

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

4 & 5 Victoria – Chapter 80

An Act to establish a Company by the name of “The Sydenham Mountain Road Company.” 18th September, 1841.

Whereas the Inhabitants of Dundas, in the District of Gore, and those in the Township of West Flamboro’ [Flamborough], on the Mountain East of the property of Mr. Rees Tunis, in East Flamboro’, and persons travelling in the direction of the City of Toronto, have long experienced the want of an easy macadamized road up the said Mountain: And whereas it has been ascertained by a survey of the lands of George Rolph, Esquire, by James Kirkpatrick; Deputy Provincial Surveyor, that a good and safe road up the Mountain can be made by an expenditure of not more than two thousand pounds: And whereas it is desirable that such improvement should be made from the top of the Mountain, to the Waterloo turnpike road at the Catholic Church in Dundas, agreeably to the survey of the same by the said James Kirkpatrick, Esquire, Deputy Provincial Surveyor; and whereas John Gamble, Thomas Racey, J. P., James B. Ewart, J. P., John Keagey, Robert Holt, George Rolph and others, have petitioned the Legislature to be by Law incorporated for the purpose of effecting by means of a joint capital or stock, such a macadamized road from the top of the said Mountain to the said Waterloo turnpike road, at the Catholic Church in Dundas, agreeably to the said survey of the same by James Kirkpatrick, Esquire, Deputy Provincial Surveyor; 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 Gamble, Thomas Racey, J. P., James B. Ewart, J. P., John Keagey, Robert Holt, George Rolph, or any three of them, together with all such other persons as shall become Stockholders in such joint capital or stock, as hereinafter mentioned, shall be and are hereby united into a Company for the making, macadamizing, completing and maintaining the said road according to the powers and authorities, rules, and directions hereinafter set forth and expressed for that purpose, and for that purpose shall be and are hereby ordained, constituted and declared to be a body corporate and politic in fact, by the name of “The Sydenham Mountain Road 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 Courts and places whatsoever, in all manner of actions, suits, 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 Sydenham Mountain Road 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, which it shall or may be necessary or expedient for them to hold for the necessary purposes of the said Company, and of letting,

conveying or otherwise parting therewith, for the benefit and on account of the said Company, from time to time as they shall deem necessary or expedient.

II. And be it enacted, that the whole capital stock (exclusive of any real estate which the said Company may have or hold by virtue of this Act), shall not exceed in value two thousand pounds of lawful money of this Province, which said capital shall be composed of four hundred shares of the value of five pounds each; and that the said shares of the said capital stock shall be transferable, and may be from time to time transferred, by the respective persons so subscribing or holding the same, to every other person or persons: Provided always, that such transfer be entered or registered in a book or books to be kept for that purpose by the said Company: And provided also, that nothing herein contained shall extend or be construed to extend to allow the said Company to carry on the business of Banking.

III. And be it enacted, that within twenty days after the passing of this Act, books of subscription shall be opened in the Town of Dundas, West Flamboro', East Flamboro', Hamilton and Ancaster, in the District of Gore, by such person or persons, and under such regulations within the meaning of this Act, as the said Petitioners or the majority of them shall by writing direct.

IV. And be it enacted, that the said books of subscription shall remain open for subscription for ninety days, during which time no person subscribing shall so subscribe for more than twenty shares; but if after the expiration of the said ninety days any stock should remain not taken up, then it shall be lawful for the said subscribers or any of them, or any other person or persons, to subscribe for any greater or less number of shares, so long as any of the said stock may remain unsubscribed for.

V. And be it enacted, that all and every the subscribers for the said stock or any part thereof, shall at the time of subscribing pay a proportion of one third upon the capital stock of the whole number of shares, for which they or any of them respectively may subscribe: and that such proportion so paid and deposited at the time of subscription, shall be at the disposal of the Directors hereinafter mentioned, to and for the purposes of this Act, in manner as hereinafter is directed, and that the residue of the sum or shares of the subscribers and stockholders shall be payable by instalments, at such times, and in such proportion as a majority of the Stockholders at a Meeting to be expressly convened for that purpose, shall agree upon: Provided that no such instalment shall exceed one third of the said capital stock, or become payable in less than one year after public notice in said Town of Dundas.

VI. And be it enacted, that if any Stockholder, 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, then such Stockholders so refusing or neglecting, shall forfeit such share and shares as aforesaid with the amount 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 thereon, shall be accounted for and divided in like manner as other monies of the said Company: Provided always, that nothing in this Act shall prevent any

Stockholder from paying up the amount he subscribes for, at any time to the Directors, and the same shall be allowed to him by the said Company.

VII. And be it enacted, that as soon as the aforesaid deposit of thirty-three and one third per cent upon the whole capital stock, shall be paid into the hands of such Receiver or Receivers as the Stockholders shall appoint, it shall and may be lawful for the subscribers or the majority of them, upon thirty days notice published in the Town of Dundas, in the Gore District, to call a Public Meeting at the village of Dundas aforesaid, for the purpose of proceeding to the Election of Directors as hereinafter mentioned, and the persons then and there chosen shall be capable of serving until the first Monday in April, in the year eighteen hundred and forty-two, and the Directors so chosen shall commence the business of the said Company, and proceed therein till the first subsequent annual election of Directors as hereinafter mentioned.

VIII. And be it enacted, that the stock, property, affairs and concerns of the said Corporation of the Sydenham Mountain Road Company, shall be managed and conducted by five Directors, one of whom to be the President, who shall hold his office for one year; which Directors shall be Stockholders, and shall be inhabitants of the District of Gore, and shall be elected on the first Monday in April in every year, at such time of the day, and at such place in the said Town of Dundas, as the majority of the Directors for the time being, by thirty days public notice shall appoint: Provided nevertheless, that the first Board of Directors to be chosen by the subscribers, as aforesaid, shall continue in office till the first Monday of April, which will be in the year of our Lord, eighteen hundred and forty-two, as in the last clause provided, and no longer unless re-elected.

IX. And be it enacted, that the election of Directors shall be held and made by such Stockholders of the said Company, as shall attend at Dundas aforesaid, for that purpose, in their own proper persons or by proxy, and shall be determined by ballot, such ballot to be regulated and calculated by the number of votes allowed to such Stockholders, according to the number of shares held by them respectively, as follows, 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: Provided always, that the Stockholders so voting, shall be possessed of the share or shares in respect of which they shall respectively vote, at least three months before the time of election: and that no person, copartnership or body politic, shall be entitled to more than one vote for each share at any such election, nor at the determination of any other matter or thing concerning the said Company, or its affairs, which may by the provisions of this Act, be submitted to the judgment and decision of the Stockholders generally: Provided always, that the choice of the Scrutineers hereinafter mentioned, and of the President, be had as is hereinafter expressly directed.

X. And be it enacted, that the Directors to be chosen shall be Stockholders in the said Company, and shall hold to their own use ten shares at least; and that all and every copartnership and copartners, body and bodies politic or corporate, holding any share or shares in "The Sydenham Mountain Road Company," shall each of them vote only as an individual Stockholder; nor shall two or more persons belonging to any such copartnership or copartnerships, body or bodies politic or

corporate, be capable of being nominated or chosen, or of sitting as Directors, although such persons may hold stock in their private right or to their private use in said Sydenham Mountain Road Company.

XI. And be it enacted, that of the persons, as aforesaid, nominated and balloted for in manner aforesaid, those five shall be deemed elected who shall have the greater number of votes, according to the shares held by the voters, respectively, as hereinbefore prescribed, at each and every such election of Directors; and that at every such election, on the first Monday of April, in each and every year as aforesaid, after the ballot shall have been kept open from eleven of the clock in the forenoon, till two of the clock in the afternoon, the five persons having the majority of the votes in the manner aforesaid, shall so soon thereafter as convenient, on the same day, be declared the Directors chosen for the ensuing year, by any two or more Scrutineers who shall have been previously nominated by the Stockholders for the purpose of examination and report of such ballot: Provided nevertheless that the Stockholders present at the place of ballot, shall in the nomination of Scrutineers vote per capita and not by shares.

XII. And be it enacted, that the said Directors on the same day and place wherein they shall have been so chosen and declared Directors, shall, after all other persons have retired, choose by plurality of voices, one of their number to be President, in which choice the Directors shall vote per capita, and not by shares.

XIII. And be it enacted, that in case of vacancy by death or absence for more than two months from the sitting of the said Board, such vacancy shall as often as necessary be supplied by ballot in manner as aforesaid, the Directors for the time being present declaring such vacancy, and giving public notice to the Stockholders to meet at a day and place certain in the village of Dundas, aforesaid, for the purpose of supplying the said vacancy by ballot in manner aforesaid.

XIV. And be it enacted, that all questions submitted to or coming before the Board of Directors, concerning the affairs of the said Company, shall be decided by the majority of voices.

XV. 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, and the same to alter and amend, as to them shall appear needful and just and proper, touching the management and disposition of the stock, property, estate and effects of the said Corporation, and touching the duties and conduct of the Clerks and Servants employed by the said Company, and shall have power to make and subscribe in the name of the said Company all contracts for labour, work, materials and all other matters concerning the construction of the said Road, and after the same be completed, concerning the Tolls of the said Road and other matters and things concerning as well the construction of the said Road, its charges, tolls, profits, losses, dividends and revenue whatsoever; such rules and regulations not being contrary to this Act, nor to the Laws of this Province.

XVI. And be it enacted, that it shall and may be lawful for the President and Directors of the said Company, from time to time, to order and establish the rates of Toll payable by persons travelling upon the said Road, and the said Company shall annually if required, exhibit an account to either

or every branch of the Legislature of the Province, of the Tolls so regulated and the amount thereof received; and of the sums expended in keeping the same in repair, and also such accounts authenticated in such manner and form as the authority so requiring the same may deem satisfactory.

XVII. And be it enacted, that whenever the said Tolls shall in the annual receipts exceed in amount a sum sufficient to defray the expenses of maintaining and repairing the said Road, and to afford an annual income to the said Company of ten per cent profit on the capital actually expended in the construction of the said Road, from the commencement of its being travelled, as aforesaid, then and in such case the increasing surplus revenue of the said Tolls shall be charged against the said Company, as so much by them received in the nature of a sinking fund, by means whereof to purchase from the said Company the entire estate, use and property of the said Road to and for the use of the Public, in such manner and form as the Legislature of this Province may by Legislative enactment hereafter provide.

XVIII. And be it enacted, that the Legislature of this Province shall be at liberty at any time whatever to purchase the said entire estate, property, and use of the said road from the said Company, paying to the said Company the capital so as aforesaid, actually expended, together with fifteen per cent advance thereupon; to the credit of which payment all revenue exceeding ten per cent, upon the *bona fide* expenditure, and over and above the expense of maintaining and repairing the said road, shall be charged and taken: and it is also hereby provided and declared, that if any deficiencies of the said ten per cent annual profit should occur in the case of the said road, such deficiencies shall be also chargeable against the increasing revenue of the subsequent years, so that the Company may fairly and actually receive ten per cent profit on the said *bona fide* expenditure, for the whole time they shall enjoy the estate, rights, and privileges of the said Company.

XIX. And be it enacted, that the said Company shall have full power and authority for the purpose of forming and completing the road, to purchase and hold in their corporate capacity, such real estate as may be necessary for all the purposes of the said road, and of this Act.

XX. And be it enacted, that the Directors of the said Company for the time being, shall have full power to contract, compound, compromise, and agree with the owners and occupiers of any land through or upon which the said road may most advantageously pass and terminate.

XXI. And be it enacted, that if in the making of such contract, composition, compromise, or agreement, any obstacle should arise between the parties thereto, touching the value of the portion of the land to be bought for the purposes aforesaid, then and in such case it shall and may be lawful for the Directors for the time being, from time to time as they or the majority of them shall think fit, to appoint one or more person or persons as Arbitrator or Arbitrators on the part of the said Company, and also for the party or parties disagreeing as to the value, as aforesaid, to appoint one or more person or persons, being an equal number with those chosen by the said Directors, as Arbitrator or Arbitrators on his or her or their part; and that the persons so chosen on both sides shall (having met for that purpose) choose by ballot one other indifferent person; and

the whole number of persons so chosen, shall be the Arbitrators between the parties disagreeing; and the said Arbitrators shall be sworn, by a Justice of the Peace, justly, impartially and equally, as far as in them lies, to the best of their judgment, to determine the matter to be to them referred.

XXII. And be it enacted, that if after eight days notice in writing given to the party so disagreeing as to the value aforesaid, such party will not nominate or appoint an Arbitrator or Arbitrators, as aforesaid, on his part, it shall and may be lawful for the said Directors to add to their first nomination as many others (not being Stockholders of the said Company) as and for the arbitrators of the party so refusing to nominate for himself; and such added Arbitrators shall have the same power as if named by the party himself, and shall meet and ballot for the additional Arbitrator.

XXIII. And be it enacted, that the Board of Arbitrators so constituted, shall fix a convenient day for hearing the respective parties, and shall give eight days notice at least of the day and place; and having heard the parties or otherwise examined into the merits of the matters so brought before them, the said Arbitrators or a majority of them shall make their award and arbitrament thereupon in writing, which award or arbitrament shall be final as to the value so in dispute as aforesaid.

XXIV. And be it enacted, that if the party so disagreeing, refuse to accept the value of the land so ascertained by the Arbitrators, as aforesaid, till the end of the second term, in Her Majesty's Court of Queen's Bench in Canada West, next after the making of the award and tender of the value thereby ascertained, then and in such case the Directors for the time being shall be at liberty and shall have full power to occupy the piece of land so valued by the said Arbitrators, and to macadamize it in the same manner as other portions of the said Road.

XXV. And be it enacted, that in any action of ejectment, or other action real, personal, or mixed, for or on account of such occupation by the said Company, their servants, or agents, or other person or persons, using the said road, the said award shall and may be pleaded in bar to such action, at any time after the said two terms in the said Court of Queen's Bench, notwithstanding any defect in form or substance in the said award: Provided always, and it is hereby enacted and declared, that it shall and may be lawful to and for the party or parties interested in the land mentioned in the award, or their agent, by Counsel, at any time within the two next terms as aforesaid, after the same hath been made and the amount of the value awarded tendered, to move the Court of Queen's Bench to set aside such award for corruption or any other matter, or thing for which awards are now subject to be impugned by Law: Provided also, that if the first award be so set aside by the Court of Queen's Bench, the matter in difference may again be submitted to other Arbitrators and so, *toties quoties*, till a satisfactory award be made between the parties.

XXVI. And whereas the said George Rolph, one of the Petitioners to whom belongs the land the road is intended to pass over, has already expended a sum of money towards constructing a part of the said Mountain road, and it is just that he should be paid or otherwise reimbursed, or indemnified for the same; and the said George Rolph is willing to accept stock, to the amount of

his expenditure as aforesaid; be it therefore enacted, that it shall and may be lawful for the said George Rolph to subscribe for as many shares of stock as may, (at the rate before mentioned for each share) be equal in value to the said lands, and the work thereon performed, according to an estimation thereof to be made by competent persons, and approved by the said Directors as just: the limitation hereinbefore made of twenty shares, as the maximum of stock for which any one individual is permitted to subscribe within the ninety days of the first opening of the Books of Subscription as aforesaid, to the contrary notwithstanding.

XXVII. And be it enacted, that in case it should at any time happen that an election of Directors should not be made on the 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 other day to hold and make an election, in such manner as shall have been regulated by the rules of the said Corporation to be made for that purpose, such rules not being contrary to the provisions of this Act.

XXVIII. 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 the majority of them shall appear advisable; and once in every three years, (and oftener if required by a majority of the votes of the Stockholders, at a general meeting to be called for that purpose) an exact and particular statement shall be rendered of the state of their affairs, credits, and its profits and losses; and such triennial statements shall appear on the books of the Company, and be open to the perusal of any Stockholder upon his reasonable request.

XXIX. 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 and Justices of the Peace, and other persons without being specially pleaded.

XXX. And be it enacted, that this Act from the time of the passing thereof, shall continue in force for fifty years, and from thence to the next ensuing Session of the Provincial Parliament, at which time the estate, rights, titles, tolls and rates of the said road shall vest in Her Majesty, Her Heirs and Successors, to and for the public uses of this Province, unless it be otherwise provided by an Act of the Legislature, to be for that purpose at any time hereafter enacted, or unless the said road become so vested at an earlier period by the operation of the sinking fund aforesaid.