

Laws of His Majesty's Province of Upper Canada, passed in the year 1827. York: Robert Stanton, 1827.

8 George IV – Chapter 1

An Act to confer upon His Majesty certain powers and authorities, necessary to the making, maintaining, and using the Canal intended to be completed under His Majesty's direction, for connecting the waters of Lake Ontario with the River Ottawa, and for other purposes therein mentioned. Passed 17th Feb'y. 1827.

Whereas, His Majesty has been most graciously pleased to direct measures to be immediately taken, under the superintendence of the proper Military Department, for constructing a Canal uniting the waters of Lake Ontario with the River Ottawa, and affording a convenient Navigation for the Transport of Naval and Military Stores; and whereas, such a Canal, when completed, will tend most essentially to the security of this Province, by facilitating measures for its defence, and will also greatly promote its Agricultural and Commercial Interests; and it is therefore expedient to provide by Law any necessary facility towards the prosecution of so desirable a Work.

Be it therefore enacted, by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of, and under the authority of an Act passed in the Parliament of Great Britain, intituled, "*An Act to repeal certain parts of an Act, passed in the Fourteenth Year of His Majesty's Reign, intituled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'*" and by the authority of the same, That the Officer employed by His Majesty to superintend the said Work, shall have full power and authority to explore the Country lying between Lake Ontario or the waters leading therefrom, and the River Ottawa, and to enter into and upon the Lands or Grounds of, or belonging to, any person or persons, bodies politic or corporate, and to Survey and take Levels of the same or any part thereof, and set out and ascertain such parts thereof as he shall think necessary and proper for making the said Canal, Locks, Aqueducts, Tunnels, and all such other Improvements, matters, and conveniences, as he shall think proper and necessary for making, effecting, preserving, improving, completing, and using in the said Navigation; and also, to bore, dig, cut, trench, remove, take, carry away, and lay earth, soil, clay, stone, rubbish, trees, roots of trees, beds of gravel or sand, or any other matter or things which may be dug or got in the making of the said Canal, Locks, Tunnels, Aqueducts, or other Improvements, or out of any Lands or Grounds of any person or persons adjoining or lying contiguous thereto, and which may be necessary for constructing or repairing the said Canal, or other the said Works or Improvements, or which may obstruct the making or maintaining the same; and also, to make, build, erect, and set up, in and upon the said Canal, or upon the Lands adjoining or near to the same, such and so many Bridges, Tunnels, Aqueducts, Sluices, Locks, Wears, Pens for water, Tanks, Reservoirs, Drains, Wharves, Quays, Landing Places, and other Works, Ways, Roads, and Conveniences, as the Officer aforesaid

shall think requisite and convenient for the purposes of the said Navigation; and also, from time to time to alter the route of the said Canal, and to amend, repair, widen, or enlarge the same or any other of the conveniences above mentioned, as well for carrying or conveying Goods, Commodities, Timber, and other things, to and from the said Canal, as for the carrying or conveying of all manner of materials necessary for making, erecting, finishing, altering, repairing, amending, widening, or enlarging the works of, and belonging to, the said Navigation; and also, place, lay, work, and manufacture the said materials on the grounds near to the place or places where the said works or any of them are or shall be intended to be made, erected, repaired, or done, and to build and construct the several Locks, Bridges, Works, and Erections, belonging thereto; and also, 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, passing in, through, along, or upon the said Canal, as the Officer aforesaid 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 matters and things which he 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, doing as little damage as may be in the execution of the several powers to him hereby granted.

II. 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 other purposes and conveniences herein before mentioned, the Officer aforesaid is Hereby empowered to contract, compound, compromise, and agree with all bodies politic, communities, corporations, aggregate or sole, guardians, and all' other person or persons for themselves, or as Trustees, not only for and on behalf of themselves, their Heirs and Successors, but also for and on behalf of those whom they represent, whether infants, lunatics, ideots, femmes covert, or other person or persons who shall occupy, be possessed of, or interested in, any Lands or Grounds which shall be set out, or ascertained as aforesaid, for the absolute surrender to His Majesty, His Heirs and Successors of so much of the said Land as shall be required, or for the damages which he, she, or they may reasonably claim in consequence of the said intended Canal, Locks, Towing Paths, Railways, and other Constructions and Erections, being cut and constructed in and upon his, her, or their respective Lands, and that all such contracts, agreements, and surrenders, shall be valid and effectual in Law, to all intents and purposes whatsoever, any Law, Statute, or Usage, to the contrary notwithstanding.

III. And be it further enacted by the authority aforesaid, That such parts and portions of Land or Lands, covered with Water, as may be so ascertained and set out by the Officer employed by His Majesty as necessary to be occupied for the purposes of the said Canal; and also, such parts and portions as may, upon any alteration or deviation from the line originally

laid out for the said Canal, be ascertained and set out as necessary for the purposes thereof, shall be forever thereafter vested in His Majesty, His Heirs and Successors.

IV. And be it further enacted by the authority aforesaid, That if before the completion of the Canal through the Lands of any person or persons, no voluntary agreement shall have been made as to the amount of compensation to be paid for damages according to this Act, the Officer superintending the said Work shall, at any time after the completion of such portion of the Canal, upon the notice or request, in writing, of the Proprietor of such Lands, or his Agent legally authorized, appoint an Arbitrator, who at a day to be named in such notice, shall attend upon the Premises in question, to meet the Arbitrator to be appointed by such Claimant, and such two Arbitrators shall and may, before proceeding to consider the claim, appoint a third Arbitrator; which three Arbitrators, being first sworn by some one of His Majesty's Justices of the Peace then there present, to give a just and true Award upon the claim submitted to them, shall, upon the statements of the Parties, and view of the Premises, and upon the testimony of Witnesses to be examined upon Oath or Affirmation, if either Party shall require it, (which Oath or Affirmation any one of the said Arbitrators is hereby authorized to Administer), make their Award in writing under their hands, of the amount of damages to be paid to such Claimant.

V. And be it further enacted by the authority aforesaid, That if either the Officer superintending the said Work, or the Party claiming damages as aforesaid, shall decline to abide by any such Award, such refusal shall be declared in writing within ten days after such Award, and damages upon such claim shall be thereafter assessed in manner following, but at the sole expense of the Party refusing to abide by such Award.

VI. And be it further enacted by the authority aforesaid, That in all cases in which Awards shall be made, to which either Party shall refuse to conform as aforesaid, it shall and may be lawful for the Party dissenting from such Award, to serve on the other Party a notice in writing, appointing a day, not less than thirty days from the time of serving such notice, for having the damages for which he is entitled to claim compensation according to this Act, assessed in the manner hereinafter provided; and that the Party giving such notice shall also specify some day therein, which shall be at least ten days before the day appointed for such assessment, and not less than ten days from the time of serving such notice, at which he will attend at the Office of the Sheriff of the District in which the Lands lie, for the purpose of striking a Jury to assess the damages so claimed as aforesaid.

VII. And be it further enacted by the authority aforesaid, That on the day so appointed as last aforesaid, the Parties, their Attornies or Agents, shall attend at the Sheriff's office, and that the Sheriff shall at the hour of one o'clock in the afternoon proceed in the presence of the Parties, or such of them their Attorney or Agent as may be present, to select the names of forty one persons from among those qualified to serve on special juries, and in the manner directed by law for selecting special juries, and that the names of such forty one persons so drawn being fairly written out by such Sheriff, each Party, or his Attorney or Agent attending for that purpose shall alternately strike off one, that Party beginning at

whose instance such jury is struck, until the whole number shall be reduced to seven, and that such seven persons shall be a jury for assessing the damages to be paid to such claimant as aforesaid. Provided always, That in case either Party shall omit to attend personally or by Agent at the time appointed, the Sheriff or his Deputy shall strike in behalf of such person not attending.

VIII. And be it further enacted by the authority aforesaid, That the seven persons so struck to serve as aforesaid shall be summoned by the Sheriff to attend upon the premises in respect to which the damages are claimed as aforesaid, giving not less than ten days notice of such attendance, and that the Sheriff or his Deputy shall also attend at the time so appointed, and shall administer to the five persons who shall first answer upon being called in the order in which they shall stand upon the original list the oath following, that is to say.—“I, A. B. do swear that I will well and truly assess the damages upon the claim of C. D. according to the Act in that behalf,” and thereupon the said jury having viewed the premises and received the testimony upon oath, or affirmation, of such witnesses as shall be brought before them, (which oath or affirmation the said Sheriff or his Deputy is hereby authorized to administer) shall deliver their verdict by the opinion of the majority of such jury, of the amount of damages to be paid to such claimant.

IX. And be it further enacted by the authority aforesaid, That in estimating the claim of any individual to compensation for property taken, or for damage done under the authority of this Act, the Arbitrators or jury assessing such damages shall take into their consideration the benefit likely to accrue to such individual from the construction of the said Canal by its enhancing the value of his property or producing other advantages: Provided always nevertheless, That it shall not be competent to any Arbitrators or Jury to direct any individual claiming as aforesaid to pay a Sum in consideration of such advantages, over and above the amount at which the damages of such individual shall be estimated.

X. And be it further enacted by the authority aforesaid, That the Party desiring such Jury to be summoned, shall pay to the Sheriff for striking and summoning the same, and for attending and taking the verdict, the Sum of Five Pounds, and to each Juryman attending in pursuance of such Summons, the Sum of Fifteen Shillings.

XI. And be it further enacted by the authority aforesaid, That when it shall appear necessary to cut into any Highway, in order to conduct the said Canal through the same, the Officer aforesaid shall, within one month, cause to be constructed a secure, sufficient, and commodious Bridge, for the passing of Carriages, in order to re-establish the communication between the several parts of such Highways.

XII. And be it further enacted by the authority aforesaid, That if any person or persons shall wilfully or maliciously break 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, 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, every such person or persons so offending shall be deemed guilty of a misdemeanor.

XIII. 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 or vessel, or raft, navigating in or upon the said Canal so as by such overloading the same to obstruct the passage 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 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, and if any person shall throw any ballast, gravel, stones or rubbish, into any part of the said Canal or locks, every such person shall, for every such offence forfeit a sum not exceeding Five pounds.

XIX. 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 persons employed by the officer in charge, made for that purpose, remove the same, he shall for every such offence forfeit a penalty of Ten Shillings for every hour such obstruction shall continue, and it shall be lawful for the agents, Toll-gatherers or others employed by the officer in charge, 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 are paid, 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 Toll-gatherers or other persons, employed by His Majesty to cause such boat or vessel to be weighed or drawn up, and to detain and keep the same until payment be made of all expenses necessarily occasioned thereby.

XX. And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for the owners and occupiers of any Lands adjoining to the said Canal, to use any boats thereon for the purpose of husbandry, or 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 officer or person in charge for the time being) without interruption, 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 merchandise to Market or for sale, or for any person or persons for hire, and shall not obstruct or prejudice the navigation of the said Canal or the towing paths thereof.

XXI. And whereas it may hereafter happen from floods or from unexpected accident that wears, 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 that it may be necessary that the same should be immediately repaired or rebuilt to prevent further damages, Be it further enacted by the authority aforesaid, That when and so often as any such case may happen, it shall be lawful for any person or persons employed by His Majesty 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 Canal or branches reservoirs or trenches 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 for the purposes aforesaid without any previous treaty whatsoever with the owner or owners, occupier or occupiers of, or other person or persons interested in such lands, grounds or hereditaments or any of them, doing as little damage thereby as the nature of the case will admit of, and making recompense for such damages to the owner or owners of, or other 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, and means of the digging for, getting, working, taking, carrying away, and using such stones, gravel, and materials or any of them, which damages and the satisfaction and recompence in respect thereof shall be settled, adjusted, ascertained and determined, by the ways and means hereinbefore described, with respect to the other damage done by the making and completing the said navigation.

XXII. And be it further enacted by the authority aforesaid, That the officer employed by His Majesty 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 boats, vessels, or rafts to pass each other, to open or cut 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 the said boats, vessels, and rafts, being 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 shall be publicly notified by the officer in charge of such Canal.

XXIII. 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 refusing so to permit and suffer, shall forfeit and pay the sum of forty shillings, and it shall be lawful for the toll gatherer, or such other person or persons as shall be appointed 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 aforesaid 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 on behalf of His Majesty shall have alone the power of ascertaining such tonnage.

XXIV. And be it further enacted by the authority aforesaid, That all persons whatsoever shall have free liberty to use with Horses, Cattle and Carriages, the roads and ways to be made as aforesaid, (except the towing paths) for the purpose of conveying any goods, wares, merchandize, timber, and commodities, whatsoever, to and from the said Canal, and also to navigate on the said Canal with any boats, barges, vessels or rafts, and to use the said wharves and quays for loading and unloading any goods, wares, merchandize, timber, and commodities, and also to use the said towing paths with horses for drawing and hawling such boats and vessels, upon payment of such rates and dues as shall be established by His Majesty.

XXV. And be it further enacted by the authority aforesaid, That in case of refusal or neglect of payment of any such rates or dues as may be imposed by His Majesty for passing along the said Canal or of any part thereof on demand, to the person or persons appointed to receive the same, such person may in his own name sue for and recover the same in any Court having jurisdiction thereof, or the person or persons to whom the said rates or dues ought to be paid, may and he is and they are hereby authorized and empowered to seize and detain 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.

XXVI. 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 bye-law of the said Officer to be made in pursuance thereof, shall, upon proof of the offences respectively before any two Justices of the Peace for the District in which such offence has been committed, either by confession of the party or parties, or by the oath of one credible witness, 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, 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 such 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 such District, 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.

XXVII. And be it further enacted by the authority aforesaid, That all Penalties imposed by this Act, when levied and satisfied in manner aforesaid, shall be paid to the said Officer, to be by him transmitted to His Majesty's Receiver General of this Province, to be accounted for to His Majesty through the Lords Commissioners of His Majesty's Treasury, in such manner as His Majesty shall be pleased to direct.

XXVIII. And be it further enacted by the authority aforesaid, That all and singular the powers and authorities given by this Act to His Majesty, or to the Officer to be employed by His Majesty in superintending the construction of the said Canal, or to the Officer at any

time hereafter in charge thereof, shall extend so far as may be required for the purposes of this Act, to all and every the persons employed or to be employed in the execution of any matter authorized to be done by this Act.

XXIX. And be it further enacted by the authority aforesaid, That all and every the powers, authorities and privileges by this Act given, relating in any manner to the Canal intended to be made as aforesaid, shall extend and apply to that part of the Navigation to be made or improved, which shall lie along the Lakes or Rivers, as well as to such parts as shall require to be wholly made and excavated through Lands affording now no natural Channel.

XXX. And be it further enacted by the authority aforesaid, That it shall and may be lawful for any Officers or persons employed by His Majesty, in case His Majesty shall desire to improve the Navigation of the Rivers Tay and Goodwood, which empty their waters into the River Rideau, to enter into or upon the Lands or Grounds of, or belonging to, any person or persons on the borders of the said Rivers Tay and Goodwood, in the same manner and for the like purposes, and subject to the same conditions as His Majesty is by this Act authorized to do with respect to the Lands bordering on the River Rideau.

XXXI. 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 there shall be a continuation of damages, then within six Calendar 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 done so, 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.

XXXII. And be it further enacted by the authority aforesaid, That this Act shall be deemed a Public Act, and shall be judicially noticed as such in the several Courts in this Province.