

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

7 William IV – Chapter 71

**An Act granting a sum of money to Improve a Harbour in the Township of Whitby, in the Home District. Passed 4th March, 1837.**

Whereas the improvement of the Harbour at Windsor Bay is of importance to the Trade and Commerce of the Province, as well as to its Shipping interest: And whereas, it is expedient to raise by loan a sum sufficient to make such improvement, and to authorise a suitable toll to be levied and collected on all Goods, Produce and other articles, as well as on all Vessels and Crafts passing in or using the same: Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled, "*An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,*" and by the authority of the same, That it shall and may be lawful for the Governor, Lieutenant Governor, or Person Administering the Government of this Province, so soon after the passing of this Act as he may deem expedient, to authorise and direct His Majesty's Receiver General of this Province to raise by loan, from any person or persons, Body Corporate or Politic, who may be willing to advance the same upon the credit of the Government Bills, or Debentures, authorised to be issued under this Act, a sum of money, not exceeding Nine Thousand Pounds, at a rate of interest not exceeding Six per cent per annum, payable half yearly in this Province, or at as much lower rate of interest as the same can be obtained, to improve and complete the said Harbour, and also to make and complete such works as may be deemed necessary, to protect and secure the entrance thereof from Lake Ontario.

II. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the Receiver General, for the time being, to cause any number of Debentures to be made out, for any such sum or sums of money, not exceeding in the whole the sum of Nine Thousand Pounds, as any person or persons, Body Corporate or Politic, shall agree to advance on the credit of the said Debentures; which Debentures shall be prepared and made out in such method and form, as His Majesty's Receiver General shall think most safe and convenient; and that for each loan or advance a Debenture shall issue, bearing date at the day on which the same shall actually be issued, conditioned for the payment of the said sum of Nine Thousand Pounds, or such part thereof as may be actually raised, and redeemable at a period not exceeding twenty years, and shall and may be signed by the Receiver General of the Province, for the time being.

III. And be it further enacted by the authority aforesaid, That if any person or persons shall forge or counterfeit any such Debenture as aforesaid, which shall be issued under the authority of this Act, and uncanceled, or any stamp, endorsement, or writing thereon, or therein, or tender in payment any such forged Debenture, or any Debenture with such counterfeit endorsement or

writing thereon, or shall demand to have any such counterfeit Debenture, or any Debenture with such counterfeit endorsement or writing thereon or therein, exchanged for ready money, by any person or persons who shall be obliged or required to exchange the same, or by any other person or persons whomsoever, knowing the Debenture so tendered in payment, or to be exchanged, or the endorsement or writing thereon or therein to be forged or counterfeited, with intent to defraud His Majesty, His Heirs and Successors, or the persons appointed to pay off the same, or any of them, or any other person or persons, Bodies Politic or Corporate, then every such person or persons so offending, being thereof lawfully convicted, shall be adjudged a felon, and shall suffer as in cases of felony.

IV. And be it further enacted by the authority aforesaid, That the Receiver General of this Province, for the time being, shall, before each Session of the Parliament of this Province, transmit to the Governor, Lieutenant Governor, or Person Administering the Government of this Province, a correct account of the numbers, amount and dates, of the different Debentures which he may have issued under the authority of this Act, of the amount of the Debentures redeemed by him, and the interest paid thereon respectively, and also of the amount of the said Debentures outstanding and unredeemed at the periods aforesaid, and of the expense attending the issuing the same, to be laid before the Legislature of this Province.

V. And be it further enacted by the authority aforesaid, That the interest growing due on the said Debentures, shall and may be payable in half yearly periods, to be computed from the date thereof, and shall and may be paid on demand by the Receiver General of this Province, for the time being, who shall take care to have the same endorsed on each Debenture at the time of payment thereof, expressing the period up to which the said interest shall have been paid, and shall take Receipts for the same from the persons respectively; and that the Governor, Lieutenant Governor, or Person Administering the Government of this Province, shall, after the thirtieth day of June, and the thirty-first day of December, in each year, issue Warrants to the Receiver General, for the payment of the amount of interest that shall have been advanced, according to the Receipts to be by him taken as aforesaid.

VI. And be it further enacted by the authority aforesaid, That the Receiver General of this Province, and the person or persons necessarily employed under him in the execution of this Act, shall severally have and receive such awards and allowances as to the Governor, Lieutenant Governor, or Person Administering the Government of this Province, and the Executive Council thereof, shall adjudge to be reasonable and direct to be allowed them, for their respective services in the execution of this Act; and that the same shall be paid in discharge of such Warrant or Warrants as the Governor, Lieutenant Governor, or Person Administering the Government of this Province, shall from time to time issue for that purpose.

VII. And be it further enacted by the authority aforesaid, That a separate Warrant shall be made to the Receiver General by the Governor, Lieutenant Governor, or Person Administering the Government of this Province, for the time being, for the payment of each Debenture as the same may become due, and be presented in favor of the lawful holder thereof; and that such

Debentures as shall from time to time be discharged and paid off, shall be cancelled and made void by the said Receiver General.

VIII. And be it further enacted by the authority aforesaid, That at any time after the said Debentures, or any of them, shall respectively become due, according to the terms thereof, it shall and may be lawful for the Governor, Lieutenant Governor, or Person Administering the Government of this Province, if he thinks proper so to do, to direct a notice to be inserted in the Upper Canada Gazette, requiring all holders of said Debentures, to present the same for payment according to this Act; and if after the insertion of the said notice for three months, any Debenture then payable shall remain out more than six months, from the first publication of such notice, all interest on such Debentures, after the expiration of the said six months, shall cease, and be no further payable in respect to the time which may elapse, between the expiration of the said six months and their presentment for payment.

IX. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the Governor, Lieutenant Governor, or Person Administering the Government of this Province, to appoint three Commissioners to carry into effect the provisions of this Act, whose duty it shall be to cause a survey, or surveys, and a plan, or plans of improvements, to be made in said Harbour at Windsor Bay, with estimates of the expense of such improvements to be made; and who shall or may contract with such person or persons as shall undertake the said improvements, and all works therewith connected, or any part thereof, and who shall do and perform all and whatsoever act and acts, thing and things, necessary and proper to carry the intention of this Act into full effect; and shall and may, from time to time, after the completion of any part of the said improvements, fix such Rates and Tolls as to them may seem just; and shall report to the Governor, Lieutenant Governor, or Person Administering the Government of this Province, for the information of the Legislature, on or before the first day of November, in each and every year, all matters by them done or performed by virtue of this Act, with an account in detail of all monies by them received and paid under the provisions thereof, with the proper vouchers for such payments.

X. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the Governor, Lieutenant Governor, or Person Administering the Government of this Province, for the time being, to nominate and appoint under his hand and Seal, such person or persons as he shall think fit, to fill any vacancy or vacancies which from time to time shall or may happen in the said Board of Commissioners by death, resignation or otherwise.

XI. And be it further enacted by the authority aforesaid, That the said Commissioners may, from time to time, appoint such Engineers, Agents, Officers, Workmen and Servants, as they may deem just and reasonable, to carry into effect the provisions of this Act, taking, when necessary, good security for the faithful discharge of the trust reposed.

XII. And be it further enacted by the authority aforesaid, That no Commissioner, Secretary or other Officer, appointed under the provisions of this Act, shall be, directly or indirectly, concerned, engaged or interested, in any contract or agreement for the performance of any work, which may be necessary under the authority of this Act.

XIII. And be it further enacted by the authority aforesaid, That the said Commissioners are hereby authorised and empowered, by themselves, their Agents or Workmen, Contractors or Servants, to enter into or upon the lands or grounds of or belonging to any person or persons, Bodies Corporate or Politic, and to survey and ascertain such parts thereof as shall be necessary and proper for making and completing the said Harbour, Ways, Wharves, Piers, Improvements and Conveniences, and for effecting, preserving, improving, completing and using, the said Harbour, and for removing and conveying all materials necessary for making, erecting, finishing, altering, repairing, amending or enlarging, the works of and belonging to the said Harbour; and also place, lay, work and manufacture, the said materials on any ground near to the place or places where the said works, or any of them, are or shall be intended to be made, erected or repaired, and build and construct the said works and erections belonging thereto, and all ways and passages which shall communicate therewith, and to erect and keep in repair any Piers, or other works of improvement in said Harbour; and also to construct, make and do, all other matters and things which shall be necessary and convenient, for the making, effecting, preserving, improving, completing and using the said Harbour, in pursuance, and within the meaning of this Act, they, the said Commissioners, doing as little damage as may be, in the execution of the several powers to them granted thereby, or intended to be hereby granted: Provided always, that in all cases where the said Commissioners shall find it necessary to take any lands, or other property, for the purpose of constructing, completing and maintaining the said Harbour, and approaches thereto, the value of said land, or other property, so taken or made use of, as also the amount of any damage done to any lands or other property, to whomsoever belonging, shall be ascertained, accounted for and discharged, by the said Commissioners, in such manner and to such amount, as the said Commissioners in their judgment and discretion shall think just and equitable.

XIV. And be it further enacted by the authority aforesaid, That the said Commissioners shall, at their first general meeting held after any of the said improvements of the Harbour aforesaid shall be finished, ascertain and fix the Rates and Dues to be taken by virtue of this Act; and that the said Commissioners may alter the said Rates and Dues at any subsequent meeting, after giving two months notice of their intention so to do; and that the Schedule of Rates and Dues shall be affixed on one or more conspicuous public place or places of said Harbour.

XV. And be it further enacted by the authority aforesaid, That an account of all Dues and Tolls, received by the Commissioners under the authority of this Act, shall be rendered to the Inspector General of the Province, on or before the thirtieth day of June, and the thirty-first day of December, in each year; and the amount thereof, deducting any necessary expenditure on account of the said Harbour or improvement, and the expense of collecting the same, shall, within ten days thereafter, be transmitted to His Majesty's Receiver General of this Province, to be applied towards the payment of the principal and interest of any loan contracted in pursuance of this Act; and after the interest, and the whole of the principal sum loaned under the provisions of this Act, shall be paid and discharged, the proceeds of the said dues and tolls, after deducting the expenses of the collection thereof, and defraying the necessary expenses of repairs, shall be subject to the disposal of the Legislature of this Province.

XVI. And to prevent disputes touching the tonnage of any Boat, Barge, Brig, Schooner, Sloop or other Vessel, passing into or using, and partaking the benefits of said Harbour, be it further enacted by the authority aforesaid, That the Owner or Master of any such Boat, Barge, or other Vessel whatsoever, shall permit and suffer any such Vessel to be gauged or measured, and refusing so to permit and suffer, shall forfeit and pay the sum of Forty Shillings; and it shall be lawful for the Commissioners, or their Agent or Agents, or such other person or persons as shall be appointed by them for that purpose, to proceed with such Owner or Master, or such other person or persons as shall be chosen or appointed by such Owner or Master, to measure and ascertain such tonnage, and to mark the same on such Boat, Schooner or other Vessel, which mark shall always be evidence of the tonnage, in all questions respecting the payment of the aforesaid Rates or Dues; and if such Master or Owner shall refuse or decline to choose a person on his behalf as aforesaid, then the person appointed by the Commissioners, or their Agent or Agents, shall alone have the power of ascertaining such tonnage.

XVII. And be it further enacted by the authority aforesaid, That if any person or persons shall wilfully or maliciously break down, damage or destroy, any bank, pier or machine, or any improvement, of what kind or nature soever, belonging to or connected with the said Harbour, or do any other act, hurt or mischief, to disturb, hinder, or prevent the carrying into effect the provisions of this Act, or the completing, supporting or maintaining, the improvements aforesaid, every such person so offending, shall be deemed guilty of a misdemeanor.

XVIII. And be it further enacted by the authority aforesaid, That all penalties and forfeitures for offences against this Act, or against any rule or By-law of the said Commissioners, to be made in pursuance thereof, shall, upon proof of the offences respectively, before any two Justices of the Peace for the Home District, either by confession of the party or parties, or by the oath of one credible Witness, be levied by distress and sale of the Goods and Chattels of the parties offending, by Warrant under the hand and seal of such Justices; and the overplus, after such penalties and forfeitures, and the charges of such distress and sale, are deducted, shall be returned, upon demand, to the owner or owners of such Goods and Chattels; and in case such sufficient distress cannot be found, or such penalties and forfeitures shall not be forthwith paid, it shall be lawful for such Justices, by Warrant under their hands and seals, to cause such offender or offenders to be committed to the Common Gaol of the Home District, there to remain without bail or main prize, for such time as such Justices may direct, not exceeding twenty days, unless such penalties and forfeitures, and all reasonable charges attending the same, shall be sooner paid and satisfied.

XIX. And be it further enacted by the authority aforesaid, That if any plaint shall be brought or commenced, against any person or persons, for any thing done or to be done in pursuance of this Act, or in execution of the powers and authorities, or the orders and directions hereinbefore given or granted, every such suit shall be brought or commenced within six calendar months next after the fact committed; or in case there shall be a continuation of damages, then within six calendar months after the doing or committing such damages shall cease, 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 at any trial to be had thereon, and that the same was done in pursuance and by authority of this Act; and if it shall appear to be done so, or if any Action or Suit

shall be brought after the time herein-before limited for bringing the same, then a verdict shall be given for the Defendant.

XX. And be it further enacted by the authority aforesaid, That whenever the Commissioners appointed under this Act shall be named, it shall be taken and construed to mean the majority of the said Commissioners; and that the said Commissioners 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 monies coming into their hands, and touching the duty and conduct of the Officers, Clerks and Servants, employed by them, and all such other matters as appertain to the conduct of the said Commissioners, in carrying into effect the provisions of this Act.

XXI. And be it further enacted by the authority aforesaid, That the said Commissioners shall hold their first meeting, at such time and place as the majority of them may name and appoint.

XXII. And be it further enacted by the authority aforesaid, That all monies which shall be raised by Debenture, under the provisions of this Act, shall be paid by the Receiver General of this Province, in discharge of such Warrant or Warrants as may from time to time be issued by the Governor, Lieutenant Governor, or Person Administering the Government of this Province for the time being, in favor of such Commissioners, and shall be accounted for through the Lords Commissioners of His Majesty's Treasury, in such manner and form as His Majesty, His Heirs and Successors, shall be graciously pleased to direct.

XXIII. And be it further enacted by the authority aforesaid, That it shall not be lawful for the Commissioners aforesaid, to commence any part of the improvements of the said Harbour, until a survey with estimates in detail, of the cost of the work, shall have been made, by a competent Engineer under their authority, and unless upon examination of such survey and estimates, by the Governor, Lieutenant Governor, or Person Administering the Government of this Province, and the Executive Council thereof, it shall satisfactorily appear to them, that the work can be completed in a permanent and sufficient manner, for a sum not considerably exceeding Nine Thousand Pounds.