

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

6 William IV – Chapter 6 (Session 1)

An Act to Incorporate certain persons therein-mentioned under the name and style of the Niagara and Detroit Rivers Rail Road Company. Passed 20th April, 1836.

Whereas John Baptiste Baby, François Baby, John Prince, Charles Elliot, Alexander Chewett, George Jasperson, John Gorrie Watson, James Dougall, John B. Langhton, Joseph Woods, John Gentle, Adam Gentle, William Elliot, Charles Baby, Thomas Paxton, Robert L. Wood, William Gaspé Hall, Benjamin Parker Cahoon, Benjamin Doughty Townsend, Edward Ermatinger, Bela Shaw, James Givens, John Bostwick, George J. Goodhue, John Redsin Woodward, and Richard Dowdle Drake, 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 Niagara River, in the Township of Bertie, in the District of Niagara, and extending to the River Detroit, in the Township of Sandwich, in the Western District: And, whereas, it is expedient to Incorporate the said Petitioners for the purposes hereinbefore 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 Jean Baptiste Baby, François Baby, John Prince, Charles Elliot, Alexander Chewett, George Jasperson, John Gorrie Watson, James Dougall, John B. Langhton, Joseph Woods, John Gentle, Adam Gentle, William Elliot, Charles Baby, Thomas Paxton, Robert L. Wood, William Gaspé Hall, Benjamin Parker Cahoon, Benjamin Doughty Townsend, Edward Ermatinger, Bela Shaw, James Givens, John Bostwick, George J. Goodhue, John Redsin Woodward, and Richard Dowdle Drake, shall be and they are hereby appointed Commissioners, under the direction of a majority of whom subscriptions may be received to the capital stock of the Niagara and Detroit Rivers Rail Road Company, hereby incorporated, and they may cause books to be opened at such times and places as they shall direct, for the purpose of receiving subscriptions to the capital stock of the said Company, first giving reasonable notice of the times and places of taking said subscriptions.

II. And be it further enacted by the authority aforesaid, That the capital stock of the said Niagara and Detroit Rivers Rail Road Company shall be five hundred thousand pounds, in shares of six pounds five shillings each, and that as soon as four thousand shares of said stock shall be subscribed, the subscribers of said stock, with such other persons as shall associate with them for that purpose, their successors and assigns, shall be and they are hereby created a Body Corporate and Politic, by the name and style of the Niagara and Detroit Rivers Rail Road Company, with perpetual succession, and by that name shall be

capable in law of purchasing, holding, leasing, selling, and conveying estates, either real, personal, or mixed, so far as the same may be necessary for the purposes hereinafter mentioned, and no further, and in their Corporate names may sue and be sued; and may have a Common Seal which they may alter and renew at pleasure, and shall have and enjoy and may exercise all powers, rights, and privileges which appertain to Corporate Bodies, for the purposes mentioned in this Act: Provided always, that nothing herein contained shall extend to authorise the said Company to carry on the business of Banking.

III. And be it further enacted by the authority aforesaid, That the said Niagara Rivers Rail Road Company shall have full power and authority to explore the Country lying between the River Niagara, in the Township of Bertie, in the Niagara District, and the River Detroit, in the Township of Sandwich, in the Western District, and 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, to connect the River Niagara, in the Township of Bertie, in the Niagara District, and the River Detroit, in the Township of Sandwich, in the Western District; 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 conveniences as they may think proper and necessary for making, effecting, preserving, improving, completing, and using on the said intended Rail Road; and to fell and cut down all timber or trees standing or being within one hundred and fifty feet on each side of said line of Rail road; and also to make, build, erect, and set up in and upon the route of the said Rail Road, or upon the land adjoining or near the same, all such works, Ways, Roads, and conveniences 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 of the conveniences above-mentioned, as well as for the carrying or conveying goods, commodities, timber, or other things to and upon the said Rail Road, as for carrying or conveying all manner of materials necessary for making, erecting, furnishing, altering, repairing, amending, widening, or enlarging the works of or belonging to the said Rail Road; and also to place, lay, work and manufacture the said materials on the ground 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, repair, maintain, 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, or 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 making, effecting, and preserving, improving, completing, and using the said Rail Road, in pursuance and within the true intent and meaning of this Act; they the said Company doing as little damage as possible in the execution of the several powers to them hereby granted, and

making satisfaction in manner hereinafter mentioned for all damages to be sustained by the owners or occupiers of said lands, tenements, and hereditaments.

IV. And be it further enacted by the authority aforesaid, That the President and Directors of said Company, to be appointed as hereinafter mentioned, are hereby authorised and 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 and privileges as they shall require for the purposes of the said Company, or for the damage 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 if the parties cannot agree, or if the owner or owners, or any of them be a femme covert, under age, non compos mentis, or out of the District in which the land or property wanted may lie, application may be made to any Justice of the Peace of such District, who shall thereupon issue his warrant, under his hand and seal, directed to the Sheriff of the said District, or if the Sheriff be interested, to one of the Coroners of said District, requiring him to summons a Jury of twelve freeholders in the District, not in any way interested in the matter or related to the parties, to meet on or near the land or property, or materials to be valued, on a day named in the said warrant, not less than five nor more than ten days after the issuing of the same, and if at the said time and place any of the persons summoned do not attend, the said Sheriff or Coroner shall immediately summon as many as may be necessary with the persons in attendance as Jurors, to furnish a pannel of twelve Jurors, and from whom each party, or his, her, or their agent or attorney, or if either be not present in person or by agent, the Sheriff or Coroner, for him, her, or them, may strike off three Jurors, and the remaining six shall sit as a Jury of Inquest of damages, and before they act as such the Sheriff or Coroner shall administer to each of them an oath or affirmation that they will justly and impartially value the damages which the owner or owners will sustain by the use or occupation of the land, or the taking of the materials or other property required by the said Company; and the said Jury shall reduce their inquisition to writing, and shall sign and seal the same, and two originals of such inquisition shall be made and executed on the same day, one of which shall be delivered to the said Company, and the other to the person claiming compensation; and the property taken and the boundaries of the land occupied by the said Company shall be set forth in such inquisition, and if, upon motion made in the Court of King's Bench in the Term following, the Court on hearing the parties shall find just cause for setting such inquisition or award aside, then an order may be made by the said Court for that purpose; and it shall be lawful for the person claiming compensation to proceed in the same manner as hereinbefore directed for obtaining another valuation, and the inquisition or award that may be made thereupon, shall be in like manner subject to the controul of the Court of King's Bench upon hearing of the parties: Provided always, that upon the money assessed as the valuation in any such investigation being paid or legally tendered to the person entitled to the same, the property so taken and valued shall immediately thereupon vest in the said Corporation as fully as if the same had been legally transferred by the owner thereof for such term of time as the same may be required for the purposes authorised by this Act, and if the money, when tendered, should not be received, it shall nevertheless be incumbent on

the said Corporation, at any time thereafter to pay the same on demand without costs; and that the Sheriff and Coroner, and Jurors to be summoned under this Act shall be entitled, for the services rendered by them, to be compensated in the same manner as is provided for similar services by the the twentieth clause of an Act of the Parliament of this Province, passed in the third year of His present Majesty's reign, entitled "*An Act granting to His Majesty a sum of money, to be raised by Debenture, for the improvement of the Navigation of the River St. Lawrence.*"

V. And be it further enacted by the authority aforesaid, That whenever in the construction of said Rail Road it shall be necessary to cross or intersect any established road, it shall be the duty of the said President and Directors so to construct the said Rail Road across such established road as not to impede the passage of persons or property along the same, or when it may be necessary to construct it through the lands of any individual, it shall be their duty to provide for such individual proper wagon ways across said Rail Road from one part of his land to the other.

VI. And be it further enacted by the authority aforesaid, That if said Company shall neglect to provide proper wagon ways across said Rail Road, as required by the preceding clause of this Act, it shall be lawful for any individual to sue such Company, and to recover such damages as a Jury may think him, her, or them entitled to for such neglect or refusal on the part of the said Company.

VII. And be it further enacted by the authority aforesaid, That if it shall be necessary for the said Rail Road Company, in the selection of the route or the construction of the said Rail Road, to be by them laid out and constructed, or any part of it to connect the same with or to cross any Rail Road, Canal, dam, or bridge, made or erected by any Incorporated Company, or authorised by any law of this Province, it shall be lawful for the said President and Directors to contract with such other Corporation for the right to cross or use such road, canal, dam, or bridge, or for the transfer of such of the Corporate or other rights and privileges of such Corporation to the said Company hereby incorporated as may be necessary in that respect, and every such other Incorporation, acting under the laws of this Province, is hereby authorised to make such contract or transfer by and through the agency of the persons authorised by the respective Acts of Incorporation to exercise their Corporate power, or by any persons who are by the law of this Province intrusted with the management and direction of such Rail Road, Canal, dam, or bridge, or any of the rights or privileges aforesaid, and every contract or transfer made in pursuance of the power and authority hereby granted, when executed by the several parties under their respective Corporate seals, shall vest in the Company hereby Incorporated all such rights and privileges, and the right to use and enjoy the same, as fully as they are used and enjoyed by the said Corporation in whom, they are now vested.

VIII. And be it further enacted by the authority aforesaid, That the President and Directors shall have power to purchase with the funds of the Company, and place on any Rail Road constructed by them under this Act all machines, wagons, carriages or vehicles of any

description, which they may deem necessary and proper for the purposes of transportation on said Rail Road; and that they shall have power to charge for tolls and transportation, such sums as shall be established by the by-laws of the said Company hereby Incorporated; and it shall not be lawful for any other Company or any other person or persons to transport any passengers or merchandise or property of any description whatever, along said Road or any part of it, without the license or permission of the President and Directors of the said Company; and the said Rail Road, with all its improvements, works and profits, and all machinery used on said Rail Road for transportation, are hereby vested in the said Company Incorporated by this Act and their Successors forever; and the shares of the Capital Stock of said Company shall be considered personal property; and shall be transferable agreeably to the by-laws of said Company, and subject to be taken in execution agreeably to such laws as are or may be hereafter in force.

IX. And be it further enacted by the authority aforesaid, That the President and Directors shall annually or semi-annually, make such dividend as they may deem proper, of the net profits of the resources of the said Company; deducting the necessary expenses, and they shall make the dividend among the Stockholders of the said Company in proper proportions to their respective shares.

X. And be it further enacted by the authority aforesaid, That if any person or persons shall wilfully, knowingly and maliciously, by any means whatever, injure, impair or destroy any part of the Rail Road constructed by said Company under this Act, or any of the necessary works, buildings or machinery of said Company, such person or persons so offending, shall each of them, for every such offence, forfeit and pay to the said Company, a sum not exceeding three times the amount of damage caused by such offence; which may be recovered in the name of said Company, by an action of debt in any Court having competent jurisdiction; and shall also be subject to an indictment, and upon conviction of such offence, shall be punished by fine and imprisonment at the discretion of the Court.

XI. And be it further enacted by the authority aforesaid, That so soon as a double or single iron or wooden Rail Road shall be so far completed for the distance of ten miles at any one place, as to be capable of being used for transportation of property or passengers, the said Company shall have full power and authority to ask for, demand and receive, recover and take, the tolls or dues to and for their own proper use and benefit, on all goods, merchandise and passengers using or occupying the said Rail Road 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 full 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.

XII. 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 to intersect or cross any

stream of water or water course lying on the route of the said Rail Road, between the river Niagara in the Township of Bertie, in the Niagara District, and the river Detroit in the Township of Sandwich, in the Western District, it shall and may be lawful for the Company to construct their double or single Rail Road across or upon the same: Provided, that the said Company shall restore the stream or water course thus intersected or crossed, to its former state or in a sufficient manner not to impair its usefulness; and shall, moreover, erect and maintain, during the continuance of the Company, sufficient fences upon the line of the route of the double or single Rail Road.

XIII. 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 said double or single Rail Road as aforesaid hereby authorised to be constructed, erected, built, made and used.

XIV. And be it further enacted by the authority aforesaid, That so soon as a President and Directors have been appointed as hereinafter mentioned, 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 Niagara, London and Western Districts, for an instalment of five per cent upon the stock which they or any of them shall respectively have subscribed; and that the residue of the stock subscribed by 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 instalment shall exceed five per cent nor become payable in less than thirty days after the public notice in the newspaper or newspapers aforesaid: Provided always, that the said President and Directors shall not commence the construction of the said Rail Road until the first instalment 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 such instalment or instalments as shall be lawfully required by the President and 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 been previously paid thereon; and that the share or shares may be sold by the said President and Directors; and the sum or sums accruing 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 such share or shares so purchased as aforesaid: Provided always, that thirty days notice of the sale of such forfeited share or shares shall be given in any newspaper or papers published in the Niagara, London and Western Districts; and that the instalment due may be received in redemption of any such forfeited share or shares at any time before the day appointed for the sale thereof.

XVI. And be it further enacted by the authority aforesaid, That the said Corporation hereby created shall have power to construct a single of double Rail Road from the river Niagara in the Township of Bertie in the Niagara District, to the river Detroit in the Township of Sandwich in the Western District; to be located under the direction Richard Dowdle Drake, Alexander Douglass, William Elliott, Benjamin Parker Cohoon, Francis Caldwell, Francis L. Walsh, John Prince, Bela Shaw,, and John Alexander Wilkinson, who are hereby appointed Commissioners for that purpose; with power to transport, take and carry property and persons upon the same by the power and force of steam or of animals or by any mechanical or other power or by any combination of such powers.

XVII. And be it further enacted by the authority aforesaid, That if the said Corporation shall not within two years from the passage of this Act commence the construction of said Rail Road and shall not within ten years from the passing of this Act construct, finish and put in operation the whole of the said Rail Road; then on failure of the Company to construct the said Rail Road within the ten years time above mentioned, the rights and privileges of the said Corporation under this Act shall be null and void as to such parts of the said Rail Road as are not finished within the time limited by this Act and to them only.

XVIII. And be it further enacted by the authority aforesaid, That whenever four thousand shares of the aforesaid Stock shall have been subscribed, if within two years after the passing of this Act the Commissioners first herein mentioned shall call a general meeting of the Stockholders at such time and place as they may appoint by giving thirty days public notice of such meeting, and at such meeting the Commissioners shall lay the subscription book before the subscribers then and there present, and thereupon the Subscribers or Stockholders who shall attend either in their own proper persons or by proxy or a majority of them shall elect nine Directors by ballot, and the nine persons who shall have the greatest number of votes at any election shall be Directors; and if it shall happen at any election that two or more have an equal number of votes in such manner that a greater number than nine shall by a plurality of votes appear to be chosen Directors, then the Stockholders herein before 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 nine; 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; a majority of whom shall be competent to manage the affairs of the Company, and in said election and on every occasion wherein a vote of the Stockholders is to be taken, every share shall entitle the holder thereof to one vote, and every Stockholder may vote by himself or by proxy.

XIX. And be it further enacted by the authority aforesaid, That to continue the succession of President and Directors of said Company, nine Directors shall be chosen as herein before mentioned annually on the first Monday in June at such place as may be appointed by the Directors; and if any vacancy shall occur by death resignation or otherwise, of any President or Director before the year for which he shall have been elected shall have expired, a person to fill such vacant place for the residue of the year may be appointed by the Directors of said

Company or a majority of them, and that the President and Directors of said Company shall hold and exercise their offices until a new election of President and Directors, and all elections which are by this Act or by the by-laws of the Company to be made on any particular day, if not made on such day may be made within thirty days thereafter.

XX. And be it further enacted by the authority aforesaid, That a general meeting of the Stockholders shall be held annually at the time and place appointed for the appointment of President and Directors; and a meeting may be called any time during the interval between the said annual meetings, by the President and Directors, or by the Stockholders owning not less than one fourth of the whole Stock, by giving thirty days public notice of the time and place of meeting, and when any such meeting shall be called by the Stockholders the notice shall specify the particular object of the call, and if at any such meeting thus called a majority in value of the Stockholders are not present in person or by proxy, such meeting shall be adjourned from day to day not exceeding three days, without transacting any business; and if within three days Stockholders having a majority of the Stock do not attend such meeting, then the same shall be dissolved.

XXI. And be it further enacted by the authority aforesaid, That at the annual meetings of the Stockholders of said Company it shall be the duty of the President and Directors of the preceding year to exhibit a clear and distinct statement of the affairs of the Company; and at any called meeting of the Stockholders a majority of those present in person or by proxy may require similar statements from the President and Directors, whose duty it shall be to furnish them when required, and at all general meetings of the Stockholders a majority in value of all the Stockholders in said Company may remove from office any President or any of the Directors of said Company and may appoint others in their stead: Provided, That the intention to propose such removal shall have been specified as one of the reasons for calling such meeting.

XXII. And be it further enacted by the authority aforesaid, That the President and Directors of the said Company before he or they act as such, shall respectively swear or affirm as the case may be, that he will well and truly discharge the duties of his office to the best of his skill and judgment.

XXIII. And be it further enacted by the authority aforesaid, That the President and Directors or a majority of them shall have power to appoint, contract with and determine the compensation of all such officers Engineers, Agents or servants whomsoever as they may deem necessary for the transaction of the business of the Company, and remove them at pleasure; and the said President and Directors or a majority of them, shall have power to determine the manner of adjusting and settling all accounts against the said Company, also the manner and evidence of transfers of Stock in said Company, and they shall have power to pass all by-laws which they may deem necessary for the carrying into execution all the powers vested in the Company hereby Incorporated: Provided, such by-laws shall not be repugnant to the laws of this Province.

XXIV. 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.

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

XXVI. 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 fit protection to the public or to any person or persons, body politic or corporate, in respect of their estate, property or rights or 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.

XXVII. 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 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 suit.

XXVIII. And be it further enacted by the authority aforesaid, That nothing in this Act contained shall extend or be construed to extend to prevent at any future period, the Hamilton and Port Dover Rail Road Company or any other Company now formed or hereafter to be formed, from establishing Lateral Branches from said Rail Road to Queenston, Niagara, Hamilton, London, Chatham, or any other place between the Township of Sandwich in the Western District, and Bertie in the Niagara District.