

Laws of Her Majesty's Province of United Canada, passed in the year 1847. Montreal:
Stewart Derbishire & George Desbarats, 1847.

10 & 11 Victoria – Chapter 88

An Act to incorporate certain persons as The Guelph and Dundas Road Company. 28th July, 1847.

Whereas certain inhabitants of the District of Wellington and Gore have petitioned for the passing of an Act incorporating a Joint Stock Company for the purpose of constructing a Plank, macadamized or gravelled Road, from the Town of Guelph in the said District of Wellington, to the macadamized Road from Dundas to Waterloo; 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 James B. Morden, Walter Colcleugh, John Weir, William Miller (of West Flamborough), William McKindlay (of the same place), George Sylvester Tiffany, William Notman, James Bell Ewart, Richard Juson, William Leslie, James Wright, Benjamin Thurtell, James Hodgert, George John Grange, William Clarke, Thomas Sandilands, Alexander Dingwall Fordyce, and Adam Johnston Fergusson, 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 by and under the name and style of The Guelph and Dundas 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 be 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 Guelph and Dundas 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 road hereby authorized to be constructed, 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, macadamized or gravelled, or a partly planked, partly macadamized and partly gravelled Road, at their own costs and charges, on and over that part of the country in the said Districts of Wellington and Gore, lying between the said

Town of Guelph and the said macadamized Road from Dundas to Waterloo, and following as near as conveniently may be the direction of the present travelled road commonly called the Brock Road, and using the same or such parts thereof as to them may appear suited to the purpose of the said Company.

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 Road hereby authorized to be constructed, 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, or 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 District in which the land is situate shall and may nominate and appoint one or more arbitrator or arbitrators to act 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.

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 arbitration 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 next ensuing Term in Her Majesty's Court of Queen's Bench, in that part of the Province formerly Upper Canada, next after making 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 Term of 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 before the last day of the said Term next ensuing 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 Company shall have full power and authority to explore the country lying between the said town of Guelph and the said macadamized Road from Dundas to Waterloo, and to designate and establish, 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 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 and belonging to the Queen's Majesty, Her Heirs, or Successors or any person or persons body or bodies corporate or politic.

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 road hereby authorized to be constructed, or any part or parts thereof, as the same shall from time to time be constructed.

X. And be it enacted, That whenever the tolls collected on any part or parts of the road hereby authorized to be constructed before the entire completion thereof shall exceed in amount a sum sufficient to defray the expenses of maintaining and repairing the said part or parts of the said road, and to afford an amount of income to the said Company of six per centum on the capital actually expended on the construction thereof, then and in such case the overplus revenue of the said tolls shall be applied to the further construction and completion of the said road hereby authorized as aforesaid, until the whole work shall be completed.

XI. And be it enacted, That the road and 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 to be incurred at each, (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 as to them may seem necessary and convenient for the due performance of their

business; provided that no such toll shall be levied until at least three miles of the said road shall have been completed.

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 toil-houses to be erected by virtue of this Act, every such person so offending and being lawfully convicted thereof, shall be deemed guilty of a misdemeanor, and that the same shall be triable at the Court of Quarter Sessions, and be punishable by fine and imprisonment or either, in the discretion of the Court; 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 recoverable on the oath of any one credible witness, before any one Justice of the Peace for the District in which such act shall have been committed.

XIV. And be it enacted, That if any person or persons shall after proceeding on the said road with any carriage or animals liable to pay toll, turn out of the said 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 a sum not exceeding ten shillings to be recovered before any one Justice of the Peace for the District in which such gate or gates may be situated.

XV. And be it enacted, That if any person or persons occupying or possessing any inclosed lands near any toll-house or toil-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 any gate, passage or way thereon, with any carriage, horse, mare or 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 such animal or animals, or carriage whereon such payment is avoided, being thereof convicted, shall for every such offence, severally to be recovered before any one Justice of the Peace for the District in which such gate or gates may be situated, forfeit and pay a sum not exceeding ten shillings currency.

XVI. And be it enacted, That if any person summarily convicted under this Act shall not pay the fine or penalty together with the costs if awarded (which costs the convicting Justice or Justices are hereby authorized to award if he or they shall think fit) either immediately after such conviction, or within such time as the Justice or Justices shall appoint, it shall be lawful for such Justice or Justices to commit the offender to the Common Jail, there to be imprisoned for any term not exceeding two calendar months, the commitment to be determinable in every case on payment of the amount and costs, or such penalty .and costs may also be levied and collected by distress and sale of the offender's goods and chattels under the authority of any warrant or warrants to be issued by such Justice or Justices, who are hereby authorized and empowered to grant the same; and that all such monies arising from any fines, penalties or forfeiture under this Act, recoverable whether summarily or imposed by any Court, shall be expended on the said road, or towards discharging the debt thereof, and that the evidence of any Stockholder of the said Company shall be admitted in proof of the offence, notwithstanding the application of such monies.

XVII. And be it enacted, That all persons, horses or carriages going to or attending or returning from any funeral, or any person with horse or carriage 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 contract, 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 consent of the owner thereof, or by virtue of the express provisions of 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 the first election of such Directors shall take place at the Town of Guelph on the first Monday in January, eighteen hundred and forty-eight, at the hour of twelve at noon, and thereafter the said annual election of Directors shall take place at the town of Guelph on such day and at such hour as a majority of the Directors for the time being shall appoint, and public notice thereof shall be given in any one newspaper that may be published in the said District of Wellington, and in any one newspaper that may be published in the said District of Gore, at least one calendar month previous to holding the said election; and the said election shall be held and made by such of the Stockholder's of the said Company as shall attend for that purpose in their own proper persons or by proxy, and 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, 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.

XX. 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; seven votes for ten shares, and one vote for every five shares above ten.

XXI. And be it enacted, That on the said first Monday in January eighteen hundred and forty-eight, a meeting of the Stockholders shall be held in the Town of Guelph as hereinbefore mentioned,

who 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 January next after the day of election, and who during such continuance shall discharge the duties of Directors of the said Company as aforesaid.

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; or if such election be the first, then on any day of which notice shall be given as hereinbefore required for such first election.

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 By-laws 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 thereof, and all such other matters or things as appertain to the business of the 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 lit.

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 Ten thousand pounds currency, 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 shares of the value of five pounds currency each, and such shares shall be personal property, 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 one newspaper that may be published in the said District of Wellington and in any one newspaper that may be published in the said District of Gore, 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) or at a meeting held for the choice of Directors as aforesaid shall agree upon; provided, however, that no such instalment subsequent to the first as aforesaid shall exceed five per cent., nor become payable in less than thirty days after public notice in the newspaper or newspapers as aforesaid.

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 for three hours, 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 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 Sockholder or Stokholders 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 he, she or they shall be entitled to the certificate of the transfer of such share or shares purchased as aforesaid: Provided always, that twenty days' notice of the sale of such forfeited share or shares shall be given in any one newspaper that may be published in the said District of Wellington, and in any one newspaper that may be published in the said District of Gore, and that the instalments due may be received in redemption of any such forfeited share at any time before the time appointed for the sale thereof, or the said Company may sue for and recover any such instalment or instalments in any Court having jurisdiction in matters of debt or contract according to the amount.

XXVIII. And be it enacted, That the said President and Directors, if they think proper, may commute tolls with any person or persons, by taking from 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.

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 statements 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 incidental expenses of the said Company, and to afford an annual income to the said Company of eight per cent, profit on the capital actually expended in the construction of the said road, the said eight per cent, to be calculated from the time or times at which the part or parts of the said road on which

such expenditure took place, shall have been constructed, 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 cent, advance thereupon to the credit of which payment all revenue exceeding eight per cent, upon the *bonâ fide* expenditure, and over and above the expense of maintaining and repairing the said road and incidental expenses of the said Company shall be charged and taken; and it is also hereby provided and declared, that if any deficiencies of the said eight 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 eight per cent, profit on their own *bonâ fide* expenditure for the whole time they shall enjoy the estate, rights and privileges acquired under this Act; anything herein contained to the contrary notwithstanding.

XXXII. And be it enacted, That it may and shall be lawful for the District Councils of the Districts of Wellington and Gore, or for either of them, to take shares in the Capital Stock of the said Company to any amount, and to borrow money on the credit of the said District or Districts, to pay for such stock or to construct any portion or portions of the said road, taking their pay therefor in shares of the Capital Stock of the said Company; and that in case any person or persons, District Council or Councils, body or bodies corporate or politic, shall be desirous of improving or constructing, or shall have improved or constructed any portion of the said line of road hereby authorized to be constructed, or shall have furnished materials or given labor therefor, and shall be desirous that the same shall be paid for in shares of the Capital Stock of the said Company, then it shall be lawful for the Directors of the said Company to cause to be transferred to such person or persons, District Council or Councils, body or bodies corporate or politic, respectively, in the Books of the said Company, as many shares of the Capital Stock as will cover the amount of their respective demands; and that any such District Council or Councils, body or bodies corporate or politic, holding stock in the said Company, may vote at any meeting of the Stockholders thereof in proportion to their number of shares, by such of their officers or other persons as they may appoint under their corporate seal for the purpose.

XXXIII. And be it enacted, That it shall be the duty of the said Corporation, and of the persons 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 of the said Company, sworn before any Justice of the Peace who is hereby authorized to administer the same, of the affairs of the said Company, showing as well the amount of its liabilities as the assets or means of meeting the same; and such President being charged before any competent Court with wilful and corrupt 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.

XXXIV. 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 alterations 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 right 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 the said Corporation.

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.

XXXVI. And be it enacted, That the words and the expressions hereinafter mentioned, which in their ordinary signification may have a more confined or different meaning, shall in this Act, except when the nature of the provisions or the context of the Act shall exclude such construction, be interpreted as follows, that is to say: the word "Oath" shall include affirmation, when by law such affirmation is required or allowed to be taken in place of an oath; and every word importing the singular number shall extend and be applied to several persons and things as well as one person or thing, and bodies corporate or politic as well as individuals; and every word importing the plural number shall extend and be applied to one person or thing as well as several persons or things; and every word importing the masculine gender only, shall extend and be applied to a female as well as a male.

XXXVII. 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.