedings of the said commissioners, and to remove and replace the commissioner or commissioners who may have forfeited or violated his, or their obligations; and upon such petition the said court, or judge, may issue such orders as may be deemed conformable to justice.

Commissioners failing in duty may be removed.

15. In case any of the said commissioners should, after

How vacancies

among Com-
missioners
may be filled.

being appointed, die, or be unable to act, the said court, or one of the judges thereof, as the case may be, shall, upon a summary petition to that effect, to be presented by the said Fabrique or any party interested in the said expropriation, personally or by attorney, and after two clear days' notice to the opposite party to be established to the satisfaction of such court or judge, replace such commissioner by another competent and disinterested person, upon whom the said office shall be binding in the same manner as upon his predecessor.

Homologation
of report of
Commissioners

16. On the day fixed in and by the judgment appointing the said commissioners, the said Fabrique or any person interested in the said expropriation personally or by attorney, shall submit to the said Superior Court, or to one of the judges thereof respectively, the report containing the appraisalment of the said commissioners, for the purpose of being confirmed and homologated to all intents and purposes; and the said court or judge, as the case may be, upon being satisfied that the proceedings and formalities hereinbefore provided for have been observed, shall pronounce the confirmation and homologation of the said report, which shall be final as regards all parties interested, and consequently not open to any appeal.

No appeal
from their
award.

After award
fabrique may
tender amount
and take pos-
session.

17. Within thirty days after the confirmation and homologation of the report of the commissioners, the said Fabrique shall tender to the proprietors of or parties interested in the parcels of land, or immoveables, or part thereof, of which the price shall have been determined as aforesaid, the amount of such price or compensation, and in the event of its being refused, shall deposit the same in the hands of the prothonotary of the Superior Court at Montreal; and such tender and deposit, duly proved, shall constitute in favor of the Fabrique, and against the parties to whom such tender has been made a legal title to each of the said parcels of land, or immoveables, or parts thereof, and thereupon the Fabrique shall, as against such parties, be the sole and only owner thereof to all legal intents, and may take immediate possession thereof without further formality, and use the same for the purposes authorized by this act.

Right to retain
sufficient to
cover incum-
brances.

18. The said Fabrique, if there be reason to believe that any of the land acquired as aforesaid is charged with any hypothec or incumbrance whatever, may obtain a certificate from the registrar of the registration division in which the land is situate, and then, if such certificate establishes the existence of such hypothec or incumbrance, the Fabrique may retain and deduct from the amount of the tender and deposit before mentioned a sufficient sum to pay such hypothec or incumbrance; unless the party interested furnishes the Fabrique with a valid and authen-

tic acquittance and discharge of such hypothec or gives security.

19. The second paragraph of the third section of chapter nineteen of the Consolidated Statutes for Lower Canada shall not apply to the parcels of land or immovables or part thereof purchased or acquired under the present act, the provisions of which shall avail as if the said second paragraph were repealed.

FORM A.

" I, _____ having been appointed commissioner Form of oath.
 " under the provisions of the (*cite the Act*) do swear that
 " I will faithfully, impartially, honestly, and diligently
 " execute all the duties of the said office according to the
 " best of my judgment and ability. So help me God."

CAP. LXXIII.

An Act to explain the seventh section of the act twelfth Victoria, chapter one hundred and thirty-six, respecting the incorporation of the Roman Catholic Bishops of this Province.

[Assented to 5th April, 1869.]

WHEREAS in and by the act twelfth Victoria, chapter Preamble.
 one hundred and thirty-six, the roman catholic archbishop of Quebec, the roman catholic bishop of Montreal and the roman catholic bishop of Bytown were incorporated with certain powers and under certain restrictions, and whereas it was the intention of the said act, in and by the seventh section thereof, to provide for the incorporation of the roman catholic archbishops or bishops of dioceses which might be thereafter formed; whereas on the faith of the said act the roman catholic bishops of the dioceses of St. Hyacinthe, Three-Rivers and St. Germain de Rimouski have, actually and *bonâ fide*, assumed and exercised and still exercise corporate powers similar to those conferred upon the said dioceses of Quebec, Montreal and Bytown, and whereas doubts have arisen respecting the legality of such corporations, and it is expedient to remove such doubts, to declare the legality of such corporations, and to provide more clearly for the incorporation of the archbishops or bishops of dioceses which may hereafter be constituted; Therefore, Her Majesty, by and with the advice and consent of the Legislature of Quebec, declares and enacts as follows :

