

Laws of Her Majesty's Province of United Canada, passed in the year 1846. Montreal:
Stewart Derbishire & George Desbarats, 1846.

9 Victoria – Chapter 80

An Act to revive and amend the Act of Upper Canada incorporating The Cobourg Rail-road Company, and for other purposes therein mentioned. 9th June, 1846.

Whereas by virtue of an Act of the Legislature of the late Province of Upper Canada, passed in the Fourth year of the Reign of His late Majesty, King William the Fourth, intituled, *An Act to incorporate certain persons under the style and title of The Cobourg Rail-road Company*, certain persons therein named were ordained, constituted and declared to be a body corporate and politic in fact, by and under the name and style of The Cobourg Rail-road Company; And whereas for the reasons set forth in the Petition of Henry Ruttan, and others hereinafter named, subscribers to the Stock of the said Cobourg Rail-road Company, and others, no steps were or have been taken towards the commencement of the said Rail-road, or the carrying out of the provisions of the above cited Act, and they have prayed that the said recited Act may be revived and amended by substituting a Plank-road in lieu of the said Rail-road; And whereas it is expedient that the said Act be revived and amended: 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 the style and title of the Joint Stock Company constituted and ordained by and under the authority of the said Act as The Cobourg Rail-road Company, be changed, and that the style and title of The Cobourg and Rice Lake Plank road and Ferry Company, be substituted therefor, and that Henry Ruttan, Ebenezer Perry, D'Arcy Edward Boulton, William Weller, John Vance Boswell and Stewart McKechnie, with all such other persons as shall become Stockholders in the said Joint Stock Company or Capital Stock as 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 Cobourg and Rice Lake Plank-road and Ferry Company, and by that 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 and 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 Cobourg and Rice Lake Plank-road and Ferry 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 held by the said Company, shall be only such as shall be

required to be held by them for the purpose of making and using said Plank-road and Ferry, and for objects immediately connected therewith.

II. And be it enacted, That from and after the passing of this Act, all and several the clauses and provisions of the herein cited Act, be and are hereby repealed.

III. And be it enacted, That the said Company and their agents and servants shall have full power under this Act, to lay out, construct, make and finish a Plank-road, at their own proper cost and charges, on and over any part of the country lying between the Cobourg Harbour and the Rice Lake, at or near a certain place known as Gore's Landing, on the south shore of the said Rice Lake, and following the direction of the present travelled road, and using such portions of the same as to them may appear practicable and suited to the purposes of the said Company; any thing herein contained to the contrary thereof in any wise notwithstanding.

IV. And be it enacted, That the said Company and their agents and servants shall have full power under this Act to build, erect, construct and maintain a wharf or wharves at or near a place known as Gore's Landing, in the Township of Hamilton, on the south shore of the Rice Lake, and also a wharf or wharves at or near some point or points, place or places such as they shall deem fit and necessary in the Townships of Otanabee and Monaghan, respectively, or either of them, the said Townships, lying and being situated on the north shore of the said Rice Lake opposite to Gore's Landing as aforesaid, and to build, establish, keep up and maintain a sufficient Ferry-boat or boats to ply regularly on and upon the waters of the said Rice Lake between the said points or places as aforesaid, for the conveyance across the said Rice Lake of passengers, baggage, horses, mules, asses, oxen, cows, sheep, pigs, goats, poultry, goods, wares and merchandize, the said Ferry-boat or boats to be propelled by steam, horses, or otherwise, and to ply at and during such hours of the day or night as to them, the said Company, may seem fitting and proper for the furtherance of the traffic, and convenience of passengers and others travelling upon and using the aforesaid Plank-road.

V. And be it enacted, That in order the better to carry into effect the intention of this Act, and for the more certain establishment of a Ferry across the said Rice Lake as aforesaid, the aforesaid Company shall cause to be made a correct survey of the points or places respectively, at, from and between which the said Ferry shall or may be established under the authority of this Act, which survey or surveys, together with the title deeds of the lands therein described, shall be duly registered in the Office of the Registrar of the County wherein such lands shall or may be situate, and until such survey or surveys, title deed or deeds shall have been duly registered as aforesaid, the said Company shall not claim, enjoy or possess any exclusive right to such Ferry, anything in this Act contained to the contrary notwithstanding.

VI. And be it enacted, That the limits of such right of Ferry across the said Rice Lake, shall extend on either side of the said Company's wharf or wharves respectively, along the shore or shores of the said Lake, for the space and distance of one mile and a half each way, and be otherwise subject to and under the protection of such Law or Laws relating to Ferries within that part of this

Province commonly known as Upper Canada, as are now or may be hereafter in force therein for the better regulation of the same.

VII. And be it enacted, That all such clauses and provisions as are hereinafter contained relative to the mode of procuring, purchasing or possessing lands or other property for the purposes of a Plank-road, shall be deemed equally to apply to all lands and other property necessary for the purposes of the said Ferry; anything herein contained to the contrary notwithstanding.

VIII. And be it enacted, That the said Company are hereby empowered to contract, compound 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, adjudge and order the respective sums of money, which the said Company, shall pay to the respective persons entitled to receive the same, the award of the majority of whom shall be final; and the said Arbitrators shall be and are hereby required to attend at some convenient place, in the vicinity of the said Plank-road, to be appointed by the said Company, after eight days' notice given for that purpose by the said Company, then and there to arbitrate and award, adjudge and determine such matters and things as shall be submitted to their consideration by the parties interested; and that each Arbitrator shall be sworn before some one of Her Majesty's Justices of the Peace in and for the said District of Newcastle, any one of whom may be required to attend the said meeting for that purpose, well and truly to assess the damages between the parties, according to the best of his judgment: Provided always, that any award 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 a reference may be again made to arbitration, as hereinbefore provided.

IX. 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, or if the land required by the said Company be the property of a minor or lunatic or person absent from this Province, then and in any such case the Judge of the District Court of the said District of Newcastle shall and may nominate and appoint one or more Arbitrator or Arbitrators 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 or Arbitrators in his or their behalf, or so being a minor or lunatic or absent from this Province, including the power to meet and ballot for the additional Arbitrator or umpire.

X. And be it enacted, That whatever sum of money may be finally awarded to any person or persons for compensation for property required to be occupied, or for damages occasioned by the interference of the said Company with his or their property, rights or privileges, shall be paid within three months from the time of the same being awarded; and in case the said Company shall fail to pay the same within that period, their right to assume any such property, or commit any act in respect of which such sum of money was awarded, shall wholly cease; and it shall be lawful for the proprietor to resume his occupation of such property, and to possess fully his rights and privileges in respect thereof, free from any claim or interference from the said Company.

XI. And be it enacted, That 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 any other person or persons, bodies politic or corporate, between the Town of Cobourg aforesaid and the Rice Lake, 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 of 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.

XII. 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 repassing over the said Plank-road hereby authorized to be constructed, erected, built, made and used.

XIII. 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 repairing 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.

XIV. 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 and other erections as to them may seem necessary and convenient for the due performance of their business.

XV. And be it enacted, That if any person or persons shall cut, break down or destroy in any other 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 one pound, currency, to be recovered before any Justice of the Peace for the District of Newcastle.

XVI. 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 Newcastle, who are hereby authorized and empowered to grant the same.

XVII. And be it enacted, That the said President and Directors, if they think proper, may commute the Toils 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 Rates of Tolls to be exacted, and taken, to be plainly and legibly printed.

XVIII. And be it enacted, That if any person or persons shall, after proceeding on the said road with any of the 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 of five shillings, which said sum shall be expended on the said road, or towards the discharging of any debts or other incumbrances thereon; and any one Justice of the Peace for the District of Newcastle, shall, on conviction of such offender, fine such person in the said penalty, and from his judgment there shall be no appeal.

XIX. 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 the Toll, whereby such payment shall be avoided, every person or persons so offending, and also the persons 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 five shillings, which shall be laid out in improving such road.

XX. And be it enacted, That Her Majesty's Mail, and persons, animals and carriages, employed in the conveyance thereof, Her Majesty's Officers and Soldiers, being in proper Staff or Regimental or Military uniform, dress or undress, and their horses, (but not when passing in a hired or private vehicle,) and all carriages and horses belonging to Her Majesty, or employed in Her service when conveying persons in such service, or returning therefrom, and all Recruits marching by route, and all persons, animals and carriages attending funerals on any day in the week, or going to or returning from Divine Service on the Lord's Day, shall pass Toll-free through any Turnpike and Toll-gate to be erected under the authority of this Act.

XXI. 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 Town of Cobourg and Rice Lake aforesaid, at or near Gore's Landing, 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.

XXII. 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 July, in each and every year, at the Town of Cobourg, 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 Town of Cobourg, 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 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.

XXIII. 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.

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

XXV. 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 useful and proper, touching the management and disposition of the stock, property, estate and effects of the said Company, touching the duties of the Officers, Clerks and servants, and all such other matters and 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.

XXVI. And be it enacted, That on the second Monday in the month of July next, a meeting of the Stockholders shall be held in the Town of Cobourg, 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 July 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.

XXVII. 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 the construction of the said Road and Ferry, and that the shares of the Capital Stock shall be composed of shares of the value of twelve pounds ten 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.

XXVIII. 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 Newcastle District, for an instalment of ten per centum 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 instalments shall exceed ten per centum, 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.

XXIX. 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 which 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 to 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 twenty days' notice of the sale of such forfeited shares shall be given in any newspaper or newspapers published in the Newcastle 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.

XXX. 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.

XXXI. 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.

XXXII. And be it enacted, That for and notwithstanding any thing in this Act contained, it shall and may be lawful for the said Cobourg and Rice Lake Plank-road and Ferry Company in their discretion, to Macadamise all or any part of the said road which they are here authorized to construct, upon the terms, conditions and restrictions, and subject to the observance of the formalities hereinbefore prescribed, and that in the event of their doing so, the words "Plank-road," wherever they occur in this Act shall be construed to mean either a Macadamized road or a road partly Macadamized and partly planked, as the case may require.

XXXIII. Provided always, and be it enacted, that the said Company shall at all times when thereunto required by Her Majesty's Deputy Post Master General, the Commander of the Forces, or any

person having the superintendence or command of any Police Force, convey Her Majesty's Mail, Her Majesty's Naval or Military Forces or Militia, and all Artillery, Ammunition, Provision or other Stores for their use, and all Policemen, Constables, and others travelling on Her Majesty's service across the said Rice Lake in their ferry boats, on such terms and conditions and under such regulations as the said Company and the said Deputy Post Master General, the Commander of the Forces, or person in command of any Police Force respectively shall agree upon, or if they cannot agree, then on such terms and conditions and under such regulations as the Governor or person administering the Government shall in Council make; and provided also, that any further enactment which the Legislature of this Province may hereafter deem it expedient to make with regard to the carriage of the said Mail or Her Majesty's Forces and other persons or articles as aforesaid, or the rates to be paid for carrying the same, or other service to be rendered by the Company to the Government, shall not be deemed an infringement of the privileges intended to be conferred by this Act; and nothing in this Act contained shall be construed to authorize the said Company to take or enter upon any land or real estate of any kind belonging to Her Majesty, Her Heirs or Successors, or vested in or held in trust by the Principal Officers of Her Majesty's Ordnance or any public body, person or party, in trust for the uses or service of Her Majesty, Her Heirs or Successors, whether such real estate be held in fee simple or for any less estate during the continuance of such estate, unless the entering upon or taking of such lands or real estate be authorized by the Governor in Council or by the Commander in Chief of Her Majesty's Forces in this Province.

XXXIV. And be it enacted, That nothing herein contained shall affect or be construed to affect in any manner or way whatsoever the rights of Her Majesty, Her Heirs or Successors or of any person or persons, or of any bodies politic, corporate or collegiate such only excepted as are hereinbefore mentioned.

XXXV. 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.