

*Laws of His Majesty's Province of Upper Canada*, passed in the year 1836. Toronto: Robert Stanton, 1836.

6 William IV – Chapter 11 (Session 1)

**An Act to Incorporate certain persons under the style and title of the Hamilton Water Works Company. Passed 20th April, 1856.**

Whereas certain inhabitants of the Town of Hamilton, in the District of Gore, have petitioned for the passing of a law Incorporating a Joint Stock Company for the purpose of supplying the said Town of Hamilton with Water: 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 Andrew Miller, Hugh B. Willton, George Hyatt, Andrew McIlroy, David Kikerdall, Ebenezer Stinson, John Stinson, Samuel McDowell, Robert Foster, James Jackson, Thomas Stinson, Junior, John E. Berrell, Asa A. Parker, John Aikman, William Chapman, Richard J. Allister, William Bateson, William Lockwood, William Hale, Allan Gilmour, Simon Bradt, James Bailie, William McDonald, Thomas Botham, Robert L. Hughson, James L. Fitch, John M. Hoffman, Hugh Greig, John Mills, Cornelius Chatfield, Henry Finch, W.D. Morse, Bennet Franklin, John Lammond, Henry Magill, Edward Magill, Thomas Brown, Alexander Carpenter, Joseph D. Clement, Godfrey Huffman, A. Banker, Patrick McMullan, William Scobell, Allan N. Macnab, John Law, John Stark, Harmanus Smith, R. Wisner, William White, Brian Carpenter, Ephraim Hopkins, Milton Davis, Edmund Ritchie, Malcolm McArthur, John M. Butler, Michael Segur, 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 Hamilton Water Works 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 change and alter the same at their will and pleasure; and also that they and their successors by the same name of the Hamilton Water Works 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 the account of the said Company from time to time, as they shall deem necessary and expedient.

II. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the said Company and their successors and their agents, servants and workmen, and they are hereby authorised and empowered to enter into and upon the lands of any person or persons, bodies politic or corporate contiguous to the said Town of Hamilton, and to survey, set out, and ascertain such parts thereof as they shall judge suitable and proper for the purposes of the said Company, and to contract with the owners or occupiers of the same for the purchase thereof, or of any privilege that may be required for the purposes of the said Company; and in case of any disagreement between the said Company and the owners or occupiers of such lands, or any part thereof, respecting the amount of purchase or otherwise, it shall and may be lawful for the owners or occupiers so disagreeing with the said Company upon the value of the said lands or privileges to nominate and appoint one indifferent person, and for the said Company to nominate an indifferent person, who together with one other person to be nominated 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 they are hereby required to attend at some convenient place at or in the vicinity of the said Town of Hamilton, to be appointed by the said Company after eight days notice given for that purpose by the said Company, then and there to arbitrate and 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 value or 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 Arbitration, in which case a reference may be again made to arbitration as herein before provided.

III. 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 by the said Company.

IV. And be it further enacted by the authority aforesaid, That the lands which shall be so ascertained and set out by the said Company for the purposes thereof, as aforesaid, shall thereupon and for ever thereafter be vested in the said Company and their successors, but subject, nevertheless, to the provision hereinbefore contained for the re-sumption of the same, as provided for in the clause last above mentioned; and it shall and may be lawful for the said Company and their successors to build, erect, or otherwise make and complete, and

maintain and keep upon the said lands, or any part thereof as shall appear most suitable and convenient, all such water works, reservoirs, aqueducts, water wheels, steam engines, and other engines, pipes, and conveniences in anywise requisite for the said undertaking, and to convey the waters therefrom in, upon, or other-wise through any of the grounds and lands lying intermediate between the said reservoirs and water works, and the said Town of Hamilton, by one or more lines of pipes as may from time to time be found necessary; and for the better effecting the purposes aforesaid, the said Company and their successors, and their agents, officers, workmen, and servants are hereby empowered to go, enter, pass, and repass in, upon, over, under and through the said grounds and lands intermediate, as aforesaid, and the same to cut and dig up, if necessary, and in, upon, over, and through the highways and roads of the Township of Barton, in the said District of Gore, and through the public ways, streets, lanes, or other passages of the said Town of Hamilton, and in, upon, through or under the lands, grounds and premises of any person or persons, bodies politic, corporate or collegiate whatsoever; and to set out, ascertain, use and occupy such part or parts thereof as they the said Company or their successors shall think necessary and proper for the making and maintaining of the said works of the said undertaking, and for distributing the waters of the said Company's establishment to the different inhabitants of the said Town of Hamilton; and for this purpose to dig up and break up the soil and pavements of such highways, roads, streets, lanes, and other passages, and to sink and lay pipes, trunks, reservoirs, and other conveniences, and to make and place stop-cocks, plugs, and other contrivances for the stopping and directing the said waters in such quantity and at such time or times as the said Company or their successors shall think fit; and from time to time to alter all or any of the said works, as well in the position as in the construction thereof, as to the said Company or their successors shall seem meet, doing as little damage as may be in the execution of the powers hereby granted to them, and making reasonable and adequate satisfaction to the proprietors.

V. Provided always, and be it further enacted by the authority aforesaid, That nothing herein contained shall extend to authorise the said Company, or any persons acting under their authority, to take, rise, or injure or damage for the purposes of the said water works, any house or other building erected on or before the first day of June, in the year of our Lord one thousand eight hundred and thirty six, or any land then used or set apart as a garden, orchard, yard, park, paddock, plantation, planted walk or avenue to a house, nursery ground for trees, without the consent in writing of the owners or proprietors thereof first had and obtained.

VI. And be it further enacted by the authority aforesaid, That if any person shall wilfully or maliciously hinder or interrupt, or cause or procure to be hindered or interrupted the said Company of proprietors hereby incorporated and empowered, as aforesaid, or their managers, servants, agents or workmen, or any of them, in doing or performing any of the works, or in the exercise of any of the powers and authorities in this Act authorised or contained, or if any person shall wilfully or maliciously let off or discharge any water, so that the same shall run waste and useless out of or from any of the cisterns, reservoirs, aqueducts, pipes, plugs, cocks, works, matters or things belonging to the said Company, or if

any person shall bathe in any of the said reservoirs or works belonging to the said Company, or shall wash, cast, put, or throw any dog, cat, or other animal, alive or dead, or any cloth, wool, filth, dirt, or other noisome or offensive matter or thing, or cause, permit or suffer the water, contents or refuse of any such sewer or drain to run or be conveyed into any of the said reservoirs or works, pipes or conduits, or otherwise wilfully foul or cause or render noisome or impure the waters running to or contained in any such reservoirs, pipes, or conduits, every person offending in any of the cases aforesaid shall, besides being subject to action at law for the damages done thereby to the said Company, be held guilty of a Misdemeanor, and upon conviction thereof before any of the Courts of criminal jurisdiction in the District of Gore, shall be punished by such Court by fine and imprisonment, or either, at the discretion of the Court, as in other misdemeanors at common law.

VII. And be it further enacted by the authority aforesaid, That in case the works for supplying the said Town of Hamilton with water, as aforesaid, shall not be completed so as to answer the purposes of this Act within five years from and after the commencement of this Act, then and from thenceforth all the powers and authorities herein-contained relative thereto shall cease and determine, save only as to so much and such part thereof as shall have been completed within the said term of five years.

VIII. 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 offices for one year, which said Directors shall be Stockholders to the amount of at least ten shares, and be elected on the first Monday in June in each and every year, at the said Town of Hamilton, 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 maybe published in the said District of Gore, at least one month 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 proper 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 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, as soon as may be after 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.

IX. 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, she, or they

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 above ten.

X. And be it further enacted by the authority aforesaid, That in case it should 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 be named to make an election of Directors in such manner as shall have been regulated by the by-laws and ordinances of the said Corporation.

XI. And be it further enacted by the authority aforesaid, That the Directors for the time being, or a majority of them, shall have power to make and subscribe such rules, orders, and by-laws as to them shall seem right and proper touching the management and disposition of the affairs, stock, property, estate, and effects of the said Company, and the preservation of the same from spoil or injury, and for the summary conviction of any person who shall trespass upon, injure or spoil any of the said Company's works or property; and touching the duty of the officers, clerks and servants, and all such other matters and things as appertain to the business of the said Corporation, and from time to time to alter or repeal such by-laws, orders and regulations, or any of them, and to make others, and to impose and inflict such reasonable fines and forfeitures upon and against all persons offending against the same, as to the Directors for the time being or a majority of them shall seem meet, not exceeding the sum of five pounds for any offence; such fines and forfeitures to be levied and recovered by such ways and means as are hereinafter mentioned, which said rules, by-laws, and orders being reduced into writing, under the common seal of the said Company, and printed and published, and painted on boards, shall be hung up and affixed on the front of the said Water Works, and shall from time to time be renewed as often as the same shall be obliterated, defaced, or destroyed, (so as to render them illegible,) and that such rules, by-laws, and orders shall be binding upon and observed by all parties, and shall be sufficient in any Court of Law or Equity to justify all persons who shall act under them: Provided, that such rules, by-laws, and orders be not repugnant to the laws of the Province or to any direction in this Act contained.

XII. And be it further enacted by the authority aforesaid, That on the first Monday in June next a meeting of the Stockholders shall be held in the said Town of Hamilton, who in the same manner as hereinbefore 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 office until the first Monday in June 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 shall not be taken to the amount of one thousand pounds in the capital stock of the said Company, then the said meeting shall not be held until that amount of stock shall have been taken up, and at least thirty days notice thereof given in any paper or papers published in the District of Gore.

XIII. And be it further enacted by the authority aforesaid, That the whole capital or stock of the said Company, inclusive of any real estate which the Company may have or hold by virtue of this Act, shall not exceed in value five thousand pounds, to be held in four hundred shares of twelve pounds ten shillings each; and that the shares of the said capital stock may, after the first instalment shall have been paid in, be transferred by the respective persons subscribing or 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.

XIV. And be it further enacted by the authority aforesaid, That so soon as Directors shall 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 newspaper published in the aforesaid District of Gore, for an instalment of five per cent upon each share which they or any of them may respectively subscribe, and that the residue of the sums 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 expressly convened for that purpose shall agree upon, so that no such instalments shall exceed five per cent, nor become payable in less than thirty days after public notice in the newspaper or newspapers, as aforesaid: Provided always, that the said Directors shall not commence the construction of any works belonging to the said Company until the first instalment shall be paid in.

XV. 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 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 that shall have been previously paid thereon; and that the said forfeited 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 like 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 share so purchased as aforesaid: Provided also, that thirty days notice of the sale of such forfeited shares shall be given in any newspaper or newspapers published in the said District of Gore, 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.

XVI. 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 a majority of them shall seem desirable; and that once in each year an exact and particular statement shall be rendered of the then actual 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 any time at his or their reasonable request.

XVII. And be it further enacted by the authority aforesaid, That all fines, penalties, and forfeitures imposed by any by-law, rule or regulation of the said Company, shall and may be recoverable with costs before any two Justices of the Peace for the said District of Gore, upon the oath of any person or persons, or on the confession of the party offending, which oath the said Justices are hereby authorised to administer, and in default of payment, the same shall be levied by distress and sale of the offenders goods and chattels, by warrant under the hand and seal of the said Justices, or one of them before whom such party was convicted; and the said fines and forfeitures, after deducting the reasonable charges of such distress and sale, shall be paid over to and for the use of the said Company, and in case sufficient distress cannot be found whereof to levy such fines, forfeitures and costs, it shall and may be lawful for such Justices, or one of them, to commit such offender or offenders to the Common Gaol or House of Correction of the District, there to remain in safe custody for such time not exceeding three months, as such Justice or Justices may order, by warrant under his or their hand or seal, hands or seals, unless such fines, forfeitures and costs shall be sooner paid.

XVIII. 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.

XIX. 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 after the fact committed and not afterwards, and the defendant or defendants in such action or suit may plead the general issue, and give this Act and the special matter in evidence on the trial.