

Provincial Statutes of Canada, passed in the year 1845. Montreal: Stewart Derbishire & George Desbarats, 1845.

8 Victoria – Chapter 88

An Act to Incorporate certain persons as “The Niagara and Ten Mile Creek Plank Road Company,” for the purpose of constructing a Plank Road from a certain place in Niagara to the Ten Mile Creek in Grantham. (29th March, 1845.)

Whereas certain inhabitants of the District of Niagara, and others, have petitioned for the passing of a Law incorporating a Joint Stock-Company, for the purpose of constructing a Plank Road commencing at Queen’s Street, in the Town of Niagara, at the north-east corner of lot number seventy-four, then in a course about south thirty-five degrees west, along the street running in rear of the Presbyterian Church to the limit of the Town, where the swamp Road enters the same, then along the said swamp Road to the Ten Mile Creek in the Township of Grantham, diverging at what is styled the Stone Ridge near the Ten Mile Creek, to intersect the Road leading from Queenston to the Forty Mile Creek in the Township of Grimsby; And whereas it is expedient to incorporate a Joint Stock Company, for the purposes hereinafter mentioned: 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, and 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 Charles Richardson, Robert Melville, George Brock, H. E. Graham, William Bowers Winterbottom, W. G. F. Downs, William Johnston, James E. Johnston, William Armstrong, John Simpson, Joseph Crouch, Warren Claus, Waller Wilson, John Burns, William H. Garrett, John Burns, Alexander Davidson, Daniel

McDougall, Bernard Roddy, Thomas Burke, Henry Burke, Henry Telford, Charles Copeland, Robert Miller, Thomas Hodgman, Joseph A. Woodruff, Stephen H. Follett, Cornelius Simmons, John McBride; Robert Connor, Richard Wolfe, John Nisbet, Lewis Donnelly, Joseph Archer, Ezekiel Archer, Charles Fields, George Winterbottom, Alexander R. Christie, F. A. B. Clench, Robert Kay, Henry Charles, George D. Atkins, Thomas Flemming, John Davidson, P. Shaw, William Davidson, Waller Davidson, Duncan Forbes, William Senior, William Wills, James Monroe, John Graham, George Watts, Robert Cole, John McLean, John Andrew, William Lockhart, Andrew Finlay, Martin Kearn, John Swinton, Walter Follett, John Rogers, Francis Conner, Nicholas Walt, W. F. Cameron, 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 Niagara and Ten Mile Creek Plank Road Company,” and by that name they and 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 concerns whatsoever; and 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 Niagara and Ten Mile Creek Plank Road Company," shall be by law capable of purchasing, having and holding to them and their successors, any estate, real or personal or mixed, to and for the use of the said Company, and of letting, conveying, and otherwise departing therewith, for the benefit and on account of the said Company, from time to time, as they shall deem necessary and convenient: Provided always, nevertheless, that the real estate to be field by the said Company shall be only such as shall be required to be held by them, for the purpose of making, using and preserving the said Plank Road, and for objects immediately connected therewith.

II. And be it enacted, That the said Company, and their Agents or Servants, shall have full power under this Act to lay out, construct, make and, finish a Plank Road, at their own costs and charges, on and over any part of the country lying between the Ten Mile Creek and Queen Street in the Town of Niagara; any thing herein contained to the contrary thereof in any wise notwithstanding.

III. And be it enacted, That the said Company are hereby empowered to contract, compound, compromise and agree with the owners and occupiers, of any lands upon which they may determine to construct the said Plank Road, either by 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 and may be entitled to receive of the said Company, in consequence of the said intended Plank Road 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 and may be lawful, from time to time, for each owner and occupier so disagreeing with the said Company, either upon the value of the lands and tenements or private privileges 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 indifferent persons, who, together with one other person to be elected by ballot by the persons, so named, shall be Arbitrators, to award, determine and adjudge, and order the respective sums of money which the said Company shall pay to the respective persons entitled to receive the same.

IV. 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 shall not nominate or appoint an Arbitrator or, Arbitrators as aforesaid on his part, then and in such case the Judge of the District Court of the said District of Niagara, shall and may nominate and appoint one or more Arbitrator or Aibitrators on their behalf, with the same powers and authority as if appointed by the party or parties so refusing or neglecting to appoint an Arbitrator of Arbitrators in his or their behalf, and shall meet and ballot for the additional Arbitrator or Umpire.

V. And be it enacted, That the Arbitrators so appointed 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 or arbitrament thereupon in writing, which award or arbitrament shall be final as to the value so in dispute as aforesaid.

VI. And be it enacted, That if the party so disagreeing, refuse to accept the value of land or damage so ascertained by the Arbitrators as aforesaid, till the end of the second term in Her Majesty's Court of Queen's Bench, in that part of this Province formerly Upper Canada, next after 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, in the same manner as other portions of the said road.

VII. 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 of 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, 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 terms as aforesaid, after the same hath been made and the amount of the value awarded tendered, to move the said 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 on till a satisfactory award be made between the parties.

VIII. And be it enacted, That the said Niagara and Ten Mile Creek Plank Road Company shall have full power and authority to explore the country lying between the Ten Mile Creek and Queen's Street, in the Town of Niagara, and to designate and establish, and for the said company to take, appropriate, have, and hold, to and for the use of them and their successors, the line and boundaries of a Plank Road to connect the Ten Mile Creek and Queen Street, in the Town of Niagara; and for the purpose aforesaid, the said company and their agents, servants and workmen, are hereby authorized and empowered to enter into and upon the lands and grounds of or belonging to the Queen's Majesty, Her 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 deem necessary and proper for making the said Plank Road, and all such matters and conveniences as they shall think proper and necessary for making, effecting, preserving, completing, and using of the said intended Plank Road; and also to make, build, erect and set up, in and upon the said route of the Plank Road aforesaid, or upon the land adjoining or near the same, all such works, ways, roads and conveniences as the said Company shall think convenient and necessary for the purposes of the said Plank Road, 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 carrying or conveying goods, commodities, timber, and other things, to and from the said Plank Road, as for the carrying and conveying all manner of materials necessary for making, erecting, furnishing, altering, repairing, amending, widening, or enlarging the works of or; belonging to the said Plank Road, and also to place, lay, work, and manufacture the said materials on the ground near to 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, or alter, any fences or passages through the said Plank Road, or which shall communicate therewith, and to construct, erect, and keep in repair any piers, arches, or other works, in, and upon any creeks or brooks for making, using, maintaining, and repairing the said Plank Road, 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 Plank Road, in pursuance 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 or hereditaments.

IX. 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 fix, regulate and receive the Tolls and charges to be received from all persons passing and re-passing over the said Plank Road hereby authorized to be constructed, erected, built, made and used.

X. And be it enacted, That the said Plank Road and all materials which shall be from time to time got or provided for constructing, building, maintaining or re-pairing the same, and the said Tolls as hereinbefore mentioned shall be and the same are hereby vested in the said Company, and their successors for ever.

XI. And be it enacted, That the President and Directors of the said Company shall have full power to erect such number of Gates in or across the said Plank Road, and fix such Tolls as they may deem fit and expedient (which Rates or Tolls may be altered from time to time as circumstances may require,) and to erect and maintain such Toll Houses, Toll Gates and other erections, which to them may seem necessary and convenient for the due performance of their business.

XII. And be it enacted, That if any person or persons shall cut, break down or destroy in any way any of the Gates or Toll Houses to be erected by virtue of this Act every such person so offending, and being lawfully convicted, shall be deemed guilty of a misdemeanor, and be punished by fine and imprisonment; and if any person Or persons shall remove any earth, stone or timber on the said road to the damage of the same, or shall forcibly pass or attempt to pass by force any of the Gates without having first paid the legal Toll at such Gate, such person or persons shall pay all damage by them committed, and shall forfeit and pay a fine not exceeding five pounds, nor less than five shillings currency, to be recovered before any Justice of the Peace for the District of Niagara.

XIII. And be it enacted, That the fines and forfeitures authorized to be imposed by this Act, shall and may be levied and collected by distress and sale of the offender's goods and chattels, under the authority of any Warrant or Warrants for that purpose to be issued by any one of Her Majesty's Justices of the Peace for the District of Niagara, who are hereby authorized and empowered to grant the same.

XIV. And be it enacted, That the said President and Directors, if they think proper, may commute the Tolls with any person or persons by taking of him, her or them a certain sum, either monthly or

annually, in lieu of such Tolls, and that the said President and Directors shall affix in a conspicuous place at all such Toll Gates a table of the rate of Tolls to be exacted and taken to be plainly and legibly printed.

XV. And be it enacted, That if any person or persons shall, after proceeding on the said Road with any carriages or animals liable to pay Toll, turn out of the same road into any other road, and shall enter the said Road beyond any of the said Gate or Gates without paying Toll, whereby such payment shall be evaded, such person or persons shall for every such offence forfeit and pay the sum often shillings, which said sum shall be expended on the said Road, or towards the discharging of any debts or oilier incumbrances thereon; and any one Justice of the Peace for the District of Niagara shall, on conviction of such offender, fine such person in the said penalty, and from his judgment there shall be no appeal.

XVI. And be it enacted, That if any person or persons occupying or possessing any enclosed lands near any Toll Houses or Toll Gates which shall be erected in pursuance of this Act, shall knowingly permit or suffer any person or persons to pass through such lands or through any gate, passage or way thereon, with any carriage, horse, mare, gelding, or other animal liable to the payment of Toll, whereby such payment shall be avoided, every person or persons so offending, and also the person riding or driving the animal or animals, or carriage whereon such payment is avoided, being thereof convicted, shall for every such offence severally forfeit and pay any sum not exceeding ten shillings, which shall be laid out in improving such road.

XVII. And be it enacted, That all persons, horses or carriages going to, or attending or returning from any funeral of any person, or going to or returning from divine service on the Lord's day, shall pass the Gates free of Toll.

XVIII. And be it enacted, That the said company or their agents or servants, at any time after the passing of this Act, under and by virtue of its provisions, shall and may construct, erect, and build a Plank Road as aforesaid, on any part or portion of the Country, lying between the Ten Mile Creek and Queen Street, in the Town of Niagara, and also that the said Plank Road contemplated by this Act, shall not in any degree interfere with or encroach upon any fee simple, right or private easement or privilege of any individual now holding and enjoying the same or entitled thereto, without the permission first had and obtained either by the consent of the owner thereof, or by virtue of reference authorized by this Act.

XIX. 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 offices for one year, which said Directors shall be stockholders to the amount of at least ten shares, and be elected on the first Monday in May, in each and every year, at the Town of Niagara, 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 District of Niagara, at least one month previous to 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 have an equal number of votes in such a 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 determined which of the said persons so having an equal number of votes shall be Director or Directors, so as to complete the whole number of seven, and the said Directors so chosen as soon as may be after 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.

XX. And be it enacted, That each stockholder shall be entitled to the number of votes in proportion to the number of shares which he or she shall have in his or her own name at least one month previous to the time of voting, according to the following rules, 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.

XXI. 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 where 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 hold and make an election of Directors in such manner as shall be regulated by the By-laws and Ordinances of the said Corporation.

XXII. And be it enacted. That the Directors for the time being, or a majority 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 company, and touching the duties of the officers, clerks and servants, and all such other matters or things as appertain to the business of the said Corporation, and also shall have power to appoint as many officers, clerks and servants for the carrying on the said business, with such salaries and allowances as to them shall seem fit.

XXIII. And be it enacted, That on the first Monday in the Month of May next, a meeting of the stockholders shall be held in the Town of Niagara, who in the same manner as hereinbefore provided shall proceed to elect seven persons to be directors, who shall elect by ballot one of their number to be President, and shall continue in 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 or until such time thereafter as other Directors are appointed.

XXIV. And be it enacted, That the whole Capital Stock which the said Company may have or hold by virtue of this Act, shall be six thousand pounds, with power to increase the same to double that amount if found necessary for constructing the said Road, and that the Shares of the Capital Stock shall be composed of nine hundred and sixty shares of the value of six pounds five shillings

currency, each, and may after the first instalment thereon shall have been paid be transferable by the respective persons subscribing and holding the same to any 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: Provided always that nothing herein contained shall extend to authorize the said Company to carry on the business of Banking.

XXV. And be it enacted, That so 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 any newspaper published in the said Niagara District for an instalment, of twenty per cent, upon each share which they or any of them may respectively have subscribed for and that the residue of the sums 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 expressly convened for that purpose, shall agree upon, so that no such instalment shall exceed twenty per cent nor become payable in less than thirty days after public notice in the newspaper or newspapers as aforesaid: Provided always, that the said Directors shall not commence the construction of the said Plank Road or way until the first instalment shall be paid in.

XXVI. And be it enacted, That of the persons as aforesaid nominated and balloted for in manner aforesaid, those seven 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 in every year as aforesaid after the ballot shall have been kept open from eleven of the clock in the forenoon to two of the clock in the afternoon, the seven persons having the majority of votes in manner aforesaid shall so soon after 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 nomination 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.

XXVII. And be it enacted, That if any Stockholder or Stockholders as aforesaid shall refuse or neglect to pay at the time required any 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 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 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 purchased as aforesaid: Provided always, that ten days notice of the sale of such forfeited shares shall be given in any newspaper or newspapers published in the Niagara District, and that the instalments due may be received in redemption of any such forfeited share at any time before the day appointed for the sale thereof.

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 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 in the books, and to be open to the perusal of any Stockholder at his or their reasonable request.

XXIX. 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 received by them 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.

XXX. And be it enacted, That the Legislature of this Province may, at any time whatever, purchase the 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 bond 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 at any time, such deficiencies shall also be chargeable against the increasing revenue of the subsequent years, so that the Company may fairly and actually receive ten per cent profit on their said bond fide expenditure for the whole time they shall enjoy the estate, rights and privileges acquired under the authority of this Act; any thing herein contained to the contrary thereof in any wise notwithstanding.

XXXI. And be it enacted, That it shall be the duty of the said Corporation, and of the person intrusted with the chief gestion of its affairs, to lay annually before the three branches of the Legislature of this Province, in the course of the first fifteen days after the opening of the Session, a general statement, upon the oath of the President or Vice President of the said Company before any Justice of the Peace, of the affairs of the said Company, shewing as well the amount of its liabilities as the assets or means of meeting the same, and such President or Vice President being charged before any competent Court of false swearing in the matter of such statement, shall be tried, and if found guilty, be punished in like manner as if he had been charged and convicted of the crime of wilful and corrupt perjury.

XXXII. And be it enacted, That notwithstanding the privileges that may be conferred by this Act, the Legislature may at any time hereafter, in their discretion, make such additions 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 corporate or politic, 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 to this Corporation.

XXXIII. And be it enacted, That this Act shall be 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.

XXXIV. And be it enacted, 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 in such action or suit may plead the general issue only, and give this Act and the special matter in evidence on the trial.