

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

10 & 11 Victoria – Chapter 92

An Act to incorporate The Scarborough and Markham, Plank Road Company. 28th July, 1847.

Whereas the inhabitants of the Townships of Scarborough, Markham and Whitechurch, and of the Townships to the easterly and north-westerly have long been subject to great inconvenience in bringing the produce of their farms to the City of Toronto, their almost exclusive market, in consequence of the extreme badness of the roads over which they have to travel; And whereas it would tend much to improve that section of the country and confer benefits on the inhabitants generally, if the road now travelled and known as the Scarborough and Markham Road were planked or macadamized, terminating at a certain point in the Kingston Road east of Gates' Tavern in the Township of Scarborough where a portion of the intended line of road has been already planked, extending in a northerly direction to Markham Village, and thence to Stouffville, on the Township line between the Townships of Markham and Whitechurch; and to extend the road in a northerly or easterly direction, or by such intermediate route as circumstances may render expedient; And whereas Joseph Tomlinson and others have petitioned the Legislature to be by law incorporated for the purposes of effecting the said improvements by means of joint Capital Stock: 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 Joseph Tomlinson, Archibald Barker, George Miller, John Robinson, William Armstrong, James Crosby, Jonathan Gates, Samuel Reesor, William Robb, Robert Armstrong, Alexander Hunter, John Reesor, Abraham Stouffer, John Torrance, Edward Wheeler, John Harrington, John Boyer, Christian Stouffer, Joseph Marr, or any five of them, together with all such other persons as shall become Stockholders in such joint Capital or Stock as hereinafter mentioned, shall be and are hereby ordained, constituted and declared to be a body corporate and politic in fact, by the name of The Scarborough and Markham Road Company, and by such name they and their successors shall and may have continued succession, and by such name shall be capable of contracting and being contracted with, of suing and being sued, pleading and being impleaded, answering and being answered unto, in all courts and places whatsoever, in all manner of actions, suits, complaints, matters and causes whatsoever, and that they and their successors may and shall have a common seal, and may change and alter the same at their will and pleasure, and also that they, and their successors by the said name of The Scarborough and Markham Road Company, shall be in law capable of purchasing, having and holding to them and their successors, any estate, real, personal or mixed, and which may be necessary for the use of the said Company, and selling, conveying or otherwise parting therewith, for the benefit and on account of the said Company, from time to time as they shall deem necessary or expedient, and shall have full power and authority to macadamize or plank the road or roads mentioned and described in the Preamble to this Act, to erect Toll-gates, and to take Tolls thereon in the manner hereinafter

mentioned, when the same shall be completed, between the Kingston Road and the Village of Markham.

II. Provided always, and it is hereby enacted and declared, That so soon as three miles of the said road shall have been completed, it shall and may be lawful for the Directors of the said Company to put up and erect a Toll-gate thereon, and collect such tolls as the Directors may think expedient to be levied, and taken of and from persons travelling along the said road.

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

IV. And be it enacted, That the whole Capital stock which the said Company may have or hold by virtue of this Act, shall be five thousand pounds, with power to increase the same to double that amount if found necessary for constructing the said Road, and that the said Capital Stock shall be composed of shares of the value of six pounds five shillings currency each, and that the said shares of the said Capital Stock shall be transferable, and may be from time to time transferred by the respective persons so subscribing or holding the same to other person or persons: Provided always, that such transfer be entered or registered in a book or books to be kept for that purpose by the said Company.

V. And be it enacted, That within sixty days after the passing of this Act, books of subscription shall be opened at Markham Village, in the Township of Markham, and the City of Toronto, by such person or persons and under such regulations, within the meaning of this Act, as the said petitioners or the majority of them shall by writing direct.

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

VII. And be it enacted, That all and every of the subscribers for the said stock or any part thereof, shall at the time of subscribing pay a proportion of ten per cent, upon the Capital Stock of the whole number of shares, for which they, or any of them respectively, may subscribe, and that such proportion so paid and deposited at the time of subscription shall be at the disposal of the Directors hereinafter mentioned, to and for the purposes of this Act in manner as hereafter is directed, and that the residue of the sum or shares of subscribers and stockholders shall be payable by instalments, at such times and in such proportion as a majority of the Shareholders at a meeting to be expressly convened for that purpose, shall agree upon.

VIII. And be it enacted, That if any Stockholder as aforesaid, shall refuse or neglect to pay at the time required, any such instalment or instalments as shall be lawfully required by the Directors, as

due upon any share or shares, then such Stockholder so refusing or neglecting shall forfeit such share or shares as aforesaid, with the amount previously paid thereon, and the said share or shares may be sold by the said Directors, and the sum so arising therefrom, together with the amount previously paid thereon, shall be accounted for, and divided in like manner as other monies of the said Company: Provided also, that nothing in this Act shall prevent any Stockholder from paying up the amount he subscribes for at any time to the Directors, and the same shall be allowed to him by the said Company.

IX. And be it enacted, That as soon as ten per cent, of the said Capital Stock shall be paid into the hands of such receiver or receivers as the Stockholders shall appoint, it shall and may be lawful for the subscribers, or the majority of them, upon thirty days' notice published in one or more of the City of Toronto newspapers, to call a public meeting at the Village of Markham aforesaid, for the purpose of proceeding to the election of Directors as hereinafter mentioned, and the persons then and there chosen being Stockholders shall be capable of serving until the second Monday in January, one thousand eight hundred and forty-nine, and the said Directors so chosen shall commence the business of the said Company, and proceed therein until the first subsequent election of annual Directors as hereinafter mentioned.

X. And be it enacted, That the stock, property, affairs and concerns of the said Corporation shall be managed and conducted by seven Directors, one of them to be the President, who shall hold his office for one year, which Directors shall be Stockholders, and shall be inhabitants of the Home District, and shall be elected on the second Monday in January in each and every year, at such time of the day and at such place in the said Village of Markham as the majority of the Directors for the time being, after thirty days' public notice, shall appoint; Provided nevertheless, that the first Board of Directors to be chosen by the subscribers as aforesaid, shall continue in office until the first Monday in January, one thousand eight hundred and forty-nine, as in the last section provided, and no longer, unless re-elected.

XI. And be it enacted, That the election of Directors shall be held and made by such Stockholders of the said Company as shall attend at the Village of Markham aforesaid for that purpose, in their own proper persons or by proxy, and shall be determined by ballot, such ballot to be regulated and calculated by the number of votes allowed to such Stockholders according to the number of shares held by them respectively, as follows, that is to say: one vote for one share; two votes for two shares; three votes for eight shares; four votes for twelve shares; five votes for sixteen shares; Provided always, that the Stockholders so voting shall be possessed of the share or shares in respect of which they shall respectively vote at least three months before the time of election, and no person, co-partnership or body politic, shall be entitled to more than five votes at any such election, or at the determination of any other matter or thing concerning the said Company, or its affairs, which may by the provisions of this Act, be submitted to the judgment and decision of the Stockholders generally: Provided also, that the choice of the scrutineers hereinafter mentioned, and of the President be had as hereinafter expressly directed.

XII. And be it enacted, That the Directors to be chosen shall be Stockholders in the said Company, and shall hold to their own use eight shares at least, and that all and every co-partnership and co-

partners, body and bodies politic or corporate, holding any share or shares of the stock of the Company, shall each of them vote only as an individual Stockholder, nor shall two or more persons belonging to any such co-partner-ship or co-partnerships, body or bodies politic or corporate, be capable of being nominated, chosen, or of sitting as Directors, although such persons may hold stock in their private right, or to their private use in the said Company.

XIII. And be it enacted, That of the persons as aforesaid nominated and balloted for in the manner as aforesaid, those shall be deemed elected who shall have the greatest number of votes according to the shares held by the voters respectively, as hereinbefore prescribed, at each and every such election of Directors; and at each and every such election on the second Monday of January, in each and every year as aforesaid, after the ballot shall have been kept open from eleven of the clock in the forenoon till two of the clock in the afternoon, the persons having the majority of the votes in manner aforesaid, shall so soon thereafter as convenient on the same day, be declared the Directors chosen for the ensuing year, by any two or more Scrutineers who shall have been previously nominated by the Stockholders, for the purpose of 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.

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

XV. And be it enacted, That in case of a vacancy among the Directors, by death or absence for more than two months from the sittings of the said Board, such vacancy shall as often as necessary be supplied until the second Monday in January following, by the remaining Directors, at a Special Meeting of the Board, called by the President.

XVI. And be it enacted, That all questions submitted to or coming before the Board of Directors, concerning the affairs of the said Company, as well as the appointment of Director or Directors to fill up vacancies in their own number, shall be decided by the majority of voices; Provided however, always, that the President of the said Company shall have no other than a casting vote.

XVII. And be it enacted, That the Directors for the time being, or the majority of them, shall have power to make and subscribe such Rules and Regulations, and the same to alter and amend as to them shall appear needful, just and proper, touching the management and disposition of the stock, property, estate and effects of the said Corporation, and touching the duties and conduct of the clerks and servants employed by the said Company, and shall have power to make and subscribe in the name of the said Company all contracts for labour, work, materials, and all matters concerning the construction of the said road, and after the same be completed, concerning the tolls of the said road, other matters and things concerning as well the construction of the said road, its charges, tolls, profits, losses, dividends and revenue whatsoever, such Rules and Regulations not being contrary to this Act nor to the Laws of this Province.

XVIII. And be it enacted, That it shall and may be lawful for the President and Directors of the said Company from time to time to order and establish the rates of toll payable by persons travelling upon the said road; it shall not be lawful for the said Directors to establish or collect or allow to be collected, any rate of toll for any horse, beast, or any other cattle or carriage employed in carrying or conveying, having been employed only in carrying on the same day, any dung, soil, or compost or manure for the improving lands, any ploughs or harrows in actual use, unless laden also with some other thing not hereby exempted from toll, or for any horse or other beast employed in going to or returning from plough or harrow, or to or from pasture or watering place, or going or returning from being shod or farried, such horse or horses or other beast not going or returning on those occasions more than one mile on the Macadamized or Plank Road.

XIX. And be it enacted, That all persons with horses, wagons or other carriages going to, attending or returning from any funeral of any person on any day in the week, or going to or returning from Divine Service on the Lord's day, shall pass the gate free of toll.

XX. 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 misdemeanour 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 damages by them committed, and shall forfeit and pay a fine not exceeding five pounds nor less than ten shillings currency, to be recovered before any Justice of the Peace for the Home District.

XXI. 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 Home District, 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 by such Justice (Jr any other Justice of the said District to the Common Jail of the Home District for any period not exceeding twenty days.

XXII. And be it enacted, That if any person or persons shall after proceeding on the said road with any carriage or animal, 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 avoided, such person or persons shall for every such offence forfeit and pay a sum not exceeding five pounds nor less than five shillings, which said sum shall be expended on the said road, or towards discharging of any debtor other incumbrances thereon, and any one Justice of the Peace for the Home District shall, on conviction of such offender, fine such offender in the said penalty, and from his judgment there shall be no appeal.

XXIII. And be it enacted, That if any person or persons occupying or possessing any enclosed land 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 land 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, any 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 generally forfeit and pay any sum not exceeding five pounds, which shall be laid out in improving such road.

XXIV. And be it enacted, That the Executive Government of this Province may at any time whatever assume and take the said entire estate, property, and use of the said road from the said Company, paying to the said Company the Capital so as aforesaid actually expended, together with ten per centum advance thereupon

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

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

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

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

XXIX. And be it enacted, That the Board of Arbitrators so constituted shall fix a convenient day for hearing the respective parties, and shall give eight days' notice at least of the day and place, and having heard the parties or otherwise examined into the merits of the matters so brought before

them, the said Arbitrators or a majority of them shall make their award and arbitrament thereupon in writing, which award or arbitrament shall be final as to the value so in dispute as aforesaid.

XXX. And be it enacted, That if the party so disagreeing refuse to accept the value of the land so ascertained by the Arbitrators as aforesaid till the end of the second term in Her Majesty's Court of Queen's Bench in 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 Arbitrators and to macadamize or plank it in the same manner as other portions of the said road.

XXXI. 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 maybe pleaded in bar to such action at any time after the said two terms in the said Court of Queen's Bench, notwithstanding any defect in form or substance in the said award: Provided always, and it is hereby enacted and declared, That it shall and may be lawful to and for tire party or parties interested in the land mentioned in the award, or their agent by counsel, at any time within the two next terms as aforesaid, after the same hath been made, and the amount of the value awarded tendered, to move the 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.

XXXII. And be it enacted, That in case it should at any time happen that an election of Directors should not be made on the day when pursuant to this Act it ought to have been made, the said Corporation shall not for that cause be deemed to be dissolved, but it shall and may be lawful on any other day to hold and make an election in such manner as shall have been regulated by the rules of the said Corporation, to be made for that purpose, such rules not being contrary to the provisions of this Act.

XXXIII. And be it enacted, That it shall be the duty of the Directors to make annual dividends of so much of the profits of the said Company as to them or the majority of them shall appear advisable, and an exact and particular statement shall be annually rendered of the state of their affairs, debts, credits, profits and losses, and such statements shall appear in the books of the Company, and be open to the perusal of any Stockholder upon his reasonable request.

XXXIV. And be it enacted, That this Act shall be deemed and taken to be a Public Act, and as such shall be judicially noticed by all Judges and Justices of the Peace, and other persons without being specially pleaded.

XXXV. And be it enacted, That this Act from the time of the passing thereof, shall continue in force for fifty years, and from thence to the end of the next ensuing Session of the Provincial Parliament.