

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

10 George IV – Chapter 9

An Act to render effectual certain Securities to be given by the Welland Canal Company, for a Loan advanced by His Majesty's Government, and for other purposes relating to the said Canal: and also, for authorizing the making a lateral Cut from the Welland Canal, through the Town of Niagara to the mouth of the River Niagara, by a Company incorporated for that purpose. Passed 20th March, 1829.

Whereas the President and Directors of the Welland Canal Company, have by their Petition set forth that certain alterations are expedient in the Charter of the said Company, which it appears proper to provide for: And whereas, under and by virtue of an Act made and passed by the Parliament of the United Kingdom of Great Britain and Ireland, in the Ninth Year of the Reign of His present Majesty, entitled: "*An Act to authorise the advance of a certain sum out of the consolidated Fund, for the completion of the Welland Canal Navigation in Upper Canada;*" the Lords Commissioners of His Majesty's Treasury, have lent and advanced to the Welland Company the sum of fifty thousand pounds sterling, money of Great Britain, to be applied by the President and Directors of the said Company, towards defraying the expences of completing the said Canal, upon the condition, however, required by the said act, that the re-payment of the monies so advanced, with interest at four per centum per annum, within the term of ten years from the passing of the said last recited act, should be secured by an assignment of the Tolls and Profits of the said Canal, to such persons in such manner, and under such conditions and regulations as the said Commissioners of the Treasury should order and direct. And whereas it may be doubted whether the President and Directors of the said Welland Canal Company can, without Legislative authority, pledge the said Canal and the Tolls and Profits thereof, in fulfilment of the assignment for that purpose made by them with the Lords Commissioners of His Majesty's Treasury, through the agency of William Hamilton Merritt, Esquire, agent for the said Company; and it is just and expedient to remove all such doubts, and to enable the said Company to afford the required security to His Majesty's Government: 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 it shall and may be lawful for the said Welland Canal Company, by any Instrument or Instruments, in writing under the Seal of the said Company well and effectually to convey, transfer and assign, the said Welland Canal, and the Tolls and profits thereof; and all and singular, the funds, property and effects of the said Company, unto such person or persons as the said Commissioners of His Majesty's Treasury, or the Governor or Lieutenant Governor, for the time being, of the Province of Upper Canada, by the direction of the said Commissioners have directed, or shall hereafter direct; and to his or their Heirs, Executors, Administrators and Assigns, upon such conditions for

redemption thereof, and upon such terms, and with such provisions and conditions as have been heretofore agreed upon by the Lords Commissioners of His Majesty's Treasury, with the said Company, or their Agent, and upon such other terms and conditions as the said Company shall agree to and think reasonable, for the effectually securing the repayment of the said fifty thousand pounds, and interest as aforesaid, to the satisfaction of the Lords Commissioners of His Majesty's Treasury: Provided always nevertheless, that no Mortgage, or other security, which shall be given by the said Company, under the authority of this Act, shall have the effect of defeating, or in any manner prejudicing, any security or securities by them given, for monies advanced to them, before the eighteenth day of August, in the year of our Lord one thousand eight hundred and twenty-eight, being the date of the agreement entered into between the Lords Commissioners of His Majesty's Treasury, and the Agent of the said Company.

II. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the President and Directors of the said Company, to contract either with His Majesty's Government or with any Public Company or Body, either Politic or Corporate; or with any private Individual, for the loan of any sum or sums of money, to be laid out in the completion of the said Canal, and for securing the repayment thereof, to cause to be executed one or more bond; or bonds, or other Instrument or Instruments, in writing, in the name of the Welland Canal Company, and Sealed with the Seal of the said Company, and signed by the President or Vice-President, and Secretary.

III. And be it further enacted by the authority aforesaid, That all such bonds or other securities so to be given, as aforesaid, shall be made payable to the person lending the money therein mentioned, or bearer, and shall be transferable by delivery.

IV. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the said Company hereafter to increase the dimensions of the Feeder they are now constructing from the Grand River to the Deep Cut, to the ordinary size of the Canal, for the purposes of Ship Navigation, if they shall deem it expedient.

V. And be it further enacted by the authority aforesaid, That it shall and may be lawful for any person or persons, whose Lands shall be taken for, or injured by the said Company, or whose Mills shall be injured by the stoppage of water, to nominate one Arbitrator, and for the Company to name another, which two shall name a third, to determine upon their oaths the amount to be paid for the Land, or the damages done thereto, which award the Directors are hereby required to pay at the time specified therein.

VI. And be it further enacted by the authority aforesaid, That in case the Welland Canal Company shall not agree with the owner or occupiers of the Land through which the feeder is now laid out, on either bank of the Welland River, between Mill Creek, above Leonard Misner's and the Deep Cut, on or before the first day of June next, upon the price to be paid to such owner or occupiers for the absolute purchase of so much of the said Land as the said Company may require, for the purposes of the said Canal, or any damages they may claim from the said Company, according to the provisions of the Charter, it shall and may be lawful for Smith Griffin, of Grimsby, Esquire; William D. Milley, of Niagara, Merchant, and Moses Brady, of Pelham, Farmer, and they are

hereby required to assemble at Mr. Berger's, Inn-keeper on the Welland River, at such time as they may appoint, during the month of June next, and to determine what price or sum of money the said Company shall and ought to pay to each individual for the Land taken and set apart for the purposes of the said Company, or any damages as aforesaid.

VII. And be it further enacted by the authority aforesaid, That the paid Arbitrators shall be sworn before some one of His Majesty's Justices of the Peace, well and truly to award and determine between the parties what price and damages shall and ought to be paid to each owner or occupier of the Land so taken as aforesaid, according to the best of their judgment; and that the witnesses to be examined before the said Arbitrators, shall be sworn by the said Smith Griffin, before their evidence is received.

VIII. And be it further enacted by the authority aforesaid, That the monies awarded to be paid under this Act, shall be paid by the aforesaid Company to the persons legally authorised to receive the same, within two months from the time of the award being made: And whereas, Alexander Stewart, John Claus, Thomas Butler, John Crooks, Jared Stocking, William Clark, John Barker, and others, Inhabitants of the Town of Niagara, are desirous of cutting a lateral branch of the said Welland Canal from the bottom of the Mountain Ridge to the said Town of Niagara, and to be Incorporated for that purpose: Be it therefore further enacted by the authority aforesaid, that the said Alexander Stewart, John Claus, Thomas Butler, John Crooks, Jared Stocking, William Clark, and John Barker, or either of them, together with all such persons as shall become Stockholders of the Company, hereinafter mentioned, shall be and are hereby ordained, constituted and declared, to be a body Corporate and Politic, in fact, and by the name of "The Niagara Canal Company and by that 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 and places whatsoever; in all manner of actions, suits, 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 name of "The Niagara Canal Company," shall be in Law capable of purchasing, having and holding, to them and their successors, any Estate, real, personal and mixed, to and for the use of the said Company, and of letting, conveying and otherwise departing therewith, for the benefit and on account of the said Company, from time to time, as they shall deem necessary and expedient.

IX. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the said Niagara Canal Company, their Engineers, Agents and Servants, to explore the country lying between the Welland Canal, below the Mountain Ridge, in the Township of Grantham, and the Town of Niagara; and to lay out the route, and to excavate, finish and complete a Branch Canal, for Boat Navigation only, from any part of the Welland Canal, below the Mountain, to the Town of Niagara, and thence into the Niagara River; — and for that purpose to raise by subscription within the said Town, or elsewhere, a sum not exceeding twenty-five thousand pounds, in Shares of twelve pounds ten shillings each.

X. And be it further enacted by the authority aforesaid, That the affairs of the said Niagara Canal Company shall be managed by three Directors, one of whom shall be President, who shall be elected annually, on the first Monday in May, in each year, and shall have all the powers, authorities and privileges used and exercised, enjoyed or belonging now by virtue of the Charter, to the Welland Canal Company, in so far as the same are applicable to the making and completing the said Branch Canal, and keeping the same in repair; and also as to the regulations and Bye Laws incidental to the good government of a chartered Company.

XI. And be it further enacted by the authority aforesaid, That as soon as the said Niagara Canal Company shall have acquired by subscription a sufficient quantity of Stock to complete the said Branch Canal, it shall and may be lawful for the said Welland Canal Company, on the one part, and the said Niagara Canal Company on the other part, to nominate four Arbitrators who shall be neither directly nor indirectly interested, two on each side, who shall nominate and appoint a fifth person equally disinterested, to be associated with them, which persons, or a majority of them, shall award and determine what compensation the Niagara Canal Company shall pay to the Welland Canal Company, and in what manner, and when, for the water to be withdrawn or taken from the Wellan Canal Company by the proposed lateral Branch Canal.

XII. And be it further enacted by the authority aforesaid, That if the Welland Canal Company shall, within six months after the umpirage or award of the said Arbitrators so chosen, as aforesaid, refuse to accept the sum, recompense or profit so to be awarded, as aforesaid, then the Stock so subscribed to the Niagara Canal Company shall thenceforth form part of and be merged in the Stock of the Welland Canal Company. And the said Welland Canal Company shall thenceforth be entitled to the Stock, and be authorized to construct the said lateral Branch Canal, and shall thereafter be deemed and taken to be part of the Welland Canal; and the Stockholders in the Niagara Canal Company shall thenceforth become Stockholders in the Welland Canal Company, according to their respective subscriptions. — And the Niagara Canal Company shall from that time cease and determine.

XIII. Provided always, and be it further enacted by the authority aforesaid, That the Welland Canal Company, after assuming the said Stock, shall, on payment of twenty-five per cent, on the estimated expense of cutting the Lateral Branch Canal by the said Stockholders in the Niagara Canal Company, immediately commence the said Lateral Branch Canal, and finish the same within two years, upon a sufficient sum being paid in by the said Niagara Canal Company Stockholders for that purpose. And also, that nothing in this Act contained, or any other Act of this Province, shall prevent the Stockholders in the Welland Canal Company, upon assuming the Lateral Branch Stock, as aforesaid, to make the Lateral Branch Canal, as aforesaid, adequate for Ship Navigation, without calling on the Subscribers to the Lateral Branch for increase of Stock for that or any other purpose whatsoever.

XIV. And be it further enacted by the authority aforesaid, That the said Niagara Canal Company, to entitle themselves to the benefits and advantages to them granted by this Act, shall, and they are hereby required to pay into the Bank of Upper Canada, on account of the said Welland Canal Company, the aforesaid sum of twenty-five per cent, on the amount of the said award; and the

said estimate for making the said Canal, within five years from the completion of the Welland Canal, between Lakes Erie and Ontario, by way of the mouth of the Chippewa River.

XV. And be it further enacted by the authority aforesaid, That the said Directors of the said Niagara Canal Company shall be, and they are hereby authorized, to contract, compromise and agree with the owner and occupiers of any Land through or upon which the route or line of the said Lateral Branch may be determined to be cut, for the purposes of the said Lateral Branch Canal, either for the absolute purchase of so much Land as shall be required for the said Company, or for the damages he, she or they shall and may be entitled to receive from the said Company, in consequence of cutting the said Lateral Canal, and in case of any disagreement between the said owners or occupiers, aforesaid — then the said owners or occupiers, and the said Directors, shall decide the same by arbitration, in the same manner, and following the same provisions, and according to the terms contained in the Act of this Province, passed in the Fourth year of the Reign of King George the Fourth, entitled, "*An Act to Incorporate certain persons therein mentioned, under the style and title of the Welland Canal Company.*" And further, that the said Arbitrators so to be appointed, according to the said Act, shall be paid and indemnified by the said Directors within one month after the sitting of the said Arbitrators.

XVI. And be it further enacted by the authority aforesaid, That at the annual Election of Directors, five Directors only shall be elected by the Stockholders, and so long as any Stock shall be held in behalf of this Province by the Government, two other Directors shall be named by the House of Assembly at every Session; and that from the time of the next Election of Directors to the end of the next Session of Parliament, Robert Dickson, Esquire, and John J. Lefferty, Esquire, be Directors of the said Company.

XVII. And be it further enacted by the authority aforesaid, That the President and Directors of the said Company shall, and they are hereby required, every year, to lay before the Legislature accounts in detail of their receipts and expenditure.