

*Laws of His Majesty's Province of Upper Canada*, passed in the year 1826. York: Robert Stanton, 1826.

7 George IV – Chapter 18

**An Act to Incorporate certain persons therein mentioned, under the style and title of "Desjardins Canal Company." (Passed 30th January, 1826.)**

Whereas Public benefits are expected to be derived from connecting Burlington Bay with Lake Ontario, and in order that those benefits may be more generally extended to the surrounding country, it is of manifest importance to form a Water communication or Canal, sufficient for the passage of Sloops and other Vessels of burden, from the said Bay, to the Village of Cootes Paradise, through the intervening Marsh and other lands. And Whereas, Peter Desjardins and others, have petitioned the Legislature to be by Law Incorporated, for the purpose of effecting, by means of a Joint Capital or Stock, such Water communication or Canal, from the said Bay to the said Village: Be it therefore enacted, by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, Constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, intituled, 'An Act for making more effectual provision for the Government of the Province of Quebec in North America, and to make further provision for the Government of the said Province;'" and by the authority of the same, That the said Peter Desjardins, Christopher Holmes. William Holmes, David Stegman, Edward Lesslie, John Lesslie, William Lesslie James Nation, Peter Paterson, John Patterson, or any six of them, together with all such other persons as shall become Stockholders in such Joint Capital or Stock as hereinafter mentioned, shall be, and are hereby ordained, constituted and declared to be, a body Corporate and Politic, in fact, by the name of Desjardins Canal Company, and that by this name, they and their successors shall and may have continued succession, and by such name shall be capable of contracting and being contracted with, of suing and being sued, pleading and being impleaded, answering and being answered unto in all Courts and places whatsoever, in all manner of actions, suits, complaints, matters and causes whatsoever, and that they and their successors may, and shall have, a common Seal, and may change and alter the same at their will and pleasure; and also, that they and their successors, by the same name of The Desjardins Canal Company, shall be, in Law, capable of purchasing, having and holding to them and their successors, any Estate, real, personal, or mixed, to and for the use of the said Company, and of letting, conveying, or otherwise departing therewith, for the benefit and on account of the said Company, from time to time, as they shall deem necessary or expedient.

II. And be it further enacted by the authority aforesaid, That the whole Capital or Stock, inclusive of any real Estate which the said Company may have or hold by virtue of this Act, shall not exceed in value Ten Thousand Pounds, of lawful currency of this Province, which Capital shall be composed of Eight Hundred Shares, of the value of Twelve Pounds Ten Shillings each, and that the said Shares, of the said Capital Stock, shall be transferable, and may be, from time to time, transferred by the respective persons, so subscribing or holding the same, to other person or persons : Provided always, that such transfer be entered or registered in a Book or Books, to be kept for that purpose, by the said Company.

III. And be it further enacted by the authority aforesaid, That within twenty days the passing of this Act, books of subscription shall be opened as nearly as possible at the same time, in the towns of York, Niagara, and Dundas, by such person or persons, and under such regulations, within the meaning of this Act, as the said petitioners, or a majority of them, shall, by writing, direct.

IV. And be it further enacted by the authority aforesaid, That the said Books of subscription shall remain open for signature for ninety days, during which time, no person subscribing, shall so subscribe for more than Twenty Shares, but if, after the expiration of the said ninety days, any Stock should remain not taken up, then it shall be lawful for the said subscribers, or any of them, or any other person or persons, to subscribe for any greater or less number of Shares, so long as any of the said Stock may remain unsubscribed.

V. And be it further enacted by the authority aforesaid, That all and every subscriber for the said Stock, or any part thereof, shall, at the time of subscribing, pay a proportion of five per centum, upon the Capital Stock of the whole number of Shares, for which they, or any of them respectively may subscribe, and that such proportion, so paid and deposited at the time of subscription, shall be at the disposal of the Directors herein-after mentioned, to and for the purposes of this Act, in manner and form as hereinafter is directed, and that the residue of the sum or Shares of the Subscribers or Stockholders shall be payable by instalments, at such times and in such proportion as a majority of the Stockholders, at a Meeting to be expressly convened for that purpose, shall agree upon: Provided, that no such instalment shall exceed ten per centum, upon the said Capital Stock, or become payable in less than sixty days after public notice in the Gazette.

VI. And be it further enacted by the authority aforesaid, That if any Stock-holder or Stockholders as aforesaid, shall refuse or neglect to pay, at the time required, any such instalment or instalments, as shall be lawfully required by the Directors, as due upon any share or shares, then such Stockholder or Stockholders, so refusing or neglecting, shall forfeit such share and shares as aforesaid, with the amount previously paid thereon, and that the said share or shares may be sold by the said Directors, and that the sum arising therefrom, together with amount previously paid thereon, shall be accounted for and divided in like manner as other monies of the said Company.

VII. And be it further enacted by the authority aforesaid, That as soon as the aforesaid deposit of five per cent, upon the whole Capital Stock, shall be paid into the hands of such Receiver or Receivers as the Stockholders shall appoint, it shall and may be lawful for the subscribers or a majority of them, upon thirty days notice, published in the Upper Canada Gazette, to call a Meeting at the village of Dundas aforesaid, for the purpose of proceeding to the election of Directors, as hereinafter mentioned, and the persons then and there chosen shall be the first Directors, and shall be capable of serving until the first Monday of April, in the year of our Lord One Thousand Eight Hundred and Twenty Seven, and the Directors so chosen shall commence the business of the said Company, and proceed therein till the first subsequent election of annual Directors, as hereinafter mentioned.

VIII. And be it further enacted by the authority aforesaid, That the Stock; property, affairs and concerns of the corporation of the Desjardins Canal Company, shall be managed and conducted by five Directors, one of whom shall be President and another Vice President, who shall hold their offices for

one year, which Directors shall be Stockholders, and shall be inhabitants of this Province, and shall be elected on the first Monday in April, in every year, at such time of the day and at such place, in the said village of Dundas, as the majority of the Directors for the time, being by thirty days public notice, shall appoint: Provided nevertheless, that the first board of Directors, to be chosen by the subscribers as aforesaid, shall continue in office till the first Monday of April, which will be in the year of our Lord One Thousand Eight Hundred and Twenty-Seven, as in the last clause provided, and no longer, unless re-elected.

IX. And be it further enacted by the authority aforesaid. That the Election of Directors shall be held and made by such Stockholders of the said Company as shall attend at Dundas aforesaid for that purpose in their own proper persons, or by proxy, and shall be determined by Ballot, such Ballot to be regulated and calculated by the number of Votes allowed to such Stockholders, according to the number of Shares held by them respectively, as follows: (that is to say,) One Vote for each Share, not exceeding Four or Five Votes for Six Shares; Six Votes for Eight Shares; Seven Votes for Ten Shares; and One Vote for every Five Shares above Ten; Provided always, That the Stockholders so Voting shall be possessed of the Share or Shares, in respect of which they shall respectively Vote, at least Three Months before the time of Election; and also, that no person, co-partnership, or body politic, shall be entitled to more than Fifteen Votes at any such Election, nor at the determination of any other matter or thing concerning the said Company or its affairs which may, by the provisions of this Act, be submitted to the Judgment and decision of the Stockholders generally: Provided always, That the choice of the Scrutineers hereinafter mentioned, and of President and Vice President be had as is hereinafter expressly directed.

X. And be it further enacted by the authority aforesaid, That the Directors to be chosen shall be Stockholders in the said Company, and shall hold to their own use, Ten Shares at least, and that all and every co-partnership, and co-partnerships, body, and bodies politic or corporate, holding any share or shares in the said Desjardins Canal Company shall each of them Vote only as an individual Stockholder, nor shall two or more persons belonging to any such co partnership, or co-partnerships, body, or bodies politic or corporate, be capable of being nominated or chosen, or of sitting as Directors, although such persons may hold Stock in their private right or to their private use, in the said Desjardins Canal Company.

XI. And be it further enacted by the authority aforesaid, That of the persons so as aforesaid nominated and balloted in manner aforesaid those Five shall be deemed Elected who shall have the greater number of Votes according to the shares held by the Voters respectively as herein-before prescribed at each and every such Election of Directors, and that at every such Election, on the First Monday of April in each and every year as aforesaid, after the Ballot shall have been kept open from Eleven of the clock in the forenoon till Two of the clock in the afternoon, the Five Persons having the majority of votes in the manner aforesaid shall, so soon thereafter as convenient, on the same day, be declared the Directors chosen for the ensuing year by any two or more Scrutineers who shall have been previously nominated by the Stockholders for the purpose of examination and report of such ballot; Provided nevertheless, that the Stockholders present at the place of ballot shall in nomination, of Scrutineers, vote per Capita, and not by shares.

XII. And be it further enacted by the authority aforesaid, That the said Directors on the same day and place wherein, they shall have been so chosen and declared Directors, shall, after all other persons retire, choose by plurality of voices one of their number President, and another of their number Vice President, in which choice the Directors shall vote per Capita, and not by shares.

XIII. And be it further enacted, by the authority aforesaid, That the Board of Directors, so to be formed as aforesaid shall, at the annual Election, undergo a change of three of its members at least, so that the Directors for the last year shall be ineligible as Directors for the next ensuing year; and in order to determine the persons so to be changed, it is hereby provided and declared, that, whenever at any such Election, it shall happen that more than two members of the late Board shall, upon scrutiny, be found among those having the greater number of votes in manner as aforesaid, then it shall and may be lawful for the Scrutineers to strike out one, or two, or three, as the case may require, from among the re-elected, such one, or two, or three, having the least number of votes and shall in lieu, take one, or two, or three other, as the case may require, from among the others balloted for, as having the next greatest number of votes, and the five persons so found to be chosen shall be the Directors for the ensuing year, and as such shall be declared by the Scrutineers.

XIV. And be it further enacted by the authority aforesaid, That in case of vacancy by death or absence for more than two months from the sittings of the said Board, such vacancy shall, as often as necessary, be supplied by ballot, in the manner as aforesaid, the Directors for the time being present, declaring such vacancy and giving Public notice in one or more Newspapers to the Stockholders to meet fit a day and place certain in the Village of Dundas aforesaid, for the purpose of supplying the said vacancy by ballot, in the manner aforesaid.

XV. And be it further enacted by the authority aforesaid. That the Vice President shall act as such, only in the absence of the President, and that three members, including the President or Vice President, shall be a Quorum of the said Board of Directors, and shall have all the power of the full Board, the absence of the other members notwithstanding.

XVI. And be it further enacted by the authority aforesaid, That all questions submitted to, or coming before the Board of Directors, concerning the affairs of the said Company, shall be decided by the majority of voices, and that the President and Vice President, when presiding, shall not vote unless an inequality of voices amongst the other members of the Board require his casting vote.

XVII. And be it further enacted by the authority aforesaid, That the Directors for the time being, or the major part of them shall have power to make and subscribe such rules and regulations, and the same to alter and amend as to them shall appear needful, and just, and proper, touching the management and disposition of the Stock, Property, Estate and effects of the said corporation, and touching the duties and conduct of the Clerks and Servants employed by the said Company, and shall have power to make and subscribe, in the name of the said Company, all contracts for labour, work, materials, and all other matters concerning the construction of the said Canal, and after the construction be completed, concerning the Navigation Tolls, Wharfage, Burdens, loading and unloading of Vessels and Boats, within the waters of the said Canal, and all other matters and things concerning as well the conduction of the said Canal and all its basins, ways, bridges, paths and passages, as also concerning its charges,

tolls, entries, clearances, profits, losses, dividends and revenue whatsoever, such rules and regulations not being contrary to this Act nor the Laws of this Province.

XVIII. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the President and Directors of the said Company from time to time, to order, regulate and establish the rates of Toll, payable by persons navigating upon the said Canal, and the said Canal shall annually, if required, exhibit an account to either or every branch of the Legislature of this Province, of the Tolls so regulated and the amount thereof received, and other sums expended in keeping the same in repair, and also of the Goods, Wares and Merchandizes transported in and along the same, such accounts to be authenticated in such manner and form as the authority so requiring the same may deem satisfactory.

XIX. And be it further enacted by the authority aforesaid, That whenever the said Tolls shall, in the annual receipts, exceed in amount a sum sufficient to defray the expenses of maintaining and repairing the said Canal, and to afford an annual income to the said Company of Twenty per Cent profit upon the Capital actually expended in the construction of the said Canal, from the time of the commencement of its navigation, for such Vessels as aforesaid, then, and in such case, the increasing surplus revenue of the said Tolls, shall be charged against the said Company, as so much by them received in the nature of a sinking fund, by means whereof, to purchase from the said Company, the entire Estate, use and property of the said Canal, to and for the use of the Public, in such manner and form as the Legislature of this Province may, by Legislative enactment, here-after provide.

XX. And be it further enacted by the authority aforesaid, That the Legislature of this Province shall be at liberty, at any time whatever, to purchase the said entire Estate, property and use of the said Canal, from the said Company, by paying to the said Company the Capital, so as aforesaid, actually expended, together with Twenty five per cent advance thereupon, to the credit of which payment, all revenue exceeding Twenty-five per cent, upon the said bona fide expenditure, and over and above the expense of maintaining and repairing the said Canal, shall be charged and taken; and it is also hereby provided and declared, that if any deficiencies of the said Twenty-five per cent, annual profit, should occur in navigation of the said Canal, such deficiencies shall be also chargeable against the increasing revenue of the subsequent years, so that the Company may fairly and actually receive Twenty per cent profit on their said bona fide expenditures for the whole time for which they shall or may enjoy the estates, rights and privileges of the said Company.

XXI. And be it further enacted by the authority aforesaid, That the said Company shall have full power and authority for the purposes of forming and completing the said Canal, to purchase and hold in their corporate capacity such real estate as may be necessary for all the purposes of the said Canal and of this Act, Provided always, that the lines of demarkation on the right and left side of the said Canal, in its whole course, shall not be less than two chains apart, in any portion of the route, and that the space between these lines shall be wholly occupied by the Canal, its banks, basins, roads, towing paths and bridges.

XXII. And be it further enacted by the authority aforesaid, That the said Directors of the said Company, for the time being, shall have full power to contract, compound, compromise and agree with the

owners and occupiers of any land, throughout or upon which the said Canal may most advantageously pass, so that such purchase shall embrace and extend to the aforesaid proposed lines of demarkation of two chains distance from each other, throughout the course of the said Canal.

XXIII. And be it further enacted by the authority aforesaid, That if, in the making of such contract, composition, compromise or agreement, any obstacle should arise between the parties thereto, touching the value of the portion of land to be bought for the purposes aforesaid, then, and in such case, it shall and may be lawful for the directors, for the time being, from time to time, as they or the majority of them may think fit, to appoint one or more person or persons as arbitrator or arbitrators on the part of the said Company, and also for the party or parties disagreeing, as to the value as aforesaid, to appoint one or more person or persons, being an equal number with those chosen by the said Directors, as arbitrator or arbitrators on his or their part, and that the persons so chosen on both sides, shall, having met for that purpose, choose by ballot one other indifferent person, and the whole number of persons so chosen shall be the arbitrators between the parties disagreeing, and that the said arbitrators shall be sworn by a Justice of the Peace, justly, impartially and equally, as far as in them lie, to the best of their judgment, to determine the matter to be to them referred.

XXIV. And be it further enacted by the authority aforesaid, That if, after eight days notice in writing, given to the party so differing as to the value as aforesaid, such party will not nominate or appoint an arbitrator or arbitrators as aforesaid on his part, it shall and may be lawful for the said Directors to add to their first nomination as many others, not being Stockholders of the said Company, as and for the arbitrators of the party so refusing to nominate for himself, and such added arbitrators shall have like power as if named by the party himself, and shall ballot for the additional arbitrator.

XXV. And be it further enacted by the authority aforesaid, That the Board of arbitrators so constituted, shall fix a convenient day for hearing the respective parties, and shall give eight days notice at least of the day and place, and having heard the parties or otherwise examined into the merits of the matters so brought before them, the said arbitrators, or a majority of them, shall make their award and arbitrament thereupon in writing, which award or arbitrament shall be final, as to the value so in dispute as aforesaid.

XXVI. And be it further enacted by the authority aforesaid., That if the Party refuse to accept the value of the Land so ascertained by the Arbitrators as aforesaid, till the end of the second Term in His Majesty's Court of King's Bench next after the making of the Award and Tender of the value thereby ascertained, then and in such case the said Directors for the time being, shall be at liberty, and shall have full power, to occupy the piece of Land so valued by the Arbitrators, and to Cut, Excavate, Embank, and otherwise use the same, for the purposes of the said Canal, in the same manner, as other portions of the route thereof.

XXVII. And be it further enacted by the authority aforesaid, That if any Action of Ejectment, or other Action, real, personal, or mixed, for, or on account of the said Occupation, Cutting, Excavation, Embankment, or other use of the same, by the said Company, their Servants or Agents, or other Person or Persons using the said Canal or Roads, Bridges, Pathways, Passes, or other Commodities thereof; the said Award shall and may be Pleaded in Bar to such Action any time after the said two

Terms in the said Court of King's Bench, notwithstanding any defect in form or substance in the said Award. Provided always, and it is hereby enacted and declared, That it shall and may be lawful to, and for the Party or Parties interested in the Land mentioned in the Award, or the Agents by Council, at any time within the two next terms as aforesaid, after the same hath been made, and the amount of the value Awarded tendered, to move the Court of King's Bench to set aside such award for corruption or any other matter or thing, tor which Awards are now subject to be impugned at Law. Provided also, That if the first Award be so set aside by the Court of Ring's Bench, the matter indifference may again be submitted to other Arbitrators, and so toties quoties till satisfaction be rendered between the parties.

XXVIII. And be it further enacted by the authority aforesaid, That whenever it shall be necessary to cut into or upon any highway, in order to conduct the said Canal by or through the same, the said Company shall, within one month after cutting through or into such highway, cause to be constructed a secure, sufficient, and commodious Bridge for the passing of Carriages, or otherwise sufficiently repair the damage so as to re-establish the communication between the several parts of such highway under a Penalty of Five Pounds Currency for each and every day after the expiration of the said time, which the said Company shall neglect to construct such Bridge or repair such damage as aforesaid. And Whereas, The Navigation of the Water between the Work or Canal contemplated by this Act, and the Outlet from Burlington Bay into Lake Ontario may be obstructed by ordinary Bridges erected thereon, and connecting public highways legally established for remedy whereof. Be it therefore enacted by the authority aforesaid, That it shall and may be Lawful for the said Company to convert such ordinary Bridges into Draw Bridges, keeping the said Draw Bridges in that situation that His Majesty's Subjects and others, with their Horses, Cattle, and Carriages, may pass thereon at all times, except when actually required to be open for the purpose of passing with Boats, Vessels, or other Craft, Navigating the said Canal.

XXIX. And Whereas, The said Peter Desjardins has already expended a large sum of Money towards constructing a part of the work contemplated in this Act, and it is just that he should be paid, or otherwise reimbursed or indemnified for the sum, and the said Peter Desjardins is willing to accept Stock to the amount of one half part of his expenditure as aforesaid, and security for the payment of other half. It is therefore further enacted by the authority aforesaid, That it shall and may be Lawful for the said Peter Desjardins at his option, to subscribe for as many Shares of Stock as may be equal in value at the rate aforementioned of each Share to the moiety or half part of his said expenditure, upon estimation thereof, made by competent Persons, and approved by the said Directors as just, the before mentioned limitation of Twenty Shares as the maximum of Stock, for which any one Individual is permitted to subscribe within the ninety days of the first opening of the Books of Subscription as aforesaid, to the contrary notwithstanding.

XXX. And be it further enacted by the authority aforesaid, That the Directors shall have power and authority by Deed or Bond to secure to the said Peter Desjardins the payment of the other moiety of the said expenditure so to be ascertained and approved as aforesaid; such payment to be made in four annual instalments, equal in period and amount, bearing Lawful Interest from the time of the passing of this Act.

XXXI. And be it further enacted by the authority aforesaid, That in case it should at any time happen that an Election of Directors should not be made on the day, when, pursuant to this Act, it ought to have been made, the said Corporation shall not, for that cause, be deemed to be dissolved; but it shall and may be Lawful on any other day to hold and make an Election in such manner as shall have been regulated by the Rules of the said Corporation, to be made for that purpose, not contrary to the Provisions of this Act.

XXXII. And be it further enacted by the authority aforesaid, That it shall be the duty of the Directors to make Annual Dividends of so much of the Profits of the said Company, as to them, or the majority of them, shall appear adviseable, and that once in every three years, and oftener, if hereto required, by a majority of the votes of the Stockholders, at a General Meeting to be called for that purpose, an exact and particular Statement shall be rendered of the state of their Affairs, of Debts, Credits, Profits, and Losses, such Triennial Statements to appear on their Books, and to be open to the perusal of any Stockholder upon his reasonable request.

XXXIII. And be it further enacted by the authority aforesaid, That this Act shall be deemed and taken to be a Public Act, and as such shall be judicially noticed by all Judges, Justices of the Peace, and other Persons without being specially pleaded.

XXXIV. And be it further enacted by the authority aforesaid, That this Act from the time of passing thereof, shall continue in force for fifty years, and from thence to the end of the then next ensuing Session of Parliament, at which time, the Estate, Rights, Titles, Tolls, and Rates of the said Canal, with the Waters and Navigation thereof, shall vest in His Majesty, His Heirs and Successors, to and for the Use of this Province, in manner aforesaid, unless otherwise provided for by any Act of the Legislature, to be for that purpose, at any time hereafter enacted.