

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.*

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## 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.

**W**HEREAS 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.

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 Richard Hare and John Grover, Malcolm McNeil, J. Warren, John Clarke, Thomas M. Spalding, James G. Rogers, Edward H. Pepper, Donald Hare, Thomas Spencer, John Spencer, John Taylor, Roderick McKenzie, William Carroll, and Jacob Vanalstine, together with all such other persons as shall become Stockholders in such Joint Stock or Capital as is hereinafter mentioned, shall be and are hereby ordained, constituted and declared to be a Body Corporate and Politic, in fact, by and under the name of the "President, Directors, and Company of the Grafton Harbor," and 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 or places whatsoever, in all manner of suits, actions, 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 President, Directors, and Company of the Grafton Harbor, 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 the account of the said Company, from time to time as they shall deem necessary and expedient: *Provided always*, that nothing herein contained shall extend or be construed to extend, to allow the said Company to carry on the business of Banking.

Constituted a Body Corporate under the name of The President, Directors and Company of the Grafton Harbour.

Restrained from carrying on business of Banking.

II. *And be it further enacted by the authority aforesaid*, That the said Company are hereby authorised and empowered, at their own cost and charge to construct a Harbor at or near Dean's Creek, near the Village of Grafton aforesaid, which shall be accessible to, and fit, safe and convenient, for the reception of such description of Vessels as commonly navigate the said Lake; and also to erect and build all such needful Moles, Piers, Wharves, Buildings, and erections whatsoever, as shall be useful and proper for the protection of the said Harbor, and for the accommodation and convenience of Vessels entering, lying, loading and unloading within the same, and to alter and amend, repair and enlarge the same, as may be found expedient and necessary.

Authorised to construct a Harbour near Dean's Creek.

May agree with owners and occupiers of land.

Arbitrators to be appointed in case of disagreement between Company and owner of lands.

Award subject to be set aside on application to the Court of King's Bench.

Company not to assume lands until same be paid for or money tendered.

III. *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 and agree, with the owners and occupiers of any Land, through or upon which they may determine to cut and construct the said Harbor, with all necessary and convenient Roads, Streets, and approaches thereto to be constructed and made, 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 the damages which he, she, or they shall and may be entitled to recover from the said Company, in consequence of the said intended Harbor, Roads, Streets, and approaches thereto being cut, made and 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, it shall and may be lawful from time to time, as often as the said Directors shall think fit, for each owner or occupier so disagreeing with the said Directors, either upon the value of the Lands and Tenements proposed to be purchased, or upon the amount of damages to be paid to them as aforesaid, to nominate and appoint one or more indifferent person or persons, and for the said Directors to nominate an equal number of indifferent persons, who, together with one other person, to be elected by ballot by the persons so named, shall be 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, the award of a majority of whom shall be final; and the said Arbitrators shall, and they are hereby required, to attend at some convenient place in the vicinity of the said intended Harbor, to be appointed by the said Directors, after eight days' notice given them for that purpose by the said Directors, 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 that each Arbitrator 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 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 reference may be again made to Arbitrators as hereinbefore provided; and that the said Company shall in no case take possession of any Land, the value of which shall be so awarded, unless payment be made according to the said Award, or a tender thereof made to the party or parties therein interested, and shall not in any manner obstruct or interfere with the Highway now passing the mouth of the said Dean's Creek, and shall con-*

struct and maintain a good and sufficient Bridge across the same, without any charge to the public.

IV. *And be it further enacted by the authority aforesaid,* That as soon as the said Harbor shall be so far completed, as to be capable of receiving and sheltering Vessels, the said Company shall have full power and authority to ask for, demand, receive and take as Tolls, to and for their own proper use and benefit and behoof, on all Goods, Wares, and Merchandize, shipped or landed on board or out of any Vessel or Boat, from or upon any part of the Lake Shore near to the mouth of what is called Dean's Creek, embracing the Lake Shore in front of Lots numbers Nineteen, Twenty, Twenty-one, and Twenty-two, in Concession B, of the said Township of Haldimand, in the said District of Newcastle, and upon all Vessels and Boats entering the said Harbor, according to the Rates following, that is to say: Pot and Pearl Ashes, per barrel, sixpence; Pork, Whiskey, Salt Beef, and Lard, per barrel, fourpence; Flour, per barrel, threepence; Merchandize, per barrel bulk, fourpence; Lard and Butter, per keg, one penny; Merchandise, per ton, five shillings; West India Staves, per thousand, two shillings; Shingles, per thousand, sixpence; Shingle Bolts, per cord, three shillings; Pipe Staves, per thousand, ten shillings; Deals, per hundred pieces, three shillings; Wheat and other Grain, per sixty pounds, one penny; Lumber, per thousand feet board measure, one shilling; Boats, under five tons, free; Boats and Vessels, under twelve tons, one shilling and threepence; Boats and Vessels, above twelve tons and not over fifty tons, two shillings and sixpence; Vessels over fifty tons, five shillings; and all articles not enumerated to pay in proportion to the above rates, subject to the direction of the Directors appointed by virtue of this Act: *Provided nevertheless,* that the said Directors shall have power to reduce the said rates of tolls, should they see fit.

Company may exact Tolls, when Harbour is in a state to admit vessels.

Rate of Tolls.

V. *And be it further enacted by the authority aforesaid,* That the said Harbour, Moles, Piers, Wharves, Buildings, erections, and all materials which shall be from time to time got or provided for constructing, building, maintaining or repairing the same, and the said Tolls on Goods, Wares and Merchandize, as hereinbefore mentioned, shall be, and the same are hereby vested in the said Company, and their Successors, for ever.

Harbour, &c. vested in Company.

VI. *And be it further enacted by the authority aforesaid,* That if any person or persons, shall neglect or refuse to pay the Tolls or Dues to be collected under this Act, it shall and may be lawful for the said Company, or their Officer, Clerk or Servant, duly appointed, to seize and detain the

Goods of parties refusing to pay Tolls, may be detained.

Goods, Vessels or Boats, or other Craft, on which the same were due and payable until such Tolls are paid, and if the same shall be unpaid for the space of thirty days next after such seizure, the said Company, or their Officers, Clerk or Servant as aforesaid, may sell and dispose of the said Goods, Vessels or Boats, or other Craft, or such part thereof as may be necessary to pay the said Tolls, by public Auction, giving ten days notice thereof, and return the overplus, if any, to the owner or owners thereof,

Number of Directors to be appointed, &c. Qualification.

VII. *And be it further enacted by the authority aforesaid,* That the property, affairs and concerns of the said Company, shall be managed and conducted by five Directors, one of whom shall be chosen President, and three of whom shall be a quorum, who shall hold their office for one year; which said Directors shall be Stockholders to the amount of at least four Shares, as well as Inhabitants of this Province, and be elected on the third Monday in June in every year, at the Village of Grafton aforesaid, at such time of the day as a majority of the Directors, for the time being, shall appoint; and public Notice thereof shall be given in the Upper Canada Gazette, and in any Newspaper or Newspapers that may be published in the said District of Newcastle, at least thirty days previous to the time of holding said Election; 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 such Directors shall be by ballot, and the five persons who shall have the greatest number of votes at any Election shall be Directors; and if it shall happen at any such Election that two or more have an equal number of votes, in such manner that a greater number of persons than five, shall by a plurality of votes appear to be chosen Directors, then the said Stockholders, hereinbefore authorized to hold such Election, shall proceed to elect by ballot, until it is ascertained which of the said persons so having an equal number of votes, shall be Director or Directors, so as to complete the whole number of five; and the said Directors so chosen, 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 if any vacancy or vacancies shall at any time happen among the Directors by death, resignation or removal from the Province, such vacancy or vacancies shall be filled up, for the remainder of the year in which they may happen, by a person or persons to be nominated by a majority of the Directors.

Time and manner of conducting Election of Directors.

President to be elected by Directors.

Notes of Stockholders proportioned to number of Shares held by them.

VIII. *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, in his or her own name, at least one month prior to the time of voting, according to the following rates, that is to say: One Vote for each Share not exceeding four; five

Votes for six Shares ; six Votes for eight Shares ; seven Votes for ten Shares, and one Vote for every five Shares above ten.

IX. *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 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 day thereafter, to make and hold an Election of Directors, in such manner as shall have been regulated by the Laws and Ordinances of the said Corporation.

Remedy in case Election of Directors should not take place on day appointed by the Act.

X. *And be it further enacted by the authority aforesaid,* That the Directors for the time being, or a 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 duties of the Officers, Clerks and Servants, 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, with such salaries and allowances, as to them shall seem fit.

Rules, &c. to be made by Directors.

XI. *And be it further enacted by the authority aforesaid,* That on the Third Monday in June, after the passing of this Act, a Meeting of the Stockholders shall be held at the Village of Grafton aforesaid, who, in the same manner as hereinbefore provided, shall proceed to elect Five Persons to be Directors, who shall continue in such office until the Third Monday in June, next after their election, and who during such continuance shall discharge the duties of Directors, in the same manner as if they had been elected at an annual election: *Provided always,* that if Shares to the amount of One Thousand Pounds of the Capital Stock of the said Company shall not be taken, then the said Meeting shall not be held until that amount of Stock shall have been taken up, and at least Thirty Days' Notice thereof given in the Upper Canada Gazette, and any Newspaper or Newspapers that may be published in the said District.

First Election of Directors to take place on the third Monday in June :

Provided Shares to the amount of £1000 be then subscribed: if not then subscribed, to be deferred until that amount is subscribed and notice given, &c.

XII. *And be it further enacted by the authority aforesaid,* That the whole Capital Stock of the said Company, 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, to be held in Sixteen Hundred Shares, of Six Pounds Five Shillings each ; and that the Shares of the said Capital Stock may, after the first Instalment thereon has been paid,

Stock, inclusive of Real Estate, not to exceed £10,000.

Shares may be transferred.

be transferred by the respective persons subscribing or holding the same, to 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.

When Directors are appointed, instalments of Stock may be called in.

XIII. *And be it further enacted by the authority aforesaid,* That as soon as Directors shall have been appointed, as aforesaid, it shall and may be lawful for them to call upon the Stockholders of the said Company, by giving thirty days notice thereof, in manner before mentioned, for an Instalment of Ten per Centum upon each Share, which they or any of them respectively may subscribe; and that the residue of the Share or Shares of the Stockholders shall be payable by Instalments, in such time and in such proportion as a majority of the Stockholders, at a Meeting to be expressly convened for that purpose, shall agree upon, so as no such Instalment shall exceed Ten per Centum, nor become payable in less than thirty days, after public notice given in the manner before mentioned: *Provided always,* that the said Directors shall not commence the construction of the said Harbour, until the first Instalment shall have been paid in.

Harbour not to be commenced until first Instalment is paid.

Stockholders making default in payment of Stock, to forfeit their Shares.

XIV. *And be it further enacted by the authority aforesaid,* That if any Stockholder 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, such Stockholder or Stockholders, so refusing or neglecting, shall forfeit such Share or Shares, as aforesaid, with any amount which shall have been previously paid thereon; and that the said Share or Shares may be sold by the Directors, and the sum arising therefrom, together with the amount previously paid in, shall be accounted for and applied in like manner as other monies of the said Company: *Provided always,* that the Purchaser or Purchasers shall pay the said Company the amount of the Instalment required, over and above the purchase money of the Share or Shares so purchased by him, her or them, as aforesaid, immediately after the sale, and before they shall be entitled to the certificate of the transfer of such Share or Shares so purchased, as aforesaid: *Provided always, nevertheless,* that thirty days public notice of the sale of such forfeited Share or Shares shall be given in the manner hereinbefore directed, and that the Instalment due may be received in redemption of any such forfeited Shares, at any time before the day appointed for the sale thereof.

Annual Dividends to be made.

XV. *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 a majority of them shall seem advisable; and that once in each year, an exact and particular Statement shall be rendered of the state of their Affairs, Debts, Credits, Profits and

Losses, such Statement to appear on the Books, and to be open to the perusal of any Stockholder, at his or her reasonable request.

XVI. *And be it further enacted by the authority aforesaid,* That at any time after fifty years after the making and completing of the said Harbour, His Majesty, His Heirs and Successors may assume the possession and property of the same, and all and every the works and dependencies thereto belonging, upon paying to the said Company, for the use of the Stockholders thereof, the full amount of their respective Shares, or of the sums furnished and advanced by each Subscriber, towards the making and completing the said Harbour, together with such further sum as will amount to Twenty-five per Centum upon the monies so advanced and paid, as a full indemnification to such Company; and the said Harbour shall, from the time of such assumption in manner aforesaid, appertain and belong to His Majesty, His Heirs and Successors, who shall from thenceforth be substituted in the place and stead of the said Company, upon the conditions and subject to the provisions of any Act of the Legislature of this Province, that may be passed respecting the same: *Provided always,* that it shall not be lawful for His Majesty, His Heirs and Successors, at any time after the expiration of the said fifty years, to assume the possession and property of the said Harbour, with its appurtenances, as aforesaid, unless it shall appear from the accounts of the said Company, to be for that intent laid before the Legislature, that the Stockholders of the said Company have received every year, upon an average, the sum of Twelve Pounds Ten Shillings, for every Hundred Pounds they shall be possessed of in the said concern.

Harbour may be assumed by His Majesty, after fifty years, upon paying, &c.

XVII. *And be it further enacted by the authority aforesaid,* That from and after the period when the possession of the right, interest and property, in and to the said Harbour, shall have been assumed by His Majesty, His Heirs or Successors, as hereinbefore authorised, all Tolls and profits arising therefrom shall be paid into the hands of His Majesty's Receiver General, to and for the public uses of this Province, at the disposition of the Legislature thereof, and shall be accounted for to His Majesty, His Heirs and Successors, through the Lords Commissioners of His Majesty's Treasury, in such manner and form as His Majesty, His Heirs and Successors, shall be graciously pleased to direct: *Provided always,* that the said Harbour shall be commenced within two years, and completed within seven years, after the passing of this Act, otherwise this Act and every matter and thing herein contained shall cease, and be utterly null and void.

When assumed by His Majesty tolls to be paid to Receiver General.



No exclusive right given to fish within the Harbour to the Company :

Persons not to fish within 100 yards of works erected by the Company.

Persons offending against last Section liable to be fined, or imprisoned in default of paying fine.

Legislature may alter or amend the provisions of this Act.

XVIII. *And be it further enacted by the authority aforesaid,* That nothing herein contained shall give to the said Company, or be construed to give to the said Company, the exclusive right of Fishing within the said Harbour or Lake Shore, within the limits before mentioned ; and that it shall not be lawful for any person or persons to take, catch or kill, or to attempt to take, catch or kill, any Fish, by Torch or Fire-light, within one hundred yards of any work erected by the said Company.

XIX. *And be it further enacted by the authority aforesaid,* That if any person or persons shall be duly convicted, by the oath of one or more credible Witness or Witnesses, before any two of His Majesty's Justices for the said District, of having so caught or killed, or so attempted to catch or kill, any Fish in manner aforesaid, such person or persons respectively, upon conviction, as aforesaid, shall forfeit and pay a sum not exceeding Five Pounds, nor less than Five Shillings, for every offence so committed, with all reasonable costs, both before and after conviction, or in default of payment, to be committed to the Common Gaol of such District, as aforesaid, for a term of not more than thirty days, nor less than two days, unless the fine and costs are sooner paid.

XX. *And be it further enacted by the authority aforesaid,* That it shall remain in the power of the Legislature to make any alterations in the provisions of this Act, or any addition thereto, which may seem to them expedient.

## CHAP. XLVIII.

*AN ACT to Incorporate sundry Persons, under the style and title of the President, Directors and Company, of the Colborne Harbour.*

[Passed 4th March, 1837.]

Preamble.

**WHEREAS** the construction of a safe and commodious Harbour at Keeler's Creek, near the Village of Colborne, in the Townships of Cramahe and 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,* Joseph A. Keeler, Dugald Cameron, John Steele, Ozem Strong, James D. Goslee, Burrage Yale McKays, and others, have petitioned to be by law Incorporated, for the purpose of effecting the construction of such Harbour, by means of a Joint Stock Company :