

Laws of His Majesty's Province of Upper Canada, passed in the year 1835. Toronto: Robert Stanton, 1835.

5 William IV – Chapter 19

An Act to Incorporate certain persons therein mentioned, under the Name and Style of the Erie and Ontario Rail Road Company. Passed 16th April, 1835.

Whereas Thomas Clark, Humphrey J. Tench, David Thornburn, John Hamilton, Malcolm Laing, Samuel Street, James Gordon, Alexander Hamilton, James Cummings, Robert Grant and others, of the District of Niagara, have, by Petition, prayed to be Incorporated as a Joint Stock Company for the purpose of constructing a double or single Iron or Wooden Rail Road or Way, commencing at the River Welland, at any point, and extending to the Niagara River, at or below Queenston, with the privilege of extending the same to Lake Erie or Ontario, or both, at any future period: And whereas it is expedient to Incorporate the said Petitioners, for the purposes herein before mentioned: 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 Thomas Clarke, Humphrey J. Tench, David Thornburn, John Hamilton, Malcolm Laing, Samuel Street, James Gordon, Alexander Hamilton, James Cummings, Robert Grant, 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 and style of the Erie and Ontario Rail Road 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 concerns whatsoever; and they and their successors may and shall have a Common Seal, and may alter the same at their will and pleasure; and also, that they and their successors by the same name of the Erie and Ontario Rail Road Company, shall be by 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 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: Provided always, nevertheless, that the Real Estate to be held by the said Company, shall be only such as shall be required to be held by them for the purpose of making, using and preserving the said Rail Road, and for objects immediately connected therewith.

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, at their own costs and charges, on and over any part of the Country, lying between the River Welland and the Niagara River, at or below Queenston; and to take, carry and transport thereon, Passengers, Goods and Property, either in Carriages used and propelled 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; and that the said Company shall in like manner and for the like purposes, have power to make and use a double or single Rail Road or Way of Iron or Wood, to lead from the River Welland to Lake Erie, or to the Niagara River below Lake Erie, and also to continue their Rail Road or Way from Queenston to Lake Ontario, if they shall undertake and contract for the making of the said last mention Rail Road before any other Company shall be Chartered by the Legislature for that purpose.

III. And be it further enacted by the authority aforesaid, That the Company 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 Rail Road, 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 Rail 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 said Company 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 the majority of whom shall be final; and the said Arbitrators shall be, and are hereby required to attend at some convenient place in the vicinity of the said intended Rail Road, to be appointed by the said Company, after eight days notice given them for that purpose 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 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 a reference may be again made to Arbitration as herein before provided.

IV. And be it further enacted by the authority aforesaid, That whatever sum of money may be finally awarded to any person or persons for compensation for property required to be occupied, or for damages occasioned by the interference of the said Company with his or

their property, rights or privileges, shall be paid within three months from the time of the same being awarded, and in case the said 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 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.

V. And be it further enacted by the authority aforesaid, That the said Erie and Ontario Rail Road Company shall have full power and authority to explore the Country lying between the River Welland in the District of Niagara, and Lake Ontario, and between the said River Welland and Lake Erie, and to designate and establish, and for the said Company to take, appropriate, have and hold, to and for the use of them and their successors, the line and boundaries of a double or single Rail Road, with their necessary Rail-ways and Side-walks, the one to connect the River Welland with Lake Ontario, and the other to connect the River Welland with Lake Erie, on or near the route laid down in the plan surveyed by Mr. Jarvis, Civil Engineer, and accompanying his Report; 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 or belonging to the King's Majesty, His Heirs or Successors, or to any other person or persons, 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 they shall think necessary and proper for making the said double or single Rail Road, and all such matters and conveniencies as they shall think proper and necessary for making, effecting, preserving, improving, completing and using, on the said intended Rail Road; and also to make, build, erect, and set up in and upon the route of the said Rail Road, or upon the lands adjoining or near the same, all such works, ways, roads and conveniencies, as the said Company shall think requisite and convenient for the purposes of the said Rail Road; and also from time to time to alter, repair, amend, widen or enlarge the same, or any other of the conveniencies above mentioned, as well for carrying or conveying goods, commodities, timber and other things, to and from the said Rail 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 Rail Road; 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 works and erections belonging thereto; and also to make, maintain, repair and alter, any fences or passages under or through the said Rail Road, or which shall communicate therewith; and to construct, erect and keep in repair, any piers, arches or other works, in and upon and across any rivers or brooks for making, using, maintaining and repairing, the said Rail Road and 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, completing and using, the said Rail 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 owner or occupier of such lands, tenements or hereditaments.

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 charges to be received for transportation of property or persons on the single or double Rail Road or Way aforesaid hereby authorised to be constructed, erected, built, made and used.

VII. And be it further enacted by the authority aforesaid, That the said double or single Rail-Road or Way, 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 or Merchandize, or Passengers, as hereinbefore mentioned, shall be and the same are hereby vested in the said Company and their successors, for ever.

VIII. And be it further enacted by the authority aforesaid, That so soon as the said double or single Iron or Wooden Rail-Road or Way 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 double or single Iron or Wooden Rail Road or Way, 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 carriage, 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.

IX. And be it further enacted by the authority aforesaid, That whenever it shall be necessary for the construction of their single or double Rail-Road or Way to intersect or cross any stream of water or watercourse, or any road or highway lying on the route of the said Rail-way, between Lakes Erie and Ontario as aforesaid, it shall be lawful for the Corporation to construct their single or double Rail Road or Way across or upon the same; Provided that the Corporation shall restore the stream or water courses, or road or highway thus intersected to its former state, or in a sufficient manner not to impair its usefulness, and shall moreover erect and maintain during the continuation of this Corporation sufficient fences upon the line of the route of their single or double Rail Road or Way.

X. And be it further enacted by the authority aforesaid, That if any person or persons shall wilfully do, or cause to be done, any act or acts 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 or persons so offending shall forfeit and pay to the said Corporation double the amount of damages sustained by means of such offence or injury, to be recovered in the name of the said Corporation, with Costs of Suit, by action of debt to be brought in any Court of record in this Province.

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 office 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 June in every year, at Stamford, 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 any Newspaper or Newspapers that may be published in the said District of Niagara, 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 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 such Election that two or more have an equal number of votes, in such manner that a greater number of persons than seven shall, by a 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, 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 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.

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 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 over ten.

XIII. 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 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.

XIV. 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 duty of the Officers, Clerks and Servants, and all such other matters as appertain to the business of the said Corporation; and shall also have power to appoint as many Officers,

Clerks and Servants, for the carrying on the said business, with such salaries and allowances as to them shall seem fit.

XV. And be it further enacted by the authority aforesaid, That on the fourth Monday after the passing of this Act, a meeting of the Stockholders shall be held at Stamford, who in the same manner as herein before provided shall proceed to elect seven persons to be Directors, who shall elect by ballot one of their number to be their President, and shall continue in such office until the first 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 the annual Election: Provided always, that if Shares to the amount of ten thousand Pounds of the Capital Stock of the said Company shall not be taken, then the said meeting shall not be held until the amount of Stock shall have been taken up, and at least thirty days notice thereof given in any paper or papers published in the said District of Niagara.

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 said Company may have or hold by virtue of this Act, shall not exceed in value Seventy-five Thousand Pounds, with a privilege to the said Company of extending the amount of such Capital to the sum of One Hundred and Fifty Thousand Pounds, in the event of the extention of the Works as aforesaid to Lakes Erie and Ontario, and that such Capital or Stock of Seventy-five Thousand Pounds, or One Hundred and Fifty Thousand Pounds (if increased) be held in Six Thousand, or Twelve Thousand Shares, of Twelve Pounds and Ten Shillings each, and that the Shares of the Capital Stock may, after the first Instalment thereon shall have been paid, be transferred by the respective persons subscribing and holding the same, to any 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: Provided always, that nothing herein contained shall extend to authorise the said Company to carry on the business of Banking.

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 any Paper or Papers published in the said District of Niagara, 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, shall agree upon, so as 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 said Rail Road or Way until the first Instalment shall be paid in.

XVIII. 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 previously been 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 the 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 Shares so purchased as aforesaid: Provided always, that thirty days notice of the Sale of such forfeited Shares shall be given in any Newspaper or Newspapers published in the District of Niagara, and that the instalments due may be received in redemption of any such forfeited Share, 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 the 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.

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.

XXI. And be it further enacted by the authority aforesaid, That at any time after fifty years after making and completing the said Rail Road or Way, His Majesty, His Heirs and Successors, may assume the possession and property of the same, and of all and every the work 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 double or single Iron or Wooden Rail Road or Way, together with such further sum as will amount to twenty-five per cent upon the monies so advanced and paid, as a full indemnification to such Company, and the said double or single Iron or Wooden Rail Road or Way 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 or Successors, at any time after the expiration of the said fifty years to assume the possession and property of the said Rail Road or Way, with their 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.

XXII. 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 double or single Iron or Wooden Rail Road or Way shall have been assumed by His Majesty, His Heirs and Successors, as herein before 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 disposal 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 double or single Iron or Wooden Rail Road or Way between the Welland River and the River Niagara, at or below Queenston, shall be commenced within one year and completed within five 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; and that nothing in this Act contained shall extend to prevent the Legislature from granting a Charter at any time hereafter to any Company or Companies, for constructing any Rail Road or Way in any other part of the Country between the Lakes Erie and Ontario, so as the same shall not impede the completion of any Rail Road or Way actually begun and in progress under the direction of the Company hereby Incorporated, within three years after the passing of this Act.

XXIII. And be it further enacted by the authority aforesaid, That this Act shall not be construed to give any power to the said Company to erect ways or works of any description upon or over the River Welland, so as to interfere in any manner with the free use and navigation thereof.

XXIV. And be it further enacted by the authority aforesaid, That notwithstanding the privileges hereby conferred, 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 or persons, Body 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 way or right of way, public or private, that may be affected by any of the powers given by this Act.

XXV. And be it further enacted by the authority aforesaid, That if any action or suit shall be brought against any person or persons 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 that 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.

XXVI. And be it further enacted by the authority aforesaid, That it shall not be lawful for the said Company, their Agents and Servants, or any of them, at any time or times to enter into and upon, have, hold, use or enjoy, for the purposes of this Act, or for any other purpose, any part or parts of the lands or grounds of or belonging to the King's Majesty, and which have been at any time heretofore specially set apart and reserved, or which are designated

or commonly known as Crown Lands, or Lands reserved for Military purposes, without the license and consent of His said Majesty, His Heirs or Successors, for such purpose being first had and obtained, signified under the hand and seal of the Governor, Lieutenant Governor, or Person Administering the Government of this Province for the time being, any thing in this Act to the contrary notwithstanding.