

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

5 William IV – Chapter 24

An Act to explain and amend an Act Incorporating the Welland Canal Company, and for appointing Arbitrators for certain purposes therein mentioned. Passed 16th April 1835.

Whereas it was provided by the tenth Section of the Act granting a Charter to the Welland Canal Company, passed in the Fourth year of the Reign of His late Majesty King George the Fourth, entitled, "*An Act to Incorporate certain persons therein mentioned, under the Style and Title of the Welland Canal-Company;*" That when and so often as it shall be necessary to cut into any Highway, in order to conduct the said Canal through the same, the said Company of Proprietors 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, under the Penalty of Four Pounds Currency for each and every day after the expiration of the said time, which the said Company shall neglect to construct such secure, sufficient and commodious Bridge as aforesaid; And whereas no doubt can be entertained, that the intention of the Legislature at the time of passing the Act of Incorporation, although not so expressed in the Tenth Section of the Act, was that the said Welland Canal Company should not only construct the necessary Bridges over such Highways as the Canal might intersect, but also that such Bridges should be thereafter maintained and kept in repair by the said Company, for the safety and convenience of His Majesty's Subjects, who might have occasion to use the said Highways; And whereas there are certain Roads passing the said Canal, within a short distance, which by erecting Bridges on each, would materially injure the Navigation of the said Canal, without producing a corresponding benefit: 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 to erect and keep in repair all Bridges over the Canal on Highways heretofore used and travelled as Public Roads, the number, places and situation, to be determined by the Directors who may be appointed by the House of Assembly during the present Session.

II. And be it further enacted by the authority aforesaid, That the President and Directors of the said Welland Canal Company, shall hereafter keep and maintain the Bridges so erected, or to be erected by them on the line of the Canal, in a safe and sufficient state of repair, and shall within seven days after the passing of this Act, complete the repair of such Bridge or Bridges as may require to be repaired, under the Penalty of One Pound for every day they shall neglect or refuse to repair the same, after the expiration of that time.

III. And be it further enacted by the authority aforesaid, That whenever any of the said Bridges shall be in an insecure state, the same may be represented to the Overseer of Roads for the Division in which the said Bridge is situate, whose duty it shall be, within twenty-four hours, to examine the same personally, and to notify the same in writing within three days to the Secretary of the Welland Canal Company, and the said Company shall within six days from the day of such notification cause the same to be properly repaired, under the Penalty of One Pound for every day the same shall be neglected after that time.

IV. And be it further enacted by the authority aforesaid, That in case the said Company shall neglect to repair such Bridge or Bridges for twenty days after such Notice, it shall and may be lawful for the Overseer of Roads for the Division in which the said Bridge or Bridges is or are situated to repair the same, and upon the completion of such repairs to make out an Account of the Cost thereof against the District, and to swear to the correctness of such Account before any Justice of the Peace for the said District, which Justice is hereby authorised to administer such oath, and upon the production of such Accounts, so sworn to, to the Treasurer of the District, to demand the amount thereof; and the Treasurer of the said District upon such demand is hereby required to pay the amount of such Account out of the funds in his hands, or thereafter to come into his hands, of the said District.

V. And be it further enacted by the authority aforesaid, That the Treasurer of the said District, after having paid any such Account, is hereby required to give immediate notice thereof in writing to any or all of the Toll-gatherers employed to collect Tolls upon the said Canal for the said Company, and that from and after such notice so to be given as aforesaid, the Tolls received by such Toll-gatherers shall be held liable for the payment of the amount of such Accounts to the said Treasurer; and such Toll-gatherers shall, and they are hereby required, out of the first monies coming into their hands on account of the said Company after such notice, to liquidate and discharge the amount of such Accounts to the said Treasurer, under a penalty of double the amount of such Account, to be recovered by the said Treasurer on account of the District against such Toll-gatherers, or their Sureties to the said Company, by action of debt in his own name as Treasurer, in any of His Majesty's Courts of Record in this Province.

VI. And be it further enacted by the authority aforesaid, That the said Company shall be and they are hereby disabled and precluded from taking any proceedings, either in Law or Equity, against the Overseer of Roads, the Treasurer of the said District, or the Toll-gatherer upon the said Canal, for any thing done by them or either of them under the authority of this Act, any thing in any law usage or custom contained to the contrary thereof notwithstanding.

VII. And whereas by the seventh Section of an Act passed in the first year of His present Majesty's Reign, entitled, "An Act to afford further aid to the Welland Canal Company, and to repeal part of and amend the laws now in force relating to the said Company," John Warren, Samuel Street and David Thorburn, Esquires, were appointed Arbitrators to settle

and award the damages sustained by individuals from the operations of the said Welland Canal Company; And whereas from the circumstance of the decease of one of the Commissioners, John Warren, Esq. during that year, the two remaining Arbitrators were unable to come to any decision: And whereas by the Fifth Section of an Act passed in the Third year of His Majesty's Reign, entitled, "An Act for affording further aid towards the completion of the Welland Canal, and for other purposes therein mentioned," Absolom Shade, William B. Robinson, and John Macaulay, Esquires, Commissioners for the affairs of the said Canal, were appointed Arbitrators in conjunction with the aforesaid remaining Arbitrators, Samuel Street and David Thorburn, Esquires, to arbitrate and determine the amount of damages due by the Company to the different individuals on the Line of the said Canal, to be determined by a majority of the said Arbitrators; but from the remote residence of the said Commissioners from the Niagara District, or other causes, it has not been found practicable to procure the attendance of a majority of the said Arbitrators so appointed, to decide thereon; and it is just and expedient that the claims of the parties who have sustained damage should be satisfied, Be it therefore enacted by the authority aforesaid, That so much of the said Act passed in the third year of His Majesty's Reign as constitutes and appoints the said Absolom Shade, William B. Robinson and John McAulay, Esquires, Arbitrators in conjunction with Samuel Street, and David Thorburn, Esquires, be and the same is hereby repealed.

VIII. And be it further enacted by the authority aforesaid, That Samuel Street, David Thorburn, Robert Grant, John Willson and Smith Griffin, Esquires, shall be and they are hereby appointed Arbitrators to settle and determine all questions of Damages which may be submitted to them, or to a majority of them, by persons who may have sustained injury from the operations of the Welland Canal Company, or whose Property shall have been or may hereafter be taken by the said Company.

IX. And whereas from the conflicting evidence likely to arise, by reason of individual interest biasing the minds of the Witnesses to be brought before the said Arbitrators, or a majority of them, in regard to the facts to be related, it is expedient that a discretionary power be allowed to the said Arbitrators to judge under all the circumstances of the case, and to frame their award accordingly; Be it therefore enacted by the authority aforesaid, That the said Arbitrators, or a majority of them, in making their awards, shall have power to exercise their own judgment and discretion, on view of the premises or any other the best information they can obtain, any laws to the contrary thereof in anywise notwithstanding.

X. And be it further enacted by the authority aforesaid, That the said Arbitrators shall severally be allowed the sum of Twenty Shillings Currency for every day they shall be engaged in the duties of such Arbitration, to be paid by the said Welland Canal Company, unless the said Arbitrators, or a majority of them, believe that the said Welland Canal Company have offered the individual the full value of the property left to their decision, in which case they can make either party pay the expenses as they may deem just and equitable.

XI. And be it further enacted by the authority aforesaid, That the said Arbitrators shall be sworn before some one of His Majesty's Justices of the Peace well and truly to hear and determine all matters submitted to them respecting claims for damages against the Welland Canal Company according to the best of their knowledge and belief.