

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

7 William IV – Chapter 52

An Act granting a Charter to an Incorporated Company, under the style and title of the President and Directors of the London and Devonport Rail Road and Harbour Company. Passed 4th March, 1837.

Whereas sundry Inhabitants of the County of Middlesex, in the District of London, have by petition set forth, that they labour under great disadvantages for want of good roads, whereby to export the surplus produce of the Country, and receive in return articles of indispensable necessity, for the transport of which they are now obliged to pay exorbitant prices: And whereas, the Petitioners have employed a skilful Engineer to explore the Country, by whose Report, and Map accompanying the same, it is ascertained that an excellent route for a Rail Road exists from the Town of London, in the London District, to the Village of Devonport, at the mouth of Cat Fish Creek, on Lake Erie, and the Petitioners have prayed to be Incorporated as a Joint Stock Company, for the purpose of constructing a Rail Road on the said route, and also a Harbour connected therewith, at the mouth of Cat Fish Creek aforesaid: 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 Henry Dailey, William Dailey, William Huggins, Herbert Dailey, Edward Wilkins, Frederick Dailey, Edward Dailey, 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, under the name and style of "The London and Devonport Rail Road and Harbour Company," and 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 manner of suits, actions, complaints, matters and causes whatsoever; and that they and their Successors shall and may 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 London and Devonport Rail Road and 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 can y on the business of Banking: And provided also, that the real estate to be held by the said Company, shall be only such as may be necessary for the purpose of making, using and preserving, the said Rail Road and Harbour, 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, at their own proper costs and charges, a double or single, Iron or Wooden Rail Road or Way, on and over any part of the Country lying between the Town of London, in the London District, and Lake Erie, at or near the Village of Devonport, at the mouth of Cat Fish Creek; 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 also, at their own costs and charges; to constructs Harbour at the mouth of Cat Fish Creek aforesaid, and connected with the said Rail Road, which shall be accessible to, and fit, safe and commodious, for the reception of such description and burthen of Vessels as usually navigate Lake Erie; and also to erect and build all such needful Moles, Piers, Wharves, Buildings and erections whatsoever, as may be deemed safe and proper for the protection of the said Harbour, and for the accommodation and convenience of Vessels entering, lying, loading and unloading within the same, and to alter, 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 Capital or Stock of the said Company, inclusive of any real estate which they may have or hold by virtue of this Act, shall not exceed in value Fifty Thousand Pounds, to be held in Eight Thousand Shares, of Six Pounds Five 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 by the said Company for that purpose.

IV. 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, as well as inhabitants of this Province, and be elected on the first Monday in June, in each and every year, at such place in the District of London, and at such time of the day as a majority of the Directors for time being shall appoint; and public notice thereof shall be given in the Upper Canada Gazette, or in some Newspaper published in the London District, 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 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 persons 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, 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 shall happen, by a person or persons to be named by a majority of the Directors.

V. And be it further enacted by the authority aforesaid, That each Stockholder shall be entitled to a number of votes, in proportion 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 ratios, 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.

VI. 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 take place 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.

VII. And be it further enacted by the authority aforesaid, That the Directors for the time being, or the 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 duties of the Officers, Clerks and Servants, and all such 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 proper.

VIII. And be it further enacted by the authority aforesaid, That on the first Monday in June next, after the passing of this Act, a Meeting of the Stockholders shall be held at Devenport, in the District of London, who, in manner hereinbefore provided, shall proceed to the Election of Directors, who shall continue in such Office until the first Monday in June next after such Election, and who, during such continuance in Office; shall discharge the duty of Directors, in the same manner as if they had been elected at the Annual Election.

IX. And be it further enacted by the authority aforesaid, That so soon as Directors have been chosen, as aforesaid, it shall be lawful for them to call upon the Stockholders of the said Company, by giving thirty days notice thereof in the Upper Canada Gazette, or in some Newspaper that may be published in the London District, for an Instalment of not more than Ten per Cent upon each Share which they or any of them may respectively subscribe, and that the residue of the sums on Shares held by the Stockholders shall be payable by Instalments, at such times 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 Instalment shall exceed Ten per Cent, nor become payable in less than thirty days, after public notice in the Upper Canada Gazette, or other Newspaper, as aforesaid: Provided always, that the said Directors shall not commence the construction of the said Rail-road and Harbour, until the first Instalment shall be paid in.

X. And be it further enacted by the authority aforesaid, That if any Stockholder, as aforesaid, shall neglect or refuse 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 so neglecting or refusing, shall forfeit such Share or Shares, as aforesaid, with any amount that shall have been previously paid thereon; and that the said Share or Shares shall 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 shall pay to the said Company, the amount of the Instalment required, over and above the purchase money for the Share or Shares so purchased by him or her, immediately after the sale, and before he or she shall be entitled to a certificate of the transfer of such Share or Shares, so purchased: Provided always, nevertheless, that thirty days notice of the sale of such forfeited Shares shall be given in the Upper Canada Gazette, or in some Newspaper published in the said District of London; 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.

XI. And be it further enacted by the authority aforesaid, That the said London and Devenport Rail-road and Harbour Company may, and they 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 and Harbour, either for the purchase of so much of the said Land and privileges as they shall require, for the purposes of the said Company, or for the damages which he, she or they, shall be entitled to receive of the said Company, in consequence of the said intended Rail-road or Harbour 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 be lawful for each owner or occupier so disagreeing with the said Company, either upon the value of the Lands, Tenements, or private privilege 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 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; and that the said Arbitrators shall take into their consideration, the advantages the party or parties through whose Lands the said Rail-road may pass, may derive from its so passing, and the award of the majority of whom shall be final; and the said Arbitrators shall be, and are hereby required, to attend at some place convenient to the said Rail-road or Harbour, to be appointed 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 District of London, any one 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.

XII. And be it further enacted by the authority aforesaid, That whatever sum of money may be finally awarded to any person or persons, as compensation for property required to be occupied by the said Company, or for damages occasioned by their interference with his, her or their property, rights or privileges, shall be paid within four months from the time of the same being awarded; and in case the 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 or proprietors to resume the occupation of such property, and to possess fully, his, her or their rights .and privileges in respect thereof, free from any claim or interference from the said Company.

XIII. And be it further enacted by the authority aforesaid, That the said London and Devonport Rail-road and Harbour Company, shall have full power and authority, to explore the country lying between the Town of London, in the London District, and the mouth of Cat-fish Creek, on the shore of Lake Erie, in the said District, and to designate and establish, 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, to connect the Town of London, in the London District, with Lake Erie, at the mouth of the said Cat-fish Creek; and for the purposes aforesaid, and for the construction of a Harbour, in connection with said Rail-road, the said Company, and their Agents, Servants and Workmen, are hereby authorised and empowered, to enter into and upon the Lands or 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 Rail-road and Harbour, and all such matters and conveniences as they shall think fit for making, effecting, preserving, improving, completing and using, the said intended Rail-road; and also to make, build, erect and set up, upon the site of the said Rail-road or Harbour, 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 Harbour; and also, from time to time, to alter, repair, amend, widen or enlarge the same, or any other of the conveniences above-mentioned, as well for the carrying and conveying Goods, Commodities, Timber and other things, to and from the said Rail-road and Harbour, 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 or belonging to the said Rail-road and Harbour; and also, place, lay, work and manufacture, the said materials on the ground near 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 Harbour; 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 and Harbour, in pursuance of 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 owners or occupiers of such Lands, Tenements and Hereditaments.

XIV. 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 Rail-road aforesaid, hereby authorised to be constructed, built, made and used; and that so 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 use and benefit, and on all Goods, Wares and Merchandise, shipped or landed on board or out of any Vessel or Boat, from or upon any part of the Lake Shore, between one-half mile East, and one-half mile West of the mouth of the said Creek, in the Township of Malahide, in the said District of London, 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, sixpence; Pork, Whiskey, Salt, Beef, and Lard, per barrel, fourpence half-penny; Lard and Butter, in kegs, one penny; Merchandize, per barrel bulk, sixpence; Wheat, per sixty pounds, and all other Grain for exportation, one penny; Merchandize, per hundred weight, two-pence; Boards and Lumber, per thousand feet, board measure, one shilling and threepence; Pipe Staves, per thousand, seven shillings and sixpence; West India Staves, per thousand, two shillings and sixpence; Boats, under twelve tons, one shilling and threepence; Boats and Vessels, over twelve tons, and under fifty tons, five shillings; Boats and Vessls, from fifty tons and upwards, seven shillings and sixpence; and all articles not enumerated, to pay in proportion to the above rates, subject to the direction of the Directors, appointed by virtue of this Act: Provided, nevertheless, that the said Directors shall have power to reduce the said Rates of Toll, should they see fit.

XV. And be it further enacted by the authority aforesaid, That the said Rail-road or Way, and the said Tolls on Goods, Wares, Merchandize and Passengers, transported on the same, and all materials which shall, from time to time, be got or provided for constructing, building, maintaining or repairing the same, shall be and are hereby vested in the said Company, and their Successors for ever.

XVI. And be it further enacted by the authority aforesaid, That so soon as the said Rail-road 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, to and for their own proper use and benefit, the Tolls or Dues payable on all Goods, Merchandize or 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 such transportation and carriage; and shall have power to erect and maintain such Toll-houses and other buildings, for the accommodation and transaction of the business, as to them may seem necessary.

XVII. And be it further enacted by the authority aforesaid, That whenever it shall be necessary for the construction of their Rail-road, to cross any Stream of Water or Water Course, or any Road or Highway, lying on the route of the said Rail-road, between the Town of London aforesaid and Lake Erie, it shall be lawful for the Corporation to construct their Rail-road upon or across the same: Provided, that the Corporation restore the Stream or Water Course, or Road or Highway thus intersected, to its former state, or in such sufficient manner, that its usefulness be not impaired, and shall, moreover, erect and maintain, during the continuance of the Corporation, sufficient fences upon the route of the said Rail-road.

XVIII. 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 actually sustained by means of such offence or injury, to be recovered in the name of the said Corporation by action of debt, to be brought in any Court of Record in this Province.

XIX. And be it further enacted by the authority aforesaid, That the said Rail Road and Harbour contemplated by this Act, shall not in any degree interfere with, or incroach upon, any Fee Simple, right, or private easement or privilege, of any individual now holding and enjoying the same, or entitled thereto, without permission first had and obtained, either by consent of the owner thereof, or by virtue of reference authorised by this Act,

XX. 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 advisable; and that once in each year an exact and particular statement shall be rendered of their affairs, debts, credits, profits and losses, such statement to appear on the Books, and to be open to the inspection of any Stockholder, at his or her reasonable request.

XXI. And be it further enacted by the authority aforesaid, That the construction of the Rail Road and Harbour contemplated by this Act, shall be commenced by the said Company within two years, and completed within seven years, from and after the time of the passing of this Act.

XXII. 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 may plead the general issue only, and give this Act, and the special matter in evidence on the trial.

XXIII. And be it further enacted by the authority aforesaid, That at any time after fifty years, after the making and completing the said Rail Road and 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 Rail Road and 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 Rail Road and 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 respecting the same: Provided always, that it shall not be lawful for His Majesty, His Heirs or Successors, at any time after the expiration off the said fifty years, to assume the possession and property of the said Rail Road and Harbour, 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 and ten shillings, for every one hundred pounds they shall be possessed of in the said concern.

XXIV. 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 Rail-road and Harbour, shall have been assumed by His Majesty, His Heirs and 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 uses of this Province, at the disposal of the Legislature thereof, and shall be accounted for to His Majesty, His Heirs and Successors, in such manner and form as His Majesty, His Heirs and Successors, shall be graciously pleased to direct.

XXV. 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.