

The Provincial Statutes of Canada, passed in the year 1841. Kingston: Stewart Derbshire & George Desbarats, 1841.

4 & 5 Victoria – Chapter 56

An Act to incorporate certain persons therein named, under the style and title of “The Sydenham Harbour Company.” 18th September, 1841.

Whereas the construction of a safe and commodious Harbour at the mouth of Annis’s Creek, in the Home District, 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, John B. Warren, E. Skae, P. M. Nicol, Joseph Wood, David Annis, Thomas Henery, Thomas Gibbs, Samuel Hall, Malcolm Wright, Hugh Munro, James D. Hoitt, Ethan Card, Robert Wilcockson, Elijah Haight, John McGregor, John Amsbury, Joseph Robson, and John McGill 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 Queen’s Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, intituled *An Act to Re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted, by the authority of the same, that the said John B. Warren, E. Skae, P. M. Nichol, Joseph Wood, David Annis, Thomas Henery, Thomas Gibbs, Samuel Hall, Malcolm Wright, Hugh Munro, James D. Hoitt, Ethan Card, Robert Wilcockson, Elijah Haight, John McGregor, John Amsburv, Joseph Robson and John McGill, 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, by and under the name and style of the “Sydenham 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 change and alter the same at their will and pleasure, and also that they and their successors, by the name of “The Sydenham 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 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 enacted, that the said Company are hereby authorized and empowered, at their own costs and charges, to construct a Harbour at the mouth of Annis’s Creek, on the Lots number Five, Six, Seven, Eight, Nine and Ten, of the Broken Front Concession of the Township of Whitby, in the Home District, aforesaid; which Harbour shall be accessible to, and fit, safe and commodious,

for the reception of such description and burthen of vessels as commonly navigate the said Lake; 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 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 enacted, that the Directors of the said Company shall be, and they are hereby empowered, to contract, compound, compromise, and agree with the owners and 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 or may be entitled to recover from the said Company, in consequence of the said intended harbour, roads, streets, and approaches thereto being cut and 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, as 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 and appoint 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 intitled 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 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 Her 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 Queen's Bench, in the same manner and on the same grounds as in ordinary cases of submission by the parties, in which case reference may be again made to Arbitrators as hereinbefore provided.

IV. And be it enacted, 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 on board or landed 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 Whitby, in the said Home District, 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, nine pence,

Pork, Whiskey, Salt, Beef, and Lard, per barrel, five pence,

Flour, per barrel, three pence halfpenny,

Flour, per hundred weight, two pence,

Wheat, per sixty pounds, one penny,

Merchandize, per barrel bulk, six pence,

Merchandize, per hundred weight, two pence,

Hollow Ware, per hundred weight, three pence,

Bar and Pig Iron, per hundred, two pence halfpenny,

Boards and Lumber, per thousand feet, board measure, one shilling and three pence,

Boats, under twelve tons, one shilling and three pence,

Boats and Vessels, from twelve tons and upwards, per ton, two shillings.

And all other articles not enumerated to pay in proportion to the above rates, subject to the Direction of the Directors appointed by virtue of this Act.

V. And be it enacted, that the said harbour, moles, 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 and merchandize, as hereinbefore mentioned, shall be and the same are hereby vested in the said Company and their successors for ever.

VI. And be it enacted, 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 and detain 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 Servant, as 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 to return the overplus, if any, to the owner or owners thereof.

VII. And be it enacted, 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 office 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 to be elected on the second Monday in May in every year, at the Township of Whitby, at such time of the day as a majority of the Directors for the time being shall appoint; and public notice thereof shall be given in any Newspaper or Newspapers that may be published in the said Home 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 said Stockholders of the said Company as shall attend for that purpose in their own proper persons, or by proxy, and all elections for such Directors shall be by ballot, and the seven persons who shall have the greatest number of votes at any election shall be Directors; and if it shall happen at any such election that two or more have an equal number of votes in such manner that a greater number of persons than seven shall, by a plurality of votes, appear to be chosen Directors, then the said Stockholders hereinbefore authorized to hold such election, shall proceed to elect by ballot until it is ascertained 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 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 may happen, by a person or persons to be nominated by a majority of the Directors.

VIII. And be it enacted, 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 rules, viz: 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 enacted, that in case it should at 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 enacted, 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 other matters as appertain to the business of the said Company; and shall 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 enacted, that on the second Monday in October next, after the passing of this Act, a meeting of the stockholders shall be held at Whitby, 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 May 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 given in the Upper Canada Gazette, or in any Newspaper or Newspapers that may be published in the said District.

XII. And be it enacted, that the whole capital or stock of the said Company, inclusive of any real estate which the said Company may have or hold by virtue of this Act, shall not exceed in value five thousand pounds, to be held in eight hundred shares of six pounds five shillings 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 holding the same to other person or persons; and such transfer shall be entered and registered in a book or books, to be kept for that purpose by the said Company.

XIII. And be it enacted, 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 Upper Canada Gazette, or in any Newspaper or Newspapers that may be published in the said District, for an instalment often 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 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 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 enacted, 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 the said Company, the amount of the instalment required, over and above the purchase money of the share or shares so purchased by him, her or them, as aforesaid, immediately after the sale, and before they shall be entitled to the certificate of the transfer of such shares so purchased, as aforesaid: Provided always, nevertheless, that thirty days notice of such forfeited shares shall be given in the Upper Canada Gazette, or in any Newspaper or Newspapers that may be published in the Home District; 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 enacted, 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 the state of their affairs, debts, credits, profits and losses, such statement to appear on the books, and to be open to the perusal of any stockholder at his or her reasonable request.

XVI. And be it enacted, 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.

XVII. And be it enacted, that at any time after fifty years after the making and completing the said Harbour, Her Majesty, Her Heirs and Successors may assume the possession and property of the same, and 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 five 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 Her Majesty, Her 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 for or respecting the same: Provided always, that it shall not be lawful for Her Majesty, Her 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 ten shillings for every one hundred pounds they shall be possessed of in the said concern.

XVIII. And be it enacted, 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 Her Majesty, Her Heirs or Successors, as hereinbefore authorized, all tolls and profits arising therefrom shall be paid into the hands of Her Majesty's Receiver General, to and for the public uses of this Province, and shall form part of the Consolidated Revenue Fund thereof, and shall be accounted for to Her Majesty, Her Heirs and Successors, through the Lords Commissioners of Her Majesty's Treasury, in such manner and form as Her Majesty, Her 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.