

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

9 Victoria – Chapter 98

An Act to incorporate certain persons as The Trafalgar, Esquesing and Erin Road Company. 18th May, 1846.

Whereas certain inhabitants of the Townships of Trafalgar, Esquesing and Erin, have petitioned for the passing of a law incorporating a Joint Stock Company, for the purpose of constructing a Plank or Macadamized Road from Oakville on Lake Ontario to the rear part of the Township of Erin, with power to extend the same; And whereas it is expedient to incorporate a Joint Stock Company for the purpose aforesaid, with the powers and under the provisions 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 John Urquhart, Charles Reynolds, Hiram Post, John A. Chisholm, William Downs, Charles Bigger, Thomas Fyfe, George Kennedy, F. W. Watkins, John Stewart, Joseph Standish, James Reid, James Appelbe, Thomas S. Harris, William Robertson, John Bussel, Joseph Bell, Robert K. Chisholm, William Barber, William Stul, Peter Barnes, William Clay, and George Hawkins, 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 Trafalgar, Esquesing and Erin Road 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, 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 Trafalgar, Esquesing and Erin 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 held 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 or Macadamized 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 or Macadamized Road, at their own costs and charges, on and over that part of the country in the Townships of Trafalgar and Esquesing, in the District of Gore, and the Township of Erin, in the District of Wellington, that is to

say, from the Town of Oakville on or near the present public road generally known as Posts Road, and thence between lots numbers twelve and thirteen, through the old Survey, and between the seventh and eighth Concessions through the new Survey of the said Township of Trafalgar, between the seventh and eighth Concessions through the said Township of Esquesing, and between the seventh and eighth Concessions through the said Township of Erin.

III. And be it enacted, That the said Company and their Agents or Servants shall have full power and authority under this Act, to lay out, construct, make and finish an additional Branch from the said direct line of road to the eastern or western boundaries of each of the said Townships, respectively, and at such points and places as the said Company shall deem expedient; and also to lay out, construct, make and finish an additional branch from the said direct line of road in the Township of Erin to any point in the Township of Garrafraxa and Eramosa, so as to connect with the Owens Sound Road.

IV. 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 or Macadamized 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 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.

V. 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 such owner or occupier shall be a minor, then, and in any such case, the Judge of the District Court of the District in which the land is situate 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, and to meet and ballot for the additional Arbitrator or Umpire.

VI. 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, which notice shall be in writing and served on each party respectively, 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 thereon in writing, which award or arbitrament shall be final as to the value so in dispute as aforesaid.

VII. 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 the 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.

VIII. 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.

IX. And be it enacted, That the said Company shall have full power and authority to explore the country lying between the Town of Oakville on Lake Ontario, and the rear part of the Township of Erin, and to designate and establish the said intended line of road, and it shall be lawful for the said Company to take, appropriate, have and hold, to and for the use of them and their successors, the requisite lands upon the line and within the boundaries of the said Plank or Macadamised Road hereby authorized to be constructed; 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 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 Road; and also to make, build, erect and set up, in and upon the said route of the 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 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 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 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 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, and maintaining, and repairing the said 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 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.

X. 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 Road hereby authorized to be constructed, erected, built, made and used.

XI. And be it enacted, That the said 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.

XII. 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 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.

XIII. 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 in which such act shall have been committed.

XIV. 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 either of the said Districts, who are hereby authorized and empowered to grant the same, and in case there shall be no such goods and chattels to satisfy such Warrant or Warrants, such offender or offenders may be committed to the common Gaol of the District in which such offence shall have been committed for any period not exceeding twenty days.

XV. 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.

XVI. 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 of ten 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 in which such part of the said Road is situate shall, on conviction of such offender, fine such person in the said penalty, and from his judgment there shall be no appeal.

XVII. 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.

XVIII. 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.

XIX. 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 Road as aforesaid; and also that the said 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 permission first had and obtained by the consent of the owner thereof, or by virtue of reference authorized by this Act.

XX. 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 the first election of such Directors shall take place at the Town of Oakville, on the first Monday in August, one thousand eight hundred and forty-six, at the hour of twelve of the clock at noon; and thereafter the said annual election of Directors shall take place at the Town of Oakville, on the first Monday in May, 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 Gore, and in any newspaper or newspapers that may be published in the said District of Wellington, 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 the 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 shall, as soon as may be after the said election, 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.

XXI. And be it enacted, That each Stockholder shall be entitled to a number of votes in proportion to the number of shares which he or she shall have in his or her own name, and shall have had 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.

XXII. 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.

XXIII. 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, and with such salaries and allowances as to them shall seem fit.

XXIV. And be it enacted, That on the first Monday in the month of August next, a meeting of the Stockholders shall be held in the Town of Oakville, 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.

XXV. And be it enacted, That the whole Capital Stock which the said Company may have or hold by virtue of this Act, shall be twenty thousand pounds, with power to increase the same to double that amount, if found necessary, for constructing the said Road; and that the aforesaid Capital Stock shall be composed of shares of the value of five pounds, currency, each, and may, after the first instalment 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.

XXVI. 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 Gore District, for an instalment of twenty 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 instalment shall exceed twenty 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 Road or way until the first instalment shall be paid in.

XXVII. 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.

XXVIII. 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 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 Gore District, and in any newspaper or newspapers published in the Wellington 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.

XXIX. 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.

XXX. 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 centum 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.

XXXI. 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 centum advance thereupon, to the credit of which payment all revenue exceeding ten per centum upon the bonâ 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 centum 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 centum profit on their said bonâ 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 anywise notwithstanding.

XXXII. And be it enacted, That it shall be the duty of the said Corporation, and of the person intrusted with the chief direction 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 with 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.

XXXIII. 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 politic or corporate, 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.

XXXIV. 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.

XXXV. 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.