

Laws of His Majesty's Province of Upper Canada, passed in the year 1837. York: Robert Stanton, 1837.

7 William IV – Chapter 49

An Act to Incorporate sundry, Persons under the style and title of the President, Directors and Company, of the Port Darlington Harbour. Passed 4th March, 1837.

Whereas, the construction of a safe and commodious Harbour at the mouth of Barber's Creek, in the township of Darlington, in the District of Newcastle, would manifestly tend to the improvement of that part of this Province, as well as be of great advantage to all persons in any way concerned in the Navigation of Lake Ontario: And whereas, Robert Fairburn, William Warren, H. J. Reid, David Smart, John Lister, John Farley, and others, have Petitioned to be by law Incorporated, for the purpose of effecting the construction of such Harbour, by means of a Joint Stock Company: 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 Robert Fairburn, William Warren, H. J. Reid, David Smart, John Lister, John Farley, together with all such other persons as shall become Stockholders in such Joint Stock or Capital, as is hereinafter mentioned, shall be, and are ordained, constituted, and declared to be, a Body Corporate and Politic, in fact, by and under the name and style of "The Port Darlington Harbour Company," and that by this 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 or places whatsoever, in all manner of suits, actions, complaints,, matters and; causes whatsoever; and that: they and their successors may and shall have a Common Seal, and may change and alter the same at their will and pleasure; and also, that they and their successors, by the same name of "The Port Darlington Harbour Company," shall be in 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, or 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: Provided always, that nothing herein contained shall extend, or be construed to extend, to allow the said Company to carry on the business of Banking.

II. And be it further enacted by the authority aforesaid, That the said Company are hereby authorised and empowered, at their own cost and charge, to construct a Harbour at the mouth of Barber's Creek, in the Township of Darlington aforesaid, which shall be accessible to, and fit, safe and convenient, for the reception of such description and burthen of Vessels as usually navigate Lake Ontario; and also to erect and build, all such needful Moles, Piers, Wharves, Buildings, and erections whatsoever, as shall be useful and proper for the protection of the said Harbour, and also for the accommodation and convenience of Vessels entering, lying, loading and unloading,

within the same, and to alter and amend, repair and enlarge the same, as may be found expedient and necessary.

III. And be it further enacted by the authority aforesaid, That the Directors of the said Company shall be, and they are hereby empowered, to contract, compound, compromise and agree, with the owners or occupiers of any land, through or upon which they may determine to cut and construct the said intended Harbour, with all necessary and convenient Roads, Streets and Approaches thereto, to be constructed and made, either for the absolute 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 recover from the said Company, in consequence of the said intended Harbour, Roads, Streets and Approaches thereto, being cut, made and constructed, in and upon his, her or their respective Lands; and in case of any disagreement between the said Directors, and the owner or owners, occupier or occupiers aforesaid, it shall and may be lawful, from time to time, as often as the said Directors shall think fit, for each owner or occupier, so disagreeing with the said Directors, either upon the value of the Lands and Tenements 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 Directors 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 a majority of whom shall be final; and the said Arbitrators shall, and they are hereby required, to attend at some convenient place in the vicinity of the said intended Harbour, to be appointed by the said Directors, after eight days notice given to them for that purpose, by the said Directors, 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 hereinbefore provided.

IV. And be it further enacted by the authority aforesaid, That as soon as the said Harbour shall be so far completed, as to be capable of receiving and sheltering Vessels, the said Company shall have full power and authority to ask for, demand, receive, recover and take, as Toll, to and for their own proper use and benefit, and behoof, on all Goods, Wares and Merchandize, shipped or landed on board or out of any Vessel or Boat, from or upon any part of the Lake Shore, between the Eastern side of Lot Number Eight, and the Western side of Lot Number Fourteen, in the Township of Darlington, in the said District of Newcastle, and upon all Vessels and Boats entering the said Harbour, according to the Rates following, that is to say: Pot and Pearl Ashes, per barrel, ninepence; Pork, Whiskey, Salt, Beef, and Lard, per barrel, sixpence; Flour, per barrel, fourpence; Merchandize, per barrel bulk, sixpence; Lard and Butter, per keg, one penny half-penny; Merchandise, per ton, seven shillings and sixpence; West India Staves, per thousand, two shillings

and six-pence; Pipe Staves, per thousand, twelve shillings and sixpence; Wheat and other Grain, per sixty pounds, one penny; Lumber, per thousand feet, Board measure, one shilling and threepence; Boats and Vessels, under twelve tons, one shilling and threepence; Boats under five tons, free; Boats and Vessels above twelve tons, and not over fifty, two shillings and sixpence; Vessels over fifty tons, five shillings.

V. And be it further enacted by the authority aforesaid, That the said Harbour, Piers, Wharves, Buildings, Erections 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 Merchadize, as herein before mentioned, shall be and the same are hereby vested in the said Company and their Successors for ever.

VI. And be it further enacted by the authority aforesaid, That if any person or persons, shall neglect or refuse to pay the Tolls or Dues to be collected under this Act, it shall and may be lawful for the said Company, or their Officer, Clerk or Servant, duly appointed, to seize or detein the Goods, Vessels or Boats, on which the same were due and payable, until such Tolls are paid; and if the same shall be unpaid for the space of thirty days next after such seizure, the said Company, or their Officer, Clerk or Servants aforesaid, may sell or dispose of the said Goods, Vessels or Boats, or such part thereof as may be necessary to pay the said Tolls, by Public Auction, giving ten days' notice thereof, and return the overplus, if any, to the owner or owners thereof.

VII. 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 four Shares, as well as inhabitants of this Province, and be elected on the first Monday in June, in every year, at Darlington, 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 the Upper Canada Gazette, or in any Newspaper or Newspapers that may be published in the said District of Newcastle, 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 proper person 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, as 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.

VIII. And be it further enacted by the authority aforesaid, That each Stockholder shall be entitled to a 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 above ten.

IX. And be it further enacted by the authority aforesaid, That in case it should 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 make and hold an Election of Directors, in such manner as shall have been regulated by the By-Laws and Ordinances of the said Corporation.

X. 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 Company; and shall also have power to appoint as many Officers, Clerks and Servants, for carrying on the said business, with such salaries and allowances as to them shall seem fit.

XI. And be it further enacted by the authority aforesaid, That on the third Monday in June, after the passing of this Act, a Meeting of the Stockholders shall be held at Darlington, who, in the same manner as hereinbefore provided, shall proceed to elect seven persons to be Directors, who 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 One Thousand Pounds of the Capital Stock of the said Company shall not be taken, 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 the Gazette, or in any Newspaper or Newspapers that may be published in the said District.

XII. 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 Ten Thousand Pounds, to be held in One Thousand Shares, of Ten Pounds each, and that the Shares of the said Capital Stock may, (after the first instalment thereon shall have been paid) be transferred by the respective persons subscribing or holding the same, to 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.

XIII. And be it further enacted by the authority aforesaid, That as 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 the Gazette, or in any Newspaper or Newspapers that may be published in the said District, for an Instalment of Ten per Cent upon each share which they or any of them respectively may subscribe, and that the residue of the sum

or shares of the Stockholders shall be payable by instalments, in such time, and in such proportion, as a majority of the Stockholders, at a meeting to be expressly convened for that purpose, shall agree upon, so as no such instalment shall exceed Ten per Cent nor become payable in less than thirty days after public notice in the Gazette, or in any Newspaper or Newspapers that may be published in the said District: Provided always, that the said Directors shall not commence the construction of the said Harbour, until the first instalment shall be paid in.

XIV. 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 been previously 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 in, 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 to 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 a certificate of the transfer of such Shares so purchased as aforesaid: Provided always, nevertheless, that thirty days notice of the Sale of such forfeited Shares shall be given in the Upper Canada Gazette, or in any Newspaper or Newspapers that may be published in the District of Newcastle; and that the Instalment due may be received in redemption of any such forfeited Share, at any time before the day appointed for the sale thereof.

XV. 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 Statements to appear on the Books, and to be open to the perusal of any Stockholder, at his or her reasonable request.

XVI. And be it further enacted by the authority aforesaid, That at any time after fifty years, after the making and completing of the said Harbour, His Majesty, His Heirs and Successors, may assume the possession and property of the same, and of all and every the Works 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 Harbour, together with such further sum as will amount to Twenty per Cent upon the monies so advanced and paid, as a full indemnification to such Company; and the said Harbour 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 of or 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 Harbour, with its 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, for every One Hundred Pounds they shall be possessed of in the said concern.

XVII. 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 Harbour, shall have been assumed by His Majesty, His Heirs or Successors, as hereinbefore 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 disposition of the Legislature thereof, and shall be accounted for to His Majesty, His Heirs and Successors, through the Lords Commissioners of His Treasury, in such manner and form as His Majesty, His Heirs and Successors, shall be graciously pleased to direct: Provided always, that the said Harbour shall be commenced within two years, and completed within seven 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.

XVIII. And be it further enacted by the authority aforesaid, That nothing herein contained shall give to the said Company, or be construed to give to the said Company, the exclusive right of fishing within the said Harbour, or Lake Shore, within the limits before mentioned.