

CHAP. XXXIII.

*AN ACT to Incorporate certain persons under the style and title of
“The Windsor Road Company.”*

[Passed 6th March, 1838.]

Preamble.

WHEREAS James T. Somerville, L. Hayden, A. W. Perry, A. Macpherson, George McGill, Ezra Annis, Samuel Cockrane, Charles Farewell, A. Norton, and others, have, by petition, prayed for an Act of Incorporation to be passed to enable such of the said petitioners, and others desiring to establish a single or double Railway, or Macadamized Road, or both, from some point of Windsor Harbour, in the Township of Whitby, to the Main York Road or Dundas Street, with a Capital of Five Thousand Pounds: *And whereas*, it is expedient to grant the prayer of said petition: *Be it therefore enacted*, by the Queen'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 James T. Somerville, L. Hayden, A. W. Perry, A. Macpherson, George McGill, Ezra Annis, Samuel Cockrane, Charles Farewell, and A. Norton, 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 and style of “The Windsor Railway or Macadamized Road Company.”

Company incorporated.

Company may construct road between Windsor and Main York Road.

II. *And be it further enacted by the authority aforesaid*, That the said Company, and their agents or servants, shall have full power under this Act, to lay out, construct, make and finish, a double or single iron or wooden Rail-road or Way, or Macadamized Road, or both, at their own costs and charges, on and over any part of the country lying between the said Windsor Harbour, and the Main York Road or Dundas Street aforesaid, and to take, carry and transport thereon, passengers, goods and property, in carriages used and propelled either by the force of steam or by the power of animals, or by any mechanical or other power, or by any combination of power which the said Company may choose to employ.

III. *And be it further enacted by the authority aforesaid,* That the said Company be and they are hereby empowered to contract, compound, compromise and agree, with the owners or occupiers of any lands upon which they may determine to construct the said Railway or Macadamized Road, or both, either by 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 receive of the said Company, in consequence of the said intended Railway or Macadamized Road being made and constructed in and upon his her or their respective lands; and in case of any disagreement between the said Company and the owner or owners, occupier or occupiers as aforesaid, it shall and may be lawful, from time to time, for each owner or occupier so disagreeing with the said Company, either upon the value of the lands and tenements, or private privileges 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 Company to nominate and appoint 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 place convenient to the said intended railway or road, to be appointed by the said Company, 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 such Arbitrators shall be sworn before some one of Her Majesty's Justices of the Peace in and for the said District, any one 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 a reference may be again made to arbitration as hereinbefore provided.

Company may contract for lands;

Or for damages.

In case of disagreement, each party may appoint Arbitrators;

Who, with one other to be chosen by ballot, shall determine amount of compensation.

Award of majority final.

Place of meeting.

Arbitrators to be sworn before justice of the Peace.

Award subject to the jurisdiction of the Court of King's Bench.

IV. *And be it further enacted by the authority aforesaid,* That whatever sum of money may be finally awarded to any persons for compensation for property required to be occupied, or for damages occasioned by the interference of the said Company, with his, her or their property, rights or privileges, shall be paid within twelve months from the time of the same being awarded; and in case the Company shall fail to pay the same within that period, then their right to assume any such property, or commit any act in respect of which such sum of money was awarded, shall wholly

Compensation awarded to be paid within twelve months;

Or property may be resumed.

cease; and it shall be lawful for the proprietor to resume his occupation of such property, and to possess fully his rights and privileges in respect thereof, free from any claim or interference of the said Company.

Company may explore country along intended line of road;

V. *And be it further enacted by the authority aforesaid,* That the said Windsor Harbour, Railway or Road Company, shall have full power and authority to explore the country lying between the said Windsor Harbour and the Main Road leading to the City of Toronto, or Dundas Street; and to designate and establish, and to take, appropriate, have and hold, to and for the uses of them and their successors, the line and boundaries of a double or single Railway or a Macadamized Road, or both as aforesaid, with the necessary Railways or Roads, to connect the said Harbour with the aforesaid Road on Dundas Street; and for the purposes aforesaid the said Company, and their agents, servants and workmen, are hereby authorised and empowered to enter into and upon the lands and grounds of and belonging to the Queen's Majesty, Her Heirs and Successors, or to any other person, bodies politic or corporate, and to survey and take levels of the same, or any part thereof, and to set out and ascertain such parts thereof as may be actually necessary and proper for making the said double or single Railway or Road, and all such matters and conveniences as they may think proper and necessary for making, effecting, preserving, improving, completing and using, the said intended Railway or Road, or both, to the best advantage; and also to make, erect, build and set up, in and upon the route of the Railway or Road, or both, or upon the lands adjoining or near the same, all such ways, roads and conveniences as the said Company shall think requisite and convenient for the purposes of the said Way or Road; and also, from time to time, to alter, repair, amend, widen or enlarge the same, or any other of the conveniences aforesaid, as well for carrying or conveying goods, commodities, timber and other things, to and from the said Way or Road, as for the carrying or conveying of all manner of materials necessary for making, erecting, furnishing, altering, repairing, amending, widening or enlarging, the works of and belonging to the said Way or Road; and also place, lay, work and manufacture the said materials, on the ground near to the places where the said works are or shall be intended to be made, erected, repaired or done, and to build and construct the several works and erections belonging thereto; and also to make, maintain, repair and alter, any fences or passages under or through the said Way or Road, or which shall communicate therewith; and to construct, erect and keep in repair, any piers, arches or other work, in, upon and across, any rivers or brooks, for making, using, maintaining and repairing, the said Way or Road, and its side-paths; and also to construct, make and do all other matters and things, which they shall think necessary and convenient, for the making, effecting, preserving, improving,

And appropriate and hold land necessary for their Road;

And alter and enlarge the road from time to time.

Materials, &c. may be manufactured on the ground, near the line of road.

Repairing and altering fences, &c.

General powers of the Company.

completing and using, the said Railway or Macadamized Road, 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 herein-mentioned for all damages to be sustained by the owners or occupiers of such lands, tenements and hereditaments.

Doing as little damage as may be.

VI. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the President and Directors of the said Company, from time to time, to fix, regulate and receive, the tolls and customs to be received for the transportation of property or persons on the single or double Railway or Macadamized Road, or both, hereby authorized to be constructed, erected, built, made and used.

President and Directors to establish and regulate tolls, &c.

VII. *And be it further enacted by the authority aforesaid,* That the said single or double Railway or Macadamized Road, or both, and appurtenances, 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, merchandize or passengers, as hereinbefore mentioned, shall, and the same are hereby vested in the said Company and their successors for ever.

Rail-road and tolls, &c. vested in the Company.

VIII. *And be it further enacted by the authority aforesaid,* That so soon as the said double or single iron or wooden Railway or Macadamized Road, or both, shall be so far completed as to be capable of being used for the transportation of property or passengers, the said Company shall have full power and authority to ask for, demand, receive, recover and take, the tolls and dues to and for their own proper use and benefit, on all goods, merchandize and passengers, using or occupying the said Railway or Road, or both, or any other convenience, erection or improvement, built, occupied or owned, by the said Company, to be used therewith; and shall have power to regulate the time and manner in which goods and passengers shall be transported, taken and carried on the same, as well as the manner of collecting all tolls and dues on account of transportation and carriages; and shall have power to erect and maintain such toll-houses and other buildings for the accommodation and proper transaction of their business, as to them may seem necessary.

Tolls, &c. when payable.

Power to regulate transport of goods and passengers, and collection of tolls.

To erect Toll-houses.

IX. *And be it further enacted by the authority aforesaid,* That whenever it shall be necessary for the construction of their single or double Railway or Road, to intersect or cross any stream of water, or water course, or any road or highway lying on the route of the said Railway or Road, between the said Harbour and the said Road or Street, it shall be

Company may construct their rail-way across any stream or water-course, highway, &c.;

Restoring former usefulness of such stream, &c.

lawful for the said Corporation to construct their Railway or Road across or upon the same: *Provided*, that the said Corporation shall restore the stream or water-course, road or highway, thus intersected, to its former state, so as its usefulness be not impaired; and shall moreover erect and maintain, during the continuance of their corporate capacity, sufficient fences upon the line of the route of their Railway or Macadamized Road.

Persons wilfully injuring the works, to forfeit double the amount of damage done.

X. *And be it further enacted by the authority aforesaid*, That if any person shall wilfully do, or cause to be done, any act whatever whereby any building, construction or work, of the said Corporation, or any engine, machine or structure, or any matter or thing appertaining to the same shall be stopped, obstructed; impaired, weakened, injured or destroyed, the person so offending shall forfeit and pay to the said Corporation, double the amount of the damages sustained by means of such offence or injury; to be recovered in the name of the said Corporation, by action of debt, to be brought in any Court of Record in this Province.

How recoverable.

Affairs of the Company, to be managed by seven Directors; One of whom to be President.

Qualification.

Thirty days notice of election.

Election by ballot.

Provision in case of equality of votes.

Election of President.

Supply of vacancies during current year.

XI. *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 seven Directors, one of whom shall be chosen President, who shall hold their offices for one year; which said Directors shall be Stockholders to the amount of at least four shares, and be elected on the first Monday in February in every year, at Windsor aforesaid, in the Township of Whitby, 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 some Newspaper published in the Home District, at least thirty days previous to the time of holding the 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 seven persons who shall have the greatest number of votes at any election shall be Directors; and if it shall happen at any election that two or more have an equal number of votes, in such a manner that a greater number of persons than seven shall, by plurality of votes, appear to be chosen Directors, then the said Stockholders hereinbefore authorised to hold such election, shall proceed to elect by ballot until it is determined 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 seven; and the said Directors so chosen, as 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 for the remainder of the year in which they may happen by a person or persons to be nominated by a majority of Directors.

XII. *And be it further enacted by the authority aforesaid,* That each Stockholder shall be entitled to the number of votes proportioned to the number of shares which he shall have held in his 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 for every five shares over ten.

Votes proportioned to number of shares.

XIII. *And be it further enacted by the authority aforesaid,* That if 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 to hold and make an election of Directors, in such manner as shall have been regulated by the by-laws and ordinances of the said Corporation.

Corporation not dissolved by non-election of Directors on day appointed.

XIV. *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 Company, and touching the duty of the officers, clerks and servants, and all such other matters as appertain to the business of the said Company, and shall have power to appoint as many officers, clerks and servants, for carrying on their business, and with such salaries and allowances as to them shall seem fit.

Directors empowered to make By-laws.

XV. *And be it further enacted by the authority aforesaid,* That on the twelfth Monday after the passing of this Act, a meeting of the Stockholders shall be held at Windsor aforesaid, who, in the manner hereinbefore mentioned, shall proceed to elect seven persons to be Directors, who shall elect one of their number to be President, and shall continue in office until the first Monday in February 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 the annual election: *Provided always,* that if shares to the amount of ten per cent 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 some paper or papers published in the Home District.

First meeting of Stockholders;

Period of service;

Amount of stock required to be previously subscribed.

Capital not to exceed
£5 000.

XVI. *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 Company may have or hold by virtue of this Act, shall not exceed in value five thousand pounds, to be held in eight hundred shares, of six pounds five shillings each; and that the shares of the capital stock may, after the first instalment shall have been paid, be transferred by the respective persons subscribing and holding the same to any other person, and such transfer shall be entered or registered in a book or books to be kept for that purpose by the said Company.

Upon appointment of
Directors, a call for £10
per cent. may be made.

Payment of residue.

Works not to be com-
menced until first instal-
ment paid.

XVII. *And be it further enacted by the authority aforesaid,* That so soon as Directors 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 some paper or papers published in the Home District, for an instalment of ten per cent upon each share, which they or any of them may respectively subscribe; and that the residue of the sum or shares of the Stockholders shall be payable by instalments, in such time and in such proportions as a majority of the Stockholders, at a meeting to be expressly convened for that purpose, may agree upon, so as that no such instalments shall exceed ten per cent, nor become payable in less than thirty days after public notice in the paper or papers as aforesaid: *Provided always,* that the said Directors shall not commence the construction of the Railway or Road until the first instalment shall be paid in.

Forfeiture of shares on
non-payment of instal-
ments.

XVIII. *And be it further enacted by the authority aforesaid,* That if any Stockholder or Stockholders 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 said Directors, and the sum arising therefrom, together with the amount previously paid thereon, 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 said instalment or instalments required over and above the purchase money of the share or shares so purchased, immediately after the sale and before he shall be entitled to a certificate of the transfer of such share or shares so purchased as aforesaid: *Provided always,* that thirty days notice of the sale of such forfeited share or shares shall be given in any newspaper or newspapers published in the Home District, and that the instalment due may be received in redemption of any such forfeited share or shares, at any time before the day appointed for the sale thereof.

XIX. *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 reasonable request.

Annual Dividends.

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

Public Act.

XXI. *And be it further enacted by the authority aforesaid,* That the said single or double Railway or Macadamized Road, shall be commenced within four years, and completed within eight years after the passing of this Act, otherwise this Act, and every matter and thing therein-contained shall cease, and be utterly null and void.

Period for commencing and completing the works.

XXII. *And be it further enacted by the authority aforesaid,* That notwithstanding the privileges hereby conferred on the said Corporation, the Legislature may at any time hereafter make such addition to this Act, or such alteration of any of its provisions as they may think proper for affording just protection to the public or to any person, bodies politic or corporate, in respect to their estate, property or rights, or any interest therein, or any advantage, privilege or convenience connected therewith, or in respect to any right of way, public or private, that may be afforded by any of the powers given by this Act.

Legislature may alter the provisions of this Act.

XXIII. *And be it further enacted by the authority aforesaid,* That if any action or suit shall be brought against any person for any matter or thing done in pursuance of this Act, such action or suit shall be brought within six calendar months next after the fact committed, and not afterwards; and the defendant or defendants in such action or suit, may plead the general issue only, and give this Act, and the special matter in evidence on the trial.

Limitation of actions.