

Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1836. Fredericton, NB: John Simpson, Printer to the King's Most Excellent Majesty, 1836.

6 William IV – Chapter 60

An Act to incorporate The Bay Verte Canal Company. Passed 16th March 1836.

'Whereas it has been deemed expedient to incorporate a Company for the purposes of cutting and making a Canal from the head of the Bay of Fundy to Bay Verte;'

I. Be it enacted by the Lieutenant Governor, Legislative Council and Assembly, That William Botsford, A. E. Botsford, Charles F. Allison, George Aulton, Joseph Avard, Junior, Joseph Wells, George Chappel, Bill Chappel, Thomas Trenholm, Thomas Robson, Edward B. Chandler, John R. Partelow, William Crane, Joseph F. Allison, William End, Daniel Hanington, J. A. Street, Philip Palmer, J. M. Wilmot, Lewis Burns, Jedediah Slason, Peter Stewart, their associates, successors and assigns shall be and they are hereby declared to be a body corporate by the name of The Bay Verte Canal Company, and by that name shall have perpetual succession and a common seal, and all the privileges and franchises incident to a Corporation, and shall be capable of taking and holding their capital stock and the increase and profits thereof, and of enlarging the same by new subscriptions in such manner and form as they may think proper if such enlargement shall be found necessary to fulfil the intention and purposes of this Act, and of purchasing, taking and holding to them, their successors and assigns in fee or for any less estate such lands, tenements, hereditaments and estate real and personal, and goods and chattels, as shall be necessary to them in the prosecution of their business as a Canal Company, and of suing and being sued, and doing other matters and things which a body politic and corporation may lawfully do.

II. And be it enacted, That the capital or stock of the said Corporation shall consist of the sum of one hundred thousand pounds of current money of this Province, which shall be divided into five thousand shares of twenty pounds each, and that five per cent, of the said capital stock shall be paid in within three years from the passing of this Act, and the residue in such parts and instalments as may be required for the service of the Company.

III. And be it enacted, That whenever one thousand shares of the said capital stock shall have been subscribed, a general meeting of the stockholders shall take place, by notice in one or more of the newspapers published in the City of Saint John thirty days previous to such meeting, in order to organize the said Company and to choose seven directors and such other officers as may be necessary to conduct the business of the Company, who shall serve until the first annual meeting and until like officers shall be chosen, and said Company may then or at any subsequent meeting make, ordain, and establish such bye laws and ordinances as may be thought necessary for the good rule and government of the said Corporation, provided the same be not contradictory to the laws of this Province or those in force within the same.

IV. And be it enacted, That the stockholders shall meet annually in the Parish of Sackville in the County of Westmorland, on the first Wednesday in June of each year, of which at least thirty days

notice shall be given in one or more of the Newspapers aforesaid, at which annual meeting there shall be chosen by a majority thereof, seven directors, who shall continue in office one year or until others are chosen in their room, provided that the omission to meet and elect as aforesaid shall work no forfeiture, but the stockholders may be afterwards collected together for that purpose by the directors.

V. And be it enacted, That the directors shall at the first meeting after their election choose one of their number president of, the Company; and that not less than four directors shall constitute a board for the transaction of business, that in the absence of the president the directors may choose one of their number chairman for the time being, that the president or such chairman shall vote at the board as a director, and in case there be an equal number of votes for and against any question before them, the president or chairman shall have a casting vote.

VI. And be it enacted, That no person shall be eligible as a director unless such person is a stockholder and holds not less than ten shares of the capital stock, and is of the full age of twenty one years; that the number of votes to which each stockholder shall be entitled on every occasion when the votes of the stockholders are to be given, shall be in the proportion following, that is to say, for one share and not more than two, one vote; for every two shares above two and not exceeding ten, one vote, making five votes for ten shares; for every four shares above ten and not exceeding thirty, one vote, making ten votes for thirty shares; for every six shares above thirty and not exceeding sixty, one vote, making fifteen votes for sixty shares; and for every eight shares above sixty and not exceeding one hundred, one vote, making twenty votes for one hundred shares, which said number of twenty votes shall be the greatest that any stockholder shall be entitled to have, and that absent members may vote by proxy, provided such proxy be a stockholder and produce sufficient authority in writing; that in case any director shall be removed by the stockholders for misconduct or mal-administration his place shall be filled up by them, fourteen days notice of the time and place of meeting for such purpose being first given, and in case of a vacancy among the directors by death, resignation or disqualification by sale of stock, the remaining directors may fill up such vacancy by choosing one of the stockholders, and the person so chosen by the stockholders or directors shall serve until another be chosen in his room.

VII. And be it enacted, That the joint stock or property of the said Corporation shall alone be responsible for the debts and engagements of the same.

VIII. And be it enacted, That the shares in the said stock shall be assignable and transferable according to such rules and regulations as may be established in that behalf, but no assignment or transfer shall be valid and effectual unless the same shall be entered or registered in a book to be kept by the directors for that purpose, that in no case shall any fractional part of a share or other than a complete share or shares be assignable or transferable; that whenever any stockholder shall transfer in manner aforesaid, all his stock or shares in the said Company he shall cease to be a member of the said Corporation.

IX. And be it enacted, That the said Company shall have power and authority by themselves or their superintendents, engineers, artists and workmen to enter in and upon and occupy for that

purpose all the land which shall be necessary and suitable for constructing and making a canal from the Au Lac Harbour at the head of the Bay of Fundy to the waters of the Bay Verte, doing as little damage as possible thereto, and to dig and make such canal, satisfying the several owners and occupiers of such land for the damage done thereto; and in case of disagreement between the said Corporation and the said owners or occupiers or any of them, the amount of compensation shall be determined by three arbitrators, one to be chosen by the said Corporation and one by the owner or occupier of the land in question, which two arbitrators so chosen shall choose a third, and in case of their not agreeing in such choice within ten days after their appointment, then it shall and may be lawful for the Lieutenant Governor or Commander in Chief for the time being to appoint the third arbitrator, and the award of the said arbitrators or any two of them shall be final and conclusive as to the matters referred to them, and in case the said company and the owners or occupiers of said land should decline appointing such arbitrators, then either of the said parties may apply to the Supreme Court of Judicature of this Province, and such Court is hereby empowered and required to issue a writ or warrant in such form as they may prescribe, directed to the Sheriff of the County where such lands lie, or to such disinterested person or persons as the said Court may appoint, commanding such Sheriff or other person or persons (as the case may be) to summon, empanel and swear a jury of twelve disinterested persons qualified to act as petit jurors in such County, to ascertain and report to the said Court what damages (if any) have been sustained by the owners or occupiers of such land by reason of such canal, which report being confirmed by the said Court shall be final and conclusive, unless sufficient cause to the contrary shall be made appear to said Court within the term next after the filing of such report, and in case the proceedings on such writ or warrant shall be set aside by the said Court for any defect, irregularity or misconduct, the parties shall be at liberty to proceed de novo, and the amount of damages so ascertained, and the costs and expenses of the proceedings, shall be taxed and allowed by the said Supreme Court and shall be borne by the said Corporation; and provided also, that if any person owning land or any other property which shall be affected by this Act, be *feme covert*, under age or *non compos mentis*, or out of the Province, then and in either of such cases the said Company shall within one year make representation thereof to the said Supreme Court, who shall proceed thereon in the same manner and to the same effect as is directed by this Act in other cases.

X. And be it enacted, That the said Company, their superintendents, engineers, artists, workmen and labourers, with their tools, instruments, carts, waggons and other carriages, and beasts of burden or draught may enter upon the lands contiguous to the said canal, whether granted or ungranted, giving or publishing notice to the occupiers thereof (if any), and from thence take and carry away any stone, gravel, sand, earth or other material necessary to the construction of the said canal, doing as little damage as possible, and repairing any breaches they may make in the enclosure thereof, and making amends for any damages that may be done thereon, the amount of such damages if the parties cannot agree to be ascertained in like manner in all respects as provided for by the ninth section of this Act in other cases.

XI. And be it enacted, That the said Company or such person or persons as they shall from time to time appoint as toll collectors or their deputies are hereby authorised to demand and receive toll of and from the persons having charge of any boat, ark or other vessel passing through the said

canal, the rates of which toll shall be regulated and established by the said Company; and the toll collectors appointed as aforesaid shall be and they are hereby authorised not to permit the passage of any boat or vessel through the said canal until the tolls fixed by the company are first paid or discharged by the owner, shipper or supercargo, or may bring suit for the same against the owner, shipper, supercargo or captain of such boat or vessel before any competent tribunal, in the name of the said Company; Provided always, that if after the expiration of six years from the time of completing the said canal, the rates, dues or tolls that may be established by the said Corporation under and by virtue of this Act should be found excessive, it shall and may be lawful for the Legislature to reduce the said rates, tolls or dues, so as that the same shall not produce to the said Corporation a greater rate of net profit upon their capital stock than twenty pounds annually for every hundred pounds of said capital stock; and in order that the true state of the affairs of the said Corporation shall be known, it shall be the duty of the president and directors thereof to produce and lay before the several branches of the Legislature of this Province, at the expiration of six years after the said canal shall have been completed as aforesaid, a just and true statement and account of the monies by them disbursed and laid out in making and completing the said canal in manner aforesaid, and also of the amount of tolls and revenues of the said canal, and of the annual expenditure and disbursements in maintaining and keeping up the same during the said six years; the said several accounts and statements to be signed by the president and treasurer of the said Corporation, and by such president and treasurer attested to on oath before any one of His Majesty's Justices of the Peace for any County in this Province; and provided also, that it shall be the duty of the said president and treasurer of the said Corporation once in each and every year after the expiration of the said six years to lay before the several branches of the Legislature a like statement and account verified on oath by the said president and treasurer as aforesaid.

XII. And be it enacted, That the said Corporation are hereby authorised to make and erect such wharves, warehouses, depots, toll houses and other buildings, either at the terminations of the said Canal or along the line thereof as may be necessary for the purposes of the same, and shall also have power to levy and collect assessments upon the shares from time to time of such sums of money as may be required for the business of the Company, and whenever any assessment shall be made by the stockholders it shall be the duty of the Treasurer to give notice requiring payment thereof within thirty days; and if any stockholder shall neglect or refuse to pay to the treasurer the amount of such assessment upon his shares at the time prescribed, it shall be the duty of the treasurer to advertise all such delinquent shares for sale at public auction giving at least thirty days notice of the time and place of sale, and all shares upon which the assessment is not then paid with interest from the time the same became due shall be sold to the highest bidder, and after retaining the amount of assessment and interest due on each share, and the expense of advertising and selling, the residue (if any) shall be paid over to the former owner, and a new certificate or certificates of the shares so sold shall be made out and delivered to the purchasers: Provided always, that no assessment shall be made except by a vote of the stockholders and a majority of all the shares.

XIII. And be it enacted, That the said Company shall so make and construct said Canal as not to obstruct or impede the use and passage of any public road which may cross the same, and in all

places where said Canal may cross or interfere with any such public road it shall be the duty of such Company to make or cause to be made a good and sufficient causeway or bridge over such Canal sufficient for all the purposes of such road, and the same to maintain and keep in repair, and if said Company shall neglect or refuse to make such causeway or bridge as soon as practicable, or when made keep the same in repair, they shall be liable to pay the penalty of forty shillings for every day the same shall be neglected or refused after having been notified in writing by the Commissioners of roads of the parish wherein such causeway or bridge or the repair thereof is required, to be sued for and recovered by the said Commissioners in an action of debt with costs in any Court of competent jurisdiction, and when recovered such penalties to be applied for the use of the public road in such parish, and such Company moreover shall be liable to an action or actions at the suit of any person who may be aggrieved thereby.

XIV. And be it enacted, That the owner or owners of any land through which said Canal passes shall not be prevented from constructing bridges over said Canal agreeably to the form and structure of the bridges which may be constructed by said Company.

XV. And be it enacted, That no suit or action shall be brought or prosecuted by any person or persons for any act, matter or thing done under the authority of this Act unless such suit or action shall be commenced within six months next after the offence shall have been committed or cause of action accrued, and the defendant or defendants in such suit or action may plead the general issue and give this Act and the special matter in evidence, and that the same was done in pursuance and by authority of this Act.

XVI. And be it enacted, That if at any time hereafter it shall be deemed expedient by the Legislature of this Province to purchase the said Canal, the stockholders shall be entitled to receive from the Treasurer of the Province the amount of the appraised value of said Canal and works therewith connected, such appraisements to be made in said manner as may be prescribed by an Act of the Legislature for that purpose, and on payment of such appraised value to the stockholders of the said Company, the corporate rights hereby granted shall thereupon cease and determine, excepting so far as the same may be necessary in the settlement of the concerns of the said Company.

XVII. And be it enacted, That if any person or persons shall wilfully and maliciously and to the prejudice of the undertaking break, injure or destroy any of the works to be made by virtue of this Act, every such person shall be judged guilty of felony, and every person so offending and being thereof lawfully convicted shall be liable to the punishment prescribed for felony in an Act made and passed in first year of the reign of His present Majesty, intituled *An Act for the improving the administration of Justice in criminal cases*.

XVIII. And be it enacted, That all meetings of the said Corporation shall be held at the parish of Sackville aforesaid, and shall be called by giving notice of the same fourteen days at least prior to such meeting, and that special meetings may be called by the secretary under the authority of the directors or of the shareholders representing not less than two hundred and fifty shares of stock,

and that all notices required to be given by this Act shall be deemed sufficient if published in one or more of the newspapers printed in the City of Saint John.

XIX. And be it enacted, That the said Corporation to entitle themselves to the privileges, benefits and advantages to them granted by this Act shall and they are hereby required to make and complete the said canal with all necessary embankments, locks, gates, dams, piers, booms, wharves and sluices within ten years from the passing of this Act; and if the same shall not be so made and completed within the period before mentioned so as to be used for the conveyance of vessels, boats, timber and other articles then this Act and every matter and thing therein contained shall cease and be utterly null and void.