

struct any Bridge or Bridges over the said Canal, in case the same is likely to obstruct or impede the Navigation thereof; that instead of Bridges the Commissioners shall provide Scows to keep up the communication, or erect a Floating-bridge or Bridges, where they may deem it absolutely necessary for the public convenience.

but Scows to be provided in lieu.

III. *And whereas* the construction of a Towing-path, between the Head of the Long Sault and Prescott, will greatly facilitate the Navigation of that part of the River Saint Lawrence; *be it further enacted by the authority aforesaid*, that nothing in the thirteenth Clause of the said recited Act shall extend, or be construed to extend, to prevent or restrain the said Commissioners from constructing such Towing-path or paths as they may think necessary, from the Head of the Long Sault to Prescott aforesaid.

Towing-path between the head of the Long Sault and Prescott, may be constructed.

CHAP. XLVI.

AN ACT to Incorporate certain persons under the style and title of the President, Directors and Company, of the Fort Erie Canal Company.

[Passed 4th March, 1837.]

WHEREAS Alexander Douglass, Charles Jones, Benjamin P. Hall, John March, James Stanton, Timothy S. Hoyt, John Hardison, George Rainsford, Cyrenus Hall, William Forsyth, John Anderson, John J. Harris, Henry Teal, Isaac Thompson, William Smith, William Sutherland, John W. Lewis, and others, of the Townships of Bertie and Willoughby, in the District of Niagara, have by their Petition represented, that great inconvenience has been experienced by the Inhabitants of that section of the Province from its earliest settlement up to the present time, and more especially by those engaged in Agricultural and Commercial pursuits, by the natural impediments opposed to a free Water communication, between Lake Erie and the Niagara River, caused by the Rapids called or known as the "Fort Erie Rapids," which render Transport by that route by the Lake, not only dangerous, but laborious and expensive: *And whereas*, the said Petitioners have prayed that they, together with such other persons as shall become Stockholders, as hereinafter mentioned, may be Incorporated for the purpose of forming a Canal for Ship Navigation, in order to remedy the said inconvenience: *And whereas*, the promotion of such a work will greatly tend as well to the prosperity of the Province, as to develop the

Preamble.

resources of that part of the country : *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, entitled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled, '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 Alexander Douglass, Charles Jones, Benjamin P. Hall, John March, James Stanton, Timothy S. Hoyt, John Hardison, George Rainsford, Cyrenus Hall, William Forsyth, John Anderson, John J. Harris, Henry Teal, William Smith, William Sutherland, John W. Lewis, Isaac Thompson, or such of them, together with such other persons as shall become Stockholders of the Company, as hereinafter mentioned, shall be and are hereby ordained, constituted and declared, to be a Body Corporate and Politic, in fact, and by the name of "The Fort Erie Canal Company;" and by that name they and their successors shall have continued succession, and shall be capable of contracting and being contracted with, 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 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 Fort Erie Canal Company, shall be capable in law of purchasing, having, and holding any Estate, real, personal or mixed, to and for the use of the said Company, conveying or otherwise departing with the same for the benefit and on account of the said Company, from time to time, as they shall deem necessary or expedient: *Provided always*, that nothing in this Act contained shall extend, or be construed to extend, to allow the said Company to carry on the trade or business of Bankers.

Alexander Douglass,
and others, incorpo-
rated,

by the name of the
"Fort Erie Canal
Company;"

Powers.

Common Seal.

Estate.

Not to carry on the
business of Bankers.

Company may explore
the country between
Fort Erie and the
River Niagara;

may purchase and
hold the line of the
intended Canal;

and select Sites for
Mills, &c.

II. *And be it further enacted by the authority aforesaid*, That the Directors of the said Company to be elected as hereinafter is mentioned, shall have full power and authority, to explore the Country lying between Fort Erie, in the Township of Bertie, and the River Niagara below the said Rapids called Fort Erie Rapids, and to purchase, take, appropriate, have and hold, to and for the use of them and their successors, the line and boundaries of an intended Canal, with the Locks, Towing-paths, Basins and Rail-ways, necessary to connect the Waters of the Niagara River, at the head of the said Rapids, with the Waters at the foot thereof: *And also*, to select such convenient sites for such Mills, Manufactories,

Warehouses and other erections, as may be required by the said Company for the purposes thereof: *Provided always*, that nothing hereinafter contained shall extend, or be construed to extend, to compel the owner or owners of any Mill Seat to sell, convey, or otherwise depart with the same to the said Company: *Provided also*, that the owner or owners of any Mill Seat or Mill Seats now situate upon or near to the intended banks of the said Canal, using any additional supply of Water brought thereto by the said Canal, shall pay a reasonable compensation therefor to the said Company, to be determined by Arbitration, as hereinafter provided, for determining damage done to property by the said Company.

Not to compel the owner of any Mill to sell to them.

Owners of Mill-seats deriving advantage from Canal, to make compensation.

III. *And be it further enacted by the authority aforesaid*, That it shall and may be lawful for the said Company, and they are hereby authorised and empowered from and after the passing of this Act, to supply the said Canal, whilst making and when made, with Water from all such Brooks, Springs, Streams, Water-courses, Hollows, and other Repositories of Water, as shall be found in making the said Canal, or within the distance of one thousand yards therefrom, or from any part thereof, or from any Reservoir or Reservoirs to be made for supplying the said Canal with Water, (save and except as herein mentioned); and the said Company are hereby also authorised and empowered, by themselves or their Deputies, Agents, Servants or Workmen, to make one or more Reservoir or Reservoirs, and such Feeders, Tunnels and Aqueducts, for supplying the said Reservoirs and Canal with Water, and conveying Water from any such Reservoir or Reservoirs to the said Canal, as to them shall seem necessary and expedient, (save and except as herein is mentioned); and for the purposes aforesaid, it shall and may be lawful for the said Company, and their Agents, Servants and Workmen, and they are hereby authorised and empowered, to enter into and upon the Lands and Grounds of and belonging to The King's Most Excellent Majesty, His Heirs or Successors, or to any other person or persons, Body or Bodies Politic, Corporate, or Collegiate, (except as is herein mentioned), and to survey and take levels of the same or any part thereof, and to set out and ascertain such parts thereof as they shall think necessary and proper for making the said Canal, or any such Reservoirs, Feeders, Tunnels or Aqueducts, and all or any such other works as they shall think proper and necessary for making, effecting, preserving, improving, completing or using, the said intended Navigation; and also to bore, dig, cut, trench, remove, take and carry away, earth, soil, clay, stone, rubbish, trees, roots of trees, beds of gravel or sand, or any other materials whatsoever, which may be dug or got in the making of the said Canal, or in making of any Reservoirs, Feeders or Aqueducts, or out of

Company may supply Canal with water from all streams, &c. :

may make Reservoirs, &c. :

may enter upon Crown and other Lands;

make Surveys:

dig and carry away earth, &c. :

And may erect
Wharves, Piers, &c. ;

and repair the same.

Boats, Barges, &c.

Piers and Arches
across Rivers, &c.

General authority.

Not to take water so
as to injure any Mills.

Provision in case
owners of Mills think
their property injured.

any Lands or Grounds of any person or persons adjoining or lying contiguous thereto, and which may be proper, requisite, or convenient for carrying on, continuing or repairing, the said Canal or other the said works, or which may hinder, prevent or obstruct, the making, using, completing, or maintaining the same, and the same to let lie in or upon the boundaries of the said Canal, or in or upon the Lands or Grounds of any person or persons adjoining thereto ; and also to make, build, erect and set up, in and upon the said Canal, and at the points of entrance to the same, or upon the lands adjoining or near the same, such and so many Wharves, Quays, Piers, Landing-places, Bridges, Tunnels, Aqueducts, Sluices, Locks, Wears, Pens for Water, Tanks, Reservoirs, Drains and other ways, roads and works, as the said Company shall think requisite and convenient for the purposes of the said Navigation : and also from time to time, to alter, repair, amend, widen or enlarge the same, or any of them, for conveying all manner of materials necessary for making, erecting, altering, repairing, widening, enlarging and carrying on, the said works ; and also, to place, lay, work, and manufacture, the said materials on the grounds near to the said works ; and to make, maintain, repair and alter, any fences or passages over, under or through, the said Canal, or the reservoirs and tunnels, aqueducts, passages, gutters, water courses and sluices respectively, which shall communicate therewith ; and also to make, set up and appoint, drawing-boats, barges, vessels or rafts, for passing in, through, along or upon, the said Canal, as they the said Company shall think convenient ; and to construct, erect, and keep in repair, any piers, arches or other works, in, upon and across, any rivers or brooks, for making, using, maintaining and repairing, the said Canal, and the towing-paths on the sides thereof ; and also to construct, make and do, all other works, matters and things, whatsoever, which they shall think necessary and convenient, for the making, effecting, preserving, improving, completing and using, the said Canal, in pursuance and within the true meaning of this Act, they, the said Company, doing as little damage as may be in the execution of the several powers to them hereby granted, and making satisfaction in manner hereinafter mentioned, for all damages to be sustained by the owner or occupiers of such lands, tenements, or hereditaments : *Provided*, that nothing in this Act contained, shall extend, or be construed to extend, to authorise the said Company to divert or take away, for the use of the said Canal, the water of any stream or river, so as to injure any mills within the limits of the said intended Canal, without the consent of the owner or owners thereof.

IV. *And be it further enacted by the authority aforesaid*, That should the owner or owners, occupier or occupiers of any mill-seats on the line of the said Canal, or within five hundred yards thereof, consider the same in

any manner injured, or the value thereof in any way depreciated, from the erection of other similar establishments, or from any other cause growing out of the cutting, making, or using the said Canal, and for the compensation of which no provision is made in this Act, it shall and may be lawful for the said Company, and they are hereby required to purchase the same at a fair valuation, founded on an average of former years, to be ascertained by Arbitration, as hereinafter is mentioned: *Provided always*, that nothing herein contained shall extend, or be construed to extend, to compel the said owner or owners, occupier or occupiers of any such mill-seats to sell, convey, or otherwise dispose of the same to the said Company.

Owners not compellable to sell to the Company.

V. *And be it further enacted by the authority aforesaid*, That after any lands or grounds shall be set out and ascertained to be necessary for making and completing the said Canal, and for other the purposes hereinafter mentioned, it shall and may be lawful for all bodies politic, corporate, or collegiate, and for all guardians, and other trustees whomsoever, not only for and on behalf of themselves, their heirs, successors, and assigns, but also for and on behalf of those whom they shall represent, whether infants; lunatics, ideots, femmes covert, or other persons, who are or shall be possessed of or interested in the same, to contract for, sell and convey unto the said Company, all or any part of such lands or grounds which shall, from time to time, be so set out and ascertained, as aforesaid, and that all such contracts, agreements, sales and conveyances, shall be valid and effectual in Law, to all intents and purposes whatsoever, any Law, Statute, or usage to the contrary thereof in any wise notwithstanding; and the amount of the purchase monies to paid for such lands or grounds respectively, shall be ascertained by Arbitration in manner hereinafter mentioned.

All Proprietors, Trustees, &c. may sell Lands to the Company.

Amount of purchase money to be ascertained by Arbitration.

VI. *And be it further enacted by the authority aforesaid*, That the Directors of the said Company shall be, and they are hereby empowered to contract, compound, compromise, settle and agree, with the owners or occupiers respectively, of any land through or upon which they may determine to cut and construct the said intended Canal, or any Locks, Towing-paths, Rail-ways, or other erections and constructions contemplated by this Act, to be cut, erected, constructed or built, either for the absolute purchase of so much of the said land as they shall require for the purposes of the said Company, or for damages which he, she, or they shall or may be entitled to recover from the said Company, in consequence of the said intended Canal, Locks, Towing-paths, Rail-ways, or other constructions and erections, being cut or constructed in and upon his, her, or their respective lands; and in case of any disagreement between the said Directors and the owner or owners, occupier or occupiers aforesaid, the amount

Company may contract, &c. with owners for Land through which Canal is cut.

In case of difference, reference to Arbitration.

of the purchase monies for the lands and tenements proposed to be purchased, or the amount of damages to be paid to them, as aforesaid, shall be ascertained by Arbitration, in manner hereinafter mentioned.

In every case of dispute between Company, and others, touching any sale or damages;

the same to be referred to Arbitrators;

one to be named by person disagreeing with the Company;

one by the Directors;

the third by the other two Arbitrators.

Award of these three or any two of them to be final.

Arbitrators to be sworn.

Arbitrators not compellable to travel more than fifty miles.

Award may be set aside by Court of King's Bench.

VII. *And be it further enacted by the authority aforesaid,* That in each and every case, where any dispute shall arise between the said Directors, and any other person or persons whomsoever, touching any purchase, sale or damages, or the money to be paid in respect thereof, and in each and every case where, under the provisions of this Act, any purchase, sale or damages, or the money to be paid in respect thereof, are directed to be ascertained and determined by Arbitration, the same shall be referred to, and ascertained and determined by three indifferent persons, to be chosen as hereinafter is mentioned, that is to say: one of such persons by the owner or owners, occupier or occupiers of the lands, or other the person or persons interested, who shall disagree with the said Directors in respect of the purchase money or compensation to be paid to him, her or them respectively, pursuant to the provisions of this Act, one other of such persons by the said Directors, and the other of such persons shall be chosen by the said two persons, to be so named as aforesaid; and such three persons shall be the Arbitrators to award, determine, adjudge, and order the respective sums of money, which the said Company shall pay to the respective persons entitled to receive the same; and the award of such three persons, or any two of them, shall be final, and the said Arbitrators shall, and they are hereby required, to attend at some convenient place in the vicinity of the route of the said intended Canal, to be appointed by the said Directors, within eight days after notice in writing shall be given them by the said Directors for that purpose, then and there to arbitrate, award, adjudge and determine, such matters and things as shall be submitted to their consideration by the parties interested; and each of the said Arbitrators shall be sworn before some one of His Majesty's Justices of the Peace in and for the said District, any of whom may be required to attend the said meeting for that purpose, well and truly to assess the damages between the parties, according to the best of his judgment: *Provided always,* that no Arbitrator shall be compellable to attend any such meeting of the Arbitrators aforesaid, who shall usually reside more than fifty miles from the place of meeting.

VIII. *And be it further enacted by the authority aforesaid,* That any award made under this Act, shall be subject to be set aside, on application to the Court of King's Bench, in the same manner and on the same grounds as in ordinary cases of submission by the parties, in which case a reference may be again had to Arbitrators, as hereinbefore provided.

IX. *And be it further enacted by the authority aforesaid,* That when and so often as it shall be necessary to cut into any highway, in order to conduct the said Canal through the same, the said Company shall, within one month after such cut, cause to be constructed a secure, sufficient, and commodious bridge, for the passing of carriages, in order to establish the communication between the several parts of such highways, under the 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, as aforesaid.

If any highway cut into or through, a bridge to be constructed within a month.

X. *And be it further enacted by the authority aforesaid,* That if any persons shall wilfully or maliciously break, throw down, damage, or destroy any Bank, Lock, Gate, Sluice, or any Works, Machine or device, to be erected or made by virtue of this Act, to the prejudice of the said Company, or do any other wilful act, hurt or mischief, to disturb, hinder or prevent the carrying into execution, or completing, supporting, or maintaining the said Canal, or any Bridge, Tunnel, Aqueduct, Sluice, Lock, Wear, Pen for Water, Bank, Reservoir, Drain, Wharf, Quay, or any other Work belonging to the said Company, every such person or persons so offending shall forfeit and pay to the said Company, the value of the damage proved by the oath of two or more credible Witnesses, to have been done; such damages, together with costs of suits in that behalf incurred, to be recovered by action in any Court of Law in this Province, having jurisdiction competent to the same, or in case of default of payment, such offender or offenders shall and may be committed to the Common Gaol, for any time not exceeding three months, at the discretion of the Court before which such offender shall be convicted.

Penalties for malicious mischief to the Canal, &c.

How recovered.

XI. *And be it further enacted by the authority aforesaid,* That if any person shall float any Timber upon the said Canal, or shall suffer the overloading of any Boat, Vessel or Raft, navigating in or upon the said Canal, so as by such overloading to obstruct the passing of any other Boat, Vessel or Raft, and shall not immediately, upon due notice given to the owner or person having the care of such Boat, Vessel or Raft, so obstructing the passage aforesaid, remove the same, so as to make a free passage for the other Boats, Vessels or Rafts, every such owner or person floating such Timber, or having the care of such Boat, Vessel or Raft, so obstructing the passage, as aforesaid, shall forfeit and pay for every such offence the sum of Five Pounds Currency; and if any person shall throw any Ballast, Gravel, Stones or Rubbish, into any part of the said Canal, every such person shall, for every such offence, forfeit a sum not exceeding Five

Penalty for obstructing the Canal by overloading any Boat, &c.

Pounds Currency, which said respective forfeitures shall be paid to the Company, to be by them applied for the purposes of the said Navigation.

Penalty if any boat, &c. obstructs the Canal, and is not removed on request.

Company may unload and remove such boats, &c.

In case of boats, &c. sinking.

XII. *And be it further enacted by the authority aforesaid,* That if any Boat, Vessel or Raft, shall be placed in any part of the said Canal, so as to obstruct the Navigation thereof, and the person having the care of such Boat, Vessel or Raft, shall not immediately, upon the request of any of the Servants of the said Company, made for that purpose, remove the same, he shall for every such offence, forfeit a penalty of Ten Shillings, of lawful money of Upper Canada, for every hour such obstruction shall continue; and it shall be lawful for the Agents or Servants of the said Company to cause any such Boat, Vessel or Raft, to be unloaded, if necessary, and to be removed in such manner as shall be proper, for preventing such obstruction in the Navigation, and to seize and detain such Boat, Vessel or Raft, and the Cargo thereof, or any part of such Cargo, until the charges occasioned by such unloading and removal, shall be paid or satisfied; and if any Boat or Vessel shall be sunk in the said Canal, and the owner or owners, or the person or persons having the care of such Boat or Vessel, shall not, without loss of time, weigh or draw up the same, it shall be lawful for the Agents or Servants of the said Company, to cause such Boat or Vessel to be weighed or drawn up, and to detain and keep the same, until payment shall be made of all expenses necessarily occasioned thereby.

Owners of lands adjoining the Canal may use boats thereon, free of charge.

Limitation.

XIII. *Provided always, and be it further enacted by the authority aforesaid,* That it shall and may be lawful for the owners and occupiers of any Lands adjoining to the said Canal, to use any Boats upon the said Canal, for the purposes of Pleasure or Husbandry, and for conveying Cattle from one Farm or part of a Farm or Lands, to any other Farm or Lands of the same owner or occupier, (not passing through any Lock without the consent of the said Company, their successors, or their principal Agent for the time being,) without interruption from the said Company, or their successors, and without paying any rate or duty for the same, so as the same be not made use of for the carriage of any Goods, Wares, or Merchandize to market, or for sale, or for any person or persons for hire, and so as the same shall not obstruct or prejudice the Navigation of the said intended Canal, or the Towing-paths thereof.

XIV. *And whereas,* it may hereafter happen from floods, or from some unexpected accident, that Weirs, Flood-gates, Dams, Banks, Reservoirs, Trenches, or other Works of the said Navigation, may be damaged or destroyed, and the adjacent Lands, or the property thereon thereby damaged, and it may be necessary that the same shall be immediately repaired or

re-built, to prevent further damages: *Be it therefore further enacted by the authority aforesaid,* That when and so often as it shall so happen, it shall be lawful for the said Company, and for their or any of their Servants, Agents or Workmen, from time to time, without any delay or interruption from any person or persons whomsoever, to enter into any Lands, Grounds, or Hereditaments, adjoining or near to the said intended Canal, or the Branches, Reservoirs, or Trenches thereof, or any of them, (not being an Orchard, Garden or Yard,) and to dig for, work, get and carry away, and use all such Stones, Gravel, and other materials, as may be necessary or proper, and required for the purposes aforesaid, without any previous treaty whatsoever with the respective owners or occupiers thereof, or of any other person or persons interested in such Lands, Grounds, or Hereditaments, or any of them, doing as little damage thereto as the nature of the case will admit, and making recompense for such damages to the owners and occupiers of or other the persons interested in such Lands, Grounds, Property or Hereditaments, within the space of six calendar months next after the same shall have been demanded, for all damages which shall or may be done by means of such accident, or the digging for, getting, working, taking, carrying away, and using such Stones, Gravel, and materials, or any of them, as aforesaid; which damages, and the satisfaction and recompense in respect thereof, shall, in case of dispute, be settled, adjusted, ascertained, and determined by Arbitration, as hereinbefore is mentioned.

In case of accidents, requiring immediate repairs,

Company may enter any lands adjoining,

for materials to repair,

without previous treaty,

making recompence within six months.

Arbitration.

XV. *And be it further enacted by the authority aforesaid,* That the said Company shall and may, in such parts of the said Canal as shall not be of sufficient breadth for admitting a Boat, Vessel or Raft, to turn about or lie, or for two Boats or other Vessels or Rafts, to pass each other, to cut and open proper spaces or places in the Lands adjoining to the said Canal, at convenient distances from each other, for the turning, lying, and passing of any such Boat, Vessel or Raft; and that all Boats, Vessels and Rafts, which shall be hauled or navigated upon the said Canal, shall, upon meeting any other Boat or Vessel, stop at or go back to and lie in the said places or spaces, in such manner as by any By-Law of the said Company shall be directed in respect thereof.

Company may open places for boats to lie or turn.

Provision in case of boats meeting.

XVI. *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 to regulate, from time to time, and establish the Rates of Toll payable in respect of all Timber, Boats, Vessels, and other Craft, and of other Cargoes and Freightage thereof, and of all Rafts navigating upon the said Canal; and the said Company shall annually, if required, exhibit an account to either Branch of the Legislature, of the Tolls collected upon the said

President and Directors to establish rates of toll.

Account to be exhibited.

If tolls excessive, the Legislature may reduce them.

Canal, and of the sums expended in keeping the same in repair, and also of the Goods, Wares and Merchandise, transported in and along the same: *Provided always*, that if at any time after the expiration of five years, from the time of the commencement of the Navigation upon any part of the said Canal, the Legislature shall deem the Tolls levied thereon excessive, it shall be lawful for them to reduce the same to such a standard as they may think just, so that the same shall not be reduced to a Rate which will produce to the said Company less than Twenty Pounds per Centum, on the Capital actually expended in making the said Canal.

Canal to be completed within eight years.

XVII. *And be it further enacted by the authority aforesaid*, That the said Company, to entitle themselves to the benefit and advantages to them granted by this Act, shall, and they are hereby required to make and complete the said Canal, Rail-way, Towing-paths and other erections required for the navigation thereof, in order to connect the waters of the Niagara River at the head of the said Rapids, called Fort Erie Rapids, with the waters at the foot thereof, within eight years from the passing of this Act, so as to be navigable for Schooners, Boats, Barges and Rafts, otherwise this Act, and every matter and thing herein contained, shall cease and be utterly null and void to all intents and purposes whatsoever.

How tonnage of boats, &c. to be ascertained.

XXVIII. And for preventing disputes touching the Tonnage of any Boat, Barge or other Vessel, navigating upon the said Canal; *Be it further enacted by the authority aforesaid*, That the Owner or Master of every such Boat, Barge or Vessel, shall permit and suffer every such Boat, Barge or Vessel, to be gauged or measured, and in case of refusal so to do, the Owner thereof shall forfeit and pay the sum of Forty Shillings, Currency; and it shall be lawful for the said Company, or their Toll-gatherer, or such person or persons as shall be appointed by them for that purpose, and such Owner or Master, each to choose one person to measure and ascertain such Tonnage, and to mark the same on such Boat, Barge or other Vessel, which mark shall always be evidence of the Tonnage in all questions respecting the payment of the said rates or dues; and if such Owner or Master shall refuse or decline to choose a person in his behalf as aforesaid, then the person appointed by the said Company, or their Toll-gatherer, shall have alone the power of ascertaining such Tonnage.

Tonnage of boats to be marked thereon.

Private roads and ways (except towing paths) may be used by any person for transporting goods, &c. to and from the Canal.

XIX. *And be it further enacted by the authority aforesaid*, That all persons whosoever shall have free liberty to use with Horses, Cattle and Carriages, the private Roads and Ways to be made under the provisions of this Act, (except the Towing-paths) for the purpose of conveying any Goods, Wares, Merchandise, Timber or other commodities, to and from the said Canal, and also to navigate the said Canal with any Schooners,

Boats, Barges, Vessels or Rafts, and to use the said Wharves and Quays, for loading and unloading any Goods, Wares, Merchandize, Timber or commodities, and also to use the said Towing-paths with Horses for drawing and hauling such Boats and Vessels, upon payment of such rates or dues as shall be established by the said Company as aforesaid,

XX. And be it further enacted by the authority aforesaid, That the said several dues shall be paid to such person or persons, at such place or places near to the said Canal, in such manner and under such regulations as by the By-laws of the said Company shall be directed; and in case of denial or neglect in payment of any such rates or dues, or any part thereof, on demand, to the person or persons appointed to receive the same, the said Company may sue for and recover the same, in any Court having jurisdiction therein, or the person or persons to whom the said rates or dues ought to be paid may, and he and they is and are hereby empowered to seize such Boat, Vessel, Barge or Raft, for or in respect whereof such rates or dues ought to be paid, and detain the same until payment thereof.

Tolls to be collected in the manner the By-Laws of the Company shall direct.

XXI. And be it further enacted by the authority aforesaid, That the whole Capital or Stock of the said Company, inclusive of any Real Estate which the Company may have or hold by virtue of this Act, shall not exceed in value Seventy-five Thousand Pounds; to be held in Six Thousand Shares, of Twelve Pounds Ten Shillings each; and that the Shares of the said Capital Stock shall, after the first instalment thereon shall have been paid, be transferable by the respective persons subscribing or holding the same, to any other person or persons; and such transfer shall be entered or registered in a Book or Books to be kept for that purpose by the said Company.

Capital of the Company not to exceed £75,000.
6000 Shares.

XXII. And be it further enacted by the authority aforesaid, That Books of Subscription shall be opened in the several Assize Towns in this Province within two months after the passing of this Act, by such person or persons, and under such regulations as the majority of the said Petitioners assembled at a meeting, to be called by any one of them in the Town of Niagara for that purpose, shall direct.

Books of Subscription to be opened.

XXIII. And be it further enacted by the authority aforesaid, That it shall and may be lawful for any person or persons, His Majesty's Subjects or others, to Subscribe for any number of Shares, (not exceeding in the first instance eighty) the amount whereof shall be due and payable to the said Company in the manner hereinafter mentioned, that is to say: Ten per Cent on each Share so Subscribed, shall be payable to the said Company immediately after the Stockholders shall have elected the Directors first

Not more than eighty Shares to be subscribed for by any one person.

How to be paid.

hereinafter mentioned, and the remainder by instalments of not more than Ten per Centum, at such periods as the President and Directors, shall from time to time direct and appoint for the payment thereof: *Provided*, that no instalment shall be called for in less than thirty days, after the same public notice shall have been given as hereinafter is mentioned, with respect to notice directed to be given of meetings to be holden under this Act: *Provided always*, that if any Stockholder or Stockholders shall neglect or refuse to pay to the said Company, the instalment due on any Share or Shares held by him, her or them, at the time required by Law, such Stockholder or Stockholders shall forfeit the same Share or Shares, with the amount previously paid thereon, and such Share or Shares shall be sold by the Directors at public Auction, after having given thirty days notice in writing of such intended sale to such Stockholder or respective Stockholders, and the proceeds thereof, together with the amount previously paid thereon, shall be accounted for and applied in like manner as any other funds of the said Company: *Provided always*, that such Purchaser or Purchasers shall pay to the said Company the amount of all instalments which shall be due and unpaid on such Share or Shares, over and above the purchase money of the same, immediately after the sale, and before they shall be entitled to a certificate of the transfer of such Share or Shares, so to be purchased as aforesaid.

Proviso for calling in instalments.

Forfeiture of Shares.

If Stock not subscribed within two months,

former Subscribers may increase their Subscription.

XXIV. *And be it further enacted by the authority aforesaid*, That if the whole number of Shares shall not be Subscribed, within two months after the Books of Subscription shall have been opened as aforesaid, then and in such case, it shall and may be lawful for any former Subscriber to increase his, her or their Subscription.

As soon as £5000 is subscribed, Meeting to be held to elect Directors.

Period of service.

As soon as £500 paid, business to commence.

XXV. *And be it further enacted by the authority aforesaid*, That so soon as Five Thousand Pounds shall have been Subscribed, it shall and may be lawful for such Subscribers, or any of them, to call a meeting pursuant to the directions hereinafter contained, for the purpose of proceeding to the Election of the number of Directors hereinafter mentioned, and such Election shall then and there be made by a majority of Shareholders present; and the persons then and there chosen shall be the first Directors, and be capable of serving until the first Monday in April succeeding their election; and the Directors so chosen, shall, as soon as a deposit amounting to Five Hundred Pounds upon the Shares subscribed as aforesaid, shall be paid to the said Directors, commence the business and operations of the said Company.

Five Directors to be chosen; one to be President.

XXVI. *And be it further enacted by the authority aforesaid*, That the Stock, Property, Affairs and Concerns of the said Corporation, shall be

managed and conducted by five Directors, one of whom shall be chosen President, who shall hold their Offices for one year ; which Directors shall be Stockholders, and shall be inhabitants of this Province, and be elected on the first Monday in April in every year, at a Meeting of Stockholders to be then holden ; and the said Election shall be held and made by such of the Stockholders of the said Company, as shall attend for that purpose in their own proper persons, or by proxy ; and all Elections for Directors shall be by ballot, and the five persons who shall have the greatest number of votes at any Election shall be Directors, (except as is hereinafter directed) ; and if it shall happen at any Election that two or more persons have an equal number of votes, in such manner that a greater number of persons than five shall, by plurality of votes, appear to be chosen as Directors, then the said Stockholders present at such meeting, shall proceed, by ballot, a second time, and by plurality of votes determine which of the said persons so having an equal number of votes shall be the Director or Directors, so as to reduce the whole number to five ; and the said Directors, so soon as may be after the said Election, shall proceed in like manner to elect, by ballot, one of their number to be President ; and two of the Directors who shall have served as Directors for the preceding year, (excepting the President) shall be incapable of serving in the office of Director for one year after the expiration of the time for which they shall have so served as Directors ; and in case a greater number than two of the Directors (exclusive of the President who served for the last year) shall appear to be elected, then the election of such Director or Directors above two, who shall have the fewest votes shall be considered void, and such other of the Stockholders as shall be eligible, and shall have the next greatest number of votes, shall be considered as elected, in the room of such last described Director or Directors, who are hereby declared incapable of serving as Directors as aforesaid ; and the President for the time being shall always be eligible to the office of Director, but Stockholders not residing within the Province shall be ineligible ; and if any Director shall absent himself from this Province, and cease to be an inhabitant thereof for the space of six months, his office shall be considered as vacant ; and if any vacancy or vacancies shall at any time happen among the Directors, or if the office of President shall become vacant by death, resignation, or removal from the said Province, such vacancy or vacancies shall be filled for the remainder of the year in which they shall happen, by a person or persons to be nominated by a majority of the remaining Directors : *Provided always*, that no person shall be eligible to be a Director, who shall not be a Stockholder to the amount of at least Ten Shares.

Election first Monday
in April.

Proxy.
Election by Ballot.

In certain case to be a
second Ballot.

President to be elected
by Ballot.

Two Directors to go
out every year.

President for time
being, always eligible.

Vacancies, how
created.

Provision for filling.

Number of votes. **XXVII.** *And be it further enacted by the authority aforesaid,* That each Stockholder shall be entitled to a number of votes, proportioned to the number of Shares which he or she shall have held, and shall continue to hold, in his or her own name, at and at least three months prior to the time of voting (except at the first election,) according to the following rates, that is to say: at the rate of one vote for each Share not exceeding four Shares; five votes for six Shares; six votes for eight Shares; seven votes for ten Shares; and one vote for every five Shares above ten.

Meetings to be holden in the Township of Bertie. **XXVIII.** *And be it further enacted by the authority aforesaid,* That the first and every other Meeting, whether General or Special, to be holden in pursuance of this Act, shall be holden at such place in the Township of Bertie, and on such days, (except where particular days for the same are herein specially appointed,) and at such hour of the day as to the said first Meeting, as the majority of the said Petitioners, and as to all other Meetings, as the majority of Directors for the time being, shall appoint; and a notice of every Meeting shall be published at least thirty days, and not more than sixty days prior to the time of such Meeting, in the Upper Canada Gazette, and in such other newspapers circulated within the Province, as the majority of the said Petitioners, as to such first Meeting, and the majority of the said Directors, as to all other meetings to be holden in pursuance of this Act, shall respectively think fit to order and direct.

Notic.

Corporation not dissolved for want of an Election. **XXIX.** *And be it further enacted by the authority aforesaid,* That in case it shall at any time happen, that an Election of Directors shall not be made on any 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 of Directors, in such manner as shall have been regulated by the Laws and Ordinances of the said Corporation.

Directors to make Half-yearly Dividends **XXX.** *And be it further enacted by the authority aforesaid,* That it shall be the duty of the Directors, to make Half-yearly Dividends of so much of the profits of the said Company, as to them or a majority of them shall appear advisable; and that once in every three years, and oftener if thereunto required by a majority of the votes of the Stockholders, to be given agreeably to the ratios hereinbefore established, at a General Meeting to be called for that purpose, an exact and particular statement shall be rendered of the debts, credits and affairs of the said Company, and of the surplus profits, (if any,) after deducting losses, dividends and expenditures.

Statement of Debts and Credits.

XXXI. *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 as to them shall appear needful and proper, touching the management and disposition of the Stock, Property, Estate, and Effects of the said Corporation, and touching the duty and conduct of the Officers, Clerks and Servants, employed by the said Company, and touching the securities to be given by them, or any of them, and all such other matters as appertain to the business of the said Company; and shall also have power to appoint as many Officers, Clerks and Servants for carrying on the said business, and with such salaries and allowances as to them shall seem meet: *Provided*, that such Rules and Regulations be not repugnant to the Laws of this Province.

Directors may make Rules and Regulations

and may appoint Officers.

XXXII. *And be it further enacted by the authority aforesaid,* That all Penalties and Forfeitures for offences against this Act, or against any Rule, Order, or By-law of the said Company, to be made in pursuance thereof, for the levying and recovering whereof no particular mode is hereinbefore directed, shall, upon proof of the offences respectively, before any two of the Justices of the Peace for the District of Niagara, either by confession of the party or parties, or by the Oath of one credible Witness, (which Oath such Justices are hereby empowered and required to administer without fee or reward) be levied by distress and sale of the Goods and Chattels of the parties offending, by Warrant under the hand and seal of such Justices, (which Warrant such Justices are hereby empowered to grant) and the Overplus, after such Penalties and Forfeitures, and the Charges of such distress and sale are deducted, shall be returned upon demand to the owner or owners of such Goods and Chattels; and in case sufficient distress cannot be found, or such Penalties and Forfeitures shall not be forthwith paid, it shall be lawful for such Justices, by Warrant under their hands and seals, to cause such offender or offenders to be committed to the Common Gaol of the District of Niagara, there to remain without bail or mainprize, for such time as such Justices may direct, not exceeding Twenty Days, unless such Penalties and Forfeitures, and all reasonable Charges attending the same, shall be sooner paid and satisfied; all which said Penalties and Forfeitures, when levied and satisfied in manner aforesaid, shall be paid to the said Company, to be by them applied for the purposes of the said Company.

Penalties for infraction of By-Laws, how to be recovered.

XXXIII. *And be it further enacted by the authority aforesaid,* That if any plaint shall be brought or commenced, against any person or persons for any thing done or to be done in pursuance of this Act, or in execution of the powers and authorities, or the orders and directions hereinbefore given or granted, every such suit shall be brought or commenced within Six Calendar Months next after the fact committed, or in case

Actions for any thing done under this Act, to be brought within six months.

Defendants may plead general issue.

there shall be a continuation of damages, then within Six Months next after the doing or committing of such damages shall cease, and not afterwards; and the Defendant or Defendants in such action or suit, shall and may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereon, and that the same was done in pursuance and by the authority of this Act; and if it shall appear to be so done, or if any action or suit shall be brought after the time hereinbefore limited for bringing the same, then a verdict shall be given for the Defendant.

This Act not to affect His Majesty, or any others, further than is expressly provided.

XXXIV. *And be it further enacted by the authority aforesaid, That nothing herein contained, shall affect in any manner or way whatsoever, the right of His Majesty, His Heirs or Successors, or of any person or persons, or of any Bodies Politic, Corporate, or Collegiate, except as is herein expressly provided.*

Not to affect any right of the Welland Canal Company.

XXXV. *And be it further enacted by the authority aforesaid, That nothing herein contained, shall be construed to affect any right or power heretofore granted and secured by law to the Welland Canal Company, any thing to the contrary notwithstanding.*

†

CHAP. XLVII.

AN ACT to Incorporate a Joint Stock Company, under the style and title of the President, Directors, and Company of the Grafton Harbor.

[Passed 9th December, 1836.]

Preamble.

WHEREAS the construction of a safe and commodious Harbor at Deau's Creek, near the Village of Grafton, in the Township of Haldimand, and Newcastle District, would manifestly tend to the improvement of that part of this Province, as well as be of great advantage to all persons in any way concerned in the Navigation of Lake Ontario: *And whereas, Richard Hare and others, have petitioned to be by law Incorporated for the purpose of effecting the construction of such Harbor, by means of a Joint Stock Company: 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, entitled, "An Act to repeal*

Richard Hare, and others.