

Laws of His Majesty's Province of Upper Canada, passed in the year 1829. York: Robert Stanton, 1829.

10 George IV – Chapter 15

An Act to Incorporate certain persons for the purpose of making a Turnpike Road in the County of Hatton, under the name of the “Dundas and Waterloo Turnpike Company.” Passed 20th March, 1829.

Whereas the Inhabitants of the Village of Dundas and of the Townships of Waterloo, Woolwich and Dumfries, and those who reside in the Country thereto adjacent within the District of Gore, will be much benefited by the improvement and further opening of the public road now leading from the village of Dundas, in Flamborough West, through the Township of Beverly and Dumfries, commonly called the Swamp Road, by which a safe and easy communication with the Head Waters of the Desjardins Canal, leading into Burlington Bay, may 'be had for carrying the produce of the said Townships and the neighbouring Country to a market: — And whereas, Absalom Shade, Abraham Erb, and others, of the Townships of Waterloo, Dumfries and Beverly, have petitioned to be incorporated for the purpose of making, completing, and maintaining the said road as a Turnpike road: — And whereas the purposes aforesaid cannot be effected without the aid of the Legislature.

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 Absalom Shade, Abraham Erb, and such other persons as may be admitted as their associates in the aforesaid undertaking, their Heirs, Executors, Administrators and Assigns, be and they and hereby constituted to a Corporation by the name of the Dundas and Waterloo Turnpike Company, with a Capital of Twenty-five Thousand Pounds, and shall by that name sue and be sued, and have a common Seal, and shall enjoy all the privileges and powers incident to a Corporation for the sole purpose of improving, opening, making and keeping in repair, a Turnpike road from the extremity of the village of Dundas to the Western extremity of Waterloo, following the present established and travelled road through what it commonly called the Swamp Road.

II. And be it further enacted by the authority aforesaid, That so soon as the said Road shall be Turnpiked, made fit and proper for the passage of Travellers, Cattle and Carriages, a regular plan thereof shall be made by a sworn Surveyor, at the expense of the said Corporation, and by the said Surveyor certified on oath to be correct, and shall be Registered in the Office of the Clerk of the Peace for the said District of Gore; and it shall thereupon be lawful for the said Corporation to erect Gates on the said Road. — Provided the same, be not at a less average distance than Nine Miles apart. — And the said Corporation shall be, and are hereby entitled to receive at each of

such Gates, as tolls, the following sums for the proper use of the said Corporation, that is to say, for every sixteen miles of Turnpike Road so made as aforesaid, the following fees:

For one pair of Horses and Waggon, — one shilling and ten pence halfpenny.

For every additional pair of Horses, — one shilling and three pence.

For one pair of Oxen and Waggon, or Cart, — one shilling and six pence.

Every additional pair of Oxen, — one shilling.

For one pair of Horses and Carriage on Steel or Iron Springs, — three shillings and nine pence.

For every additional pair of Horses, — one: shilling and three pence.

For one pair of Horses, or Oxen, and Sleigh, — one shilling.

For one Horse and Sleigh, — seven pence half-penny.

For one Horse and Waggon or Carriage, — one shilling and three pence.

For one Horse and Rider, — seven pence half-penny.

For any Waggon conveying exhibitions or carravans of any description, — double in proportion to tho aforesaid rates.

For every Horse, Ox, Bull or Cow, — three pence.

For Cattle under two years old, Sheep or Swine, — three half-pence.

III. And be it further enacted by the authority aforesaid, That the said Corporation may, if they see proper, commute the Toll with any person or persons by taking of him or them a certain sum monthly or annually in lieu of such Tolls. And the said Corporation at all such places where the said Tolls shall be collected shall affix, or cause to be affixed, in some conspicuous place at or near each Toll Gate a Table of the Rates of Toll, plainly and legibly printed.

IV. And be it further enacted by the authority aforesaid, That the whole of the said road shall be thirty feet wide; and the cuts in each side to be of sufficient depth to draw off the water; and no hill to be of a greater ascent than Sixteen Inches to the Rod; and any or all bridges so to be erected shall be made fit and proper for the passage of travellers, horses, cattle and carriages, and so wide as to permit teams and carriages freely and conveniently to pass each other over and above the room necessary on each side for foot passengers.

V. And whereas, The present Road passes for a great part through the lands of absentees whereon Pines of great length and magnitude, particularly in the Swamp, exclude the rays of the Sun, — Be it therefore enacted by the authority aforesaid, That it shall be lawful for the said Corporation whenever such may be the case to cause the trees to be felled or slashed, to the distance of one chain on each side of the road.

VI. And be it further enacted by the authority aforesaid, That if any person or persons shall, after proceeding upon the said Road with any of the articles liable to toll, turn out of the same into may other Road, or being on any other road, shall enter the said Road beyond a Turnpike Gate, whereby such payment shall be avoided, or shall take off or cause to be taken off, any Horse or other best of draught from any Carriage liable to toll, at or before the same shall come to any Turnpike Gate erected by virtue of this Act, with an intent to avoid paying any toll or rate hereby imposed, or shall put or leave in any house or place, any Horse or beast of draught, or any Carriage

liable to Toll, with such intent as aforesaid, every person so offending shall, for every such offence, forfeit and pay to the said Corporation, or to their Treasurer or Collector, a sum not exceeding ten shillings, Currency; — Provided air ways, That any person or persons in any of the cases aforesaid, who shall proceed up further upon the Road than the extent of three miles, shall not be adjudged liable to toll unless he, she, or they shall pass a Turnpike Gate.

VII. And be it further enacted by the authority aforesaid, That the Corporation, at a General Meeting assembled, may make Tickets or Checks, under such regulations as they may see fit, for prevention of fraud, or abuses, in the said tolls, or rates, or compositions, as herein-before mentioned; and the Collector, and every person receiving, such a Ticket or Check, who shall give, lend, or dispose of the same to any person, or for any purposes not authorised by the Corporation in their said regulations; and every person who shall wrongfully and knowingly receive, borrow, purchase, or use the same; and every person who by any false pretext shall obtain an exemption from any toll to which he or she is liable, being thereof convicted, shall for each offence, respectively, forfeit and pay a sum not exceeding twenty shillings Currency.

VIII. And be it further enacted by the authority aforesaid, That no person shall leave any Waggon, Cart, or other Carriage, nor shall lay, or cause to be laid, or left, any matter or thing creating, an obstruction of any kind, or nuisance upon the said Road, or the ditches, or drains thereof. And every person so offending, shall, for every such offence, forfeit and pay a sum not exceeding, ten shillings.

IX. And be it further enacted by the authority aforesaid, That if any person or persons, occupying enclosed Lands near to any Turnpike or Gate which shall be erected in pursuance of this Act, shall knowingly permit or suffer any person or persons to pass through such Lands, or through any Gate, passage, or way thereon, with any Carriage, or with any Horse, Mare, Gelding, or other animal liable to the payment of the toll, whereby such payment; shall be avoided v every person so offending, and also the persons riding or driving the animal or Carriage whereon such payment is avoided, being thereof convicted, shall, for every such offence, severally forfeit and pay to the Corporation, their Treasurer or Collector, any sum not exceeding, ten shillings, Currency.

X. Provided always, and be it enacted by the authority aforesaid, That no person, with his Horse or Carriage going, to or returning from Public Worship, nor if attending or returning, from the funeral of any person who shall die within the same Township, nor if going from one part to another part of the same Farm occupied by the same person, be chargeable with any rate of toll whatever.

XI. And be it further enacted by the authority aforesaid, That if the said Collectors or Toll-gatherers, or any other person in their employment, shall unreasonably hinder or delay any passenger at either of the Gates aforesaid, or shall demand or receive more Toll than is by law allowed, the said Corporation shall forfeit and pay a sum not exceeding five pounds, current money of this Province, besides the reimbursement of what they shall have taken above the said Toll; and the said Corporation shall be liable to pay all damages which may happen t6 any person, and which may arise from neglect or want of repair, on the same Road, after the same has been

made, completed, and certified as aforesaid. And it shall be lawful for any person or persons having paid Toll thereon, to prosecute the Corporation in His Majesty's Court of Ring's Bench of this Province, and upon the finding of a Jury, that the said Road, or any part thereof is not in proper repair, the said Corporation may and shall be obliged to have the same amended and repaired in a proper manner, within the space to be limited by the Court, who shall adjudge full costs and expences of suit to the Prosecutor or Prosecutors, against such Corporation, who shall pay the same at their own private cost — but if such Prosecution shall upon trial, be found to be vexatious and groundless, the Prosecutor or Prosecutors shall be liable to costs to be taxed.

XII. And be it further enacted by the authority aforesaid, That if any person or persons shall cut, break down, or otherwise destroy any of the Turnpike Gates, or any Toll-house to be erected by virtue of this Act, every person so offending, and being lawfully convicted, shall be deemed guilty of a misdemeanor and punished by fine and imprisonment, and if any person or persons shall remove any earth, stone, or timber on the said road to the damage of the same, or shall forcibly pass or attempt to pass by force any of the said Gates, without first having paid the legal Toll at such Gate, such person or persons shall pay all damages sustained by the said Corporation, and shall forfeit and pay a fine, not exceeding two pounds, nor less than ten shillings Currency, to be recovered before two Magistrates holding a Court of Requests within the District of Gore.

XIII. And be it further enacted by the authority aforesaid, That the said Corporation be, and they are hereby enabled, to purchase, receive, and hold Lands sufficient for the accommodation of their respective. Toll-gatherers, and the same to transfer in such manner as by their Bye-laws they may direct.

XIV. And be it further enacted by the authority aforesaid, That there shall be a meeting of the said Corporation, holden at some convenient place in the Village of Dundas, or Township of Dumfries, or Waterloo, as the majority of the Petitioners, and Subscribers shall agree, within the space or three calendar months from the day of the commencement of this Act, as hereinafter directed, of which one months notice shall be given in four or more of the most public places in the District, for the choosing of a Clerk, and such other Officers as may be deemed necessary by the said Corporation, and they may at that, or any future meeting, make, repeal and alter, such Bye-laws, Rules and Regulations, not repugnant to Law, as they may deem necessary for carrying into effect this Act, and to regulate the interests of said Corporation.

XV. And be it further enacted by the authority, aforesaid, That when any Stockholder shall neglect or refuse to pay any Instalment duly required by the said Corporation, in the manner by their Bye-laws directed, to the Treasurer, for the space of ninety days after the time for the payment thereof, the Treasurer is hereby authorized to Sell at Public Auction the Share or Shares of such delinquent, under such regulations as the said Corporation, by their Bye-laws, may direct, and the purchaser Coproducing a Certificate of such Sale from the Treasurer to the Clerk of the said Corporation, in the name of such purchaser, with the number of the Share or Shares so sold, and the same being recorded by the Clerk, at the expense of such purchaser, the said purchaser shall thereupon be deemed to all intents and purposes the proprietor thereof.

XVI. And be it further enacted by the authority aforesaid, That it shall and may be lawful, to and for each and every of the members of the said Corporation, for the time being, his and her Executors, Administrators and Assigns, to give, sell, alien, assign, devise, or dispose of his, her, or their respective share or shares, and interest in the said Corporation, to any person or persons; and the said person or persons, and their respective assigns, shall be members of the said Corporation, and shall be entitled to all and every of the rights and privileges thereof, and to the profits and advantages thereupon arising.

XVII. Provided always, and be it further enacted by the authority aforesaid, That nothing in this Act contained, shall be construed to extend to deprive the public, or any individual, of the opening any front or bye road, according to the laws of the Province, across the said Turnpike Road; to be made by virtue of this Act — nor to deprive the public, or any individual, of making any other road conformable to the laws of this Province.

XVIII. And be it further enacted by this authority aforesaid, That the said Toll Houses and conveniences, and the said Tolls, shall be, and the same are hereby, vested in the said Corporation forever, Provided always, that after the completion of Turnpiking and establishing the said Road, as fit and proper for travelling, agreeable to this Act, it shall and may be lawful for His Majesty, His Heirs and Successors, in any Act of the Legislature of this Province, assented to by His Majesty, His Heirs and Successors, to assume the possession and property of the said Road, Bridges, Toll Houses, Turnpikes and conveniences, and dissolve the said Corporation, upon paying to the said Corporation the full and entire value which the same may, at the time of such assumption, be worth, and six per cent, over and above the valuation; and thereupon the said Tolls shall from the time of such assumption, appertain and belong to His Majesty, His Heirs and Successors, and the Governor, Lieutenant Governor, or person administering the Government, shall account from time to time to the Legislature of this Province, for all Tolls and duties arising therefrom.

XIX. And be it further enacted by the authority aforesaid, That to entitle the said Corporation to the benefits and advantages of this Act, granted to the said Corporation, they shall, and are hereby required, within the period of three years from the passing of this Act, to Turnpike sixteen miles of the said Swamp Road, from the East line of Beverly to Andrew Groff's, near or at the line of Waterloo — and such part or parts of said Road, hereinbefore mentioned, West of Andrew Groff's, as shall not have been Turnpiked, within the space of five years after the passing of this Act, shall be considered to have been forfeited by the said Company, and the said Corporation shall cease to have any right, title, or claim to the said forfeited part of the said Road.

XX. And be it further enacted by the authority aforesaid, That the penalties hereby inflicted (where otherwise not particularly directed by this Act,) shall, on proof of the offences respectively, before any two or more of the Justices of the Peace for the District of Gore, either by confession of the offender, or by the oath of one or more credible witness or witnesses, (other than the prosecutor) which oath such Justices are hereby empowered and required to administer, be levied, together with the costs of prosecution, by distress and sale of the goods and chattels of such offender, by warrant, signed by such Justices, and the overplus, after such penalties, and the costs of such prosecution, and charges of such distress and sale are deducted, shall be delivered,

on demand, to the owner of such goods and chattels; and for want of such sufficient distress, the offender shall be sent by such Justices to the Gaol of the District, for any time not exceeding one month, nor less than four days as such Justices shall think most proper, One moiety of which penalties respectively, when paid and levied, shall belong to the person suing for the same, and the other moiety to His Majesty, to be paid into the hands of the Receiver General of this Province, and the same shall be accounted for to His Majesty, His Heirs and Successors, through the Lords Commissioners of His Treasury, in such manner and form as His Majesty, His Heirs and Successors shall be pleased to direct, and at the disposal of the Legislature of this Province.

XXI. And whereas, in undertakings of great expense, when the returns are uncertain, it is reasonable and proper to encourage the prosecution of the same, by securing to the persons concerned therein, their successors and assigns, the possibility of a considerable eventual benefit. Be it therefore enacted by the authority aforesaid, That the clear profits to be received from the said Turnpike Road, shall not, from and after seven years from the time this Act shall have operation, exceed twelve pounds per centum, per annum, upon the Capital Stock as hereinbefore mentioned, unless it shall be found at the said period of seven years, that the said Corporation or Society, successors or assigns, have not divided a clear profit of twelve pounds per centum, per annum, on the said capital stock, in which case the Tolls shall be continued and be collected, by and for the use of the said Corporation or Society, their Successors and Assigns, at the rates allowed by this Act, until such clear profit shall be divided as above send, and from and after the said term of seven years from the time this Act shall have operation, but after the time that the said rates of profits shall have been made up, if more than such rates of profits shall have been so divided upon the said capital, then the aforesaid tolls shall be reduced in manner following, that is to say: – if on making up and balancing of the year immediately proceeding such time, (comprehending therein all receipts of Tolls and all disbursements for repairs and expences of management,) it shall appear that the balance or clear profits of the said Road within such year, shall have exceeded the said rate of twelve pounds per centum, on the said capital, then and in such case, the Tolls to be taken during the course of one entire year, after the first day of January then next following, shall be lower than the respective Tolls hereinbefore established, in the proportion of one twelfth part as nearly as may be to avoid fractional parts of a halfpenny, for every twenty shillings per centum, which such clear profits shall have exceeded the rate thereof by this Act allowed to be divided; and from time to time thereafter the Corporation shall in their January term, fix and ascertain by the same rate and standard, an augmentation or reduction of such Tolls to be taken during the course of one entire year, after the first day of February following, in proportion as the Tolls during the course of twelve months immediately proceeding shall appear by the accounts of such twelve months made up and balanced, to have exceeded or fallen short of the said clear profit of twelve pounds per centum — but in no case shall the tolls so augmented exceed the rates of Toll authorised to be taken by this Act — and the said Corporation or Society, their Successors and Assigns, shall not demand or take, or be entitled to receive after the time aforesaid, any greater or higher rates of Toll than in the said reduced or augmented proportions is fixed by the Corporation aforesaid, any thing in this Act contained to the contrary notwithstanding.

XXII. And in order to ascertain from time to time the clear profits arising from the said Road. — Be it further enacted by the authority aforesaid, That so soon as the road shall be made and completed, a true and exact account shall be made out of all monies which shall have been expended in making and completing said Road; as also the Toll-Houses and Turnpike Gates and land thereunto belonging; and of all expenses of management which to that time shall have been incurred on account of the same, and in which account shall be charged interest on such monies respectively, from the time of payment thereof to the time of so making up the account, at the rate of six per centum per annum — which accounts so made out shall be dated and there certified by at least three of the proprietors, who shall have been appointed by the Corporation to direct or superintend the making of the Road; and also by their Clerk, who respectively shall make oath before one of His Majesty's Justices of the Peace for the District of Gore, that such an account is faithfully extracted from, the Books of the Corporation, and to the best of their belief is just and true, which oath the said Justice, as well as in the cases aftermentioned, is hereby authorized and required to administer to each of them — and such accounts when so made out, certified and sworn to, shall respectively be deposited and recorded amongst the Records of the Quarter Sessions for the District of Gore, and the amount thereof shall be considered as the capital stock of the said Corporation, and on which, the profits allowed to the same, are to be estimated as hereinbefore mentioned; and there shall afterwards, at the end of every year after the completion of the said Road, be made out a true and exact account of the monies expended in repairing the same, and the Toll Houses and Gates with the charges of management; and also, a true and exact account of all the monies collected or received from the said Tolls by virtue of this Act, which annual account shall be dated, certified, sworn to, and deposited as above — and if such account shall not be made out, dated, certified, sworn to, and deposited as above said, the said Corporation shall forfeit and pay the sum of one hundred pounds, for every month the same shall be refused or neglected, after being thereunto required by any of His Majesty's subjects, to be recovered by action of debt in any Court competent to decide thereon, and paid to the person who shall sue for the same — and if any person sworn as aforesaid, shall wilfully or corruptly swear falsely, every such person being thereof duly convicted, shall suffer the punishment inflicted by law for perjury.

XXIII. And be it enacted by the authority aforesaid, That no suit or action shall be commenced or brought against any person offending against this Act, unless the same shall be commenced or brought within three Calendar months next after the offence committed, and not afterwards.

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