

*Laws of Her Majesty's Province of Upper Canada*, passed in the year 1849. Montreal: Stewart Derbshire & George Desbarats, 1849.

12 Victoria – Chapter 157

**An Act to incorporate The Markham and Elgin Mills Flank Road Company. 30th May, 1849.**

Whereas the inhabitants of the Townships of Markham and Whitechurch, and of the Townships to the east and north-west have 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 of the said Townships and surrounding country if the side lines between Lots Numbers twenty-five and twenty-six in the Township of Markham, and one or more of the concessions running northerly from the said line were planked, macadamized or gravelled, the said road commencing at Yonge Street near Elgin Mills, and terminating at the eastern extremity of the Township of Markham and the concession line or lines to be so planked, macadamized or gravelled commencing at the side line and terminating on the given line between the townships of Markham and Whitechurch; And whereas Ashton Fletcher, Benjamin Bowman 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 and it is expedient to grant the prayer of the said petition: 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, The said Ashton Fletcher and Benjamin Bowman, 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 Markham and Elgin Mills Plank 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 Markham and Elgin Mills Plank 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 of 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, or so much of it as may be completed between Yonge Street and the eastern extremity of the Township of Markham.

II. Provided always, and it is hereby enacted and declared, That so soon as two and a half miles of the said road or roads 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 or roads.

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 or roads, to purchase and hold in their corporate capacity such real estate as may be necessary for all the purposes of the said road or roads 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 four thousand pounds, with power to increase the same to double that amount if found necessary for constructing the said road or roads, and that the said Capital Stock shall be composed of shares of the value of five pounds 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 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 all subscriptions for a share or shares in the Capital Stock of the said Company, or to the undertaking for carrying out which the said Company is incorporated, shall be good and valid, and binding on the shareholders, whether made before or after the passing of this Act and the several persons who have subscribed, or who may hereafter subscribe for shares in the said undertaking or Company, shall and they are hereby required to pay the sum or sums of money by them respectively subscribed, or such part or portion thereof as shall from time to time be called for by the Directors of the said Company, under and by virtue of the powers and directions of this Act, to such person or persons, and at such times and places as shall be directed or required by the Directors, and in case any person or persons shall neglect or refuse to pay the same, at the time and in the manner required for that purpose, it shall be lawful for the Directors to cause the same to be sued for and recovered, together with interest, in any Court of Law or Equity in this Province, having competent jurisdiction in civil cases, to the amount; and in any such action whether for the subscription already made or hereafter to be made, it shall not be necessary to set fourth the special matter in the declaration but it shall be sufficient to allege that the Defendant is holder of one or more shares (stating the number of shares) in the Stock, and is indebted to the Company in the sum to which the calls in arrear may amount, and in any such action it shall be sufficient to maintain the same, that the signature of the Defendant to some book or paper, by which it shall appear that such Defendant subscribed for or authorized or caused any person to subscribe on his account and behalf, for a share or a certain number of shares of the Stock of the said Company or undertaking be proved by one witness whether in the employment of the Company or not, and that the number of calls in arrear have been made, and the suit may be brought in the Corporate name of the Company.

VI. And be it enacted, That the Stockholders of the said Company shall be liable for all debts, due by the said Company, to the extent only of their respective share or shares.

VII. And be it enacted, That within sixty days after the passing of this Act, Books of Subscription shall be opened at Crossby's Corners, in the Township of Markham, at the office at Elgin Mills, in the Township of Vaughan, and at such other places as the Directors may appoint 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.

VIII. 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-five 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.

IX. 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 two shillings and six pence per share 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 hereinafter is directed, and that the residue of the sum or shares of Subscribers, and Stockholders shall be payable by instalments, at such time and in such proportion as the Directors may deem fit: Provided always, that no demand be made by the said Directors upon the Stockholders for any sum exceeding ten shillings per share at any one time.

X. 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 moneys 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.

XI. And be it enacted, That as soon as one half of the Capital Stock of the said Company is *bonâ fide* subscribed for, it shall and may be lawful for the Subscribers, or the majority of them, upon thirty days' notice being given by placing not less than ten advertisements in the most conspicuous and most public places in the neighbourhood, calling a General Meeting of the Stockholders to be held at Read's Corners, Crossby's Corners or at Elgin Mills, as may hereafter be determined upon by the Committee of Management, 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 first Saturday in January, one thousand eight hundred and fifty, 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.

XII. 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 first Saturday in January in each and every year, at such time of the day and at such place in the said Township 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 Saturday in January, one thousand eight hundred and fifty, as in the last section provided, and no longer, unless re-elected.

XIII. 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 such of the three above mentioned places, as shall be determined upon as 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 share, one vote; five shares, two votes; ten shares, four votes; twenty shares and upwards, five votes. 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 one month 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.

XIV. And be it enacted, That the Directors to be chosen shall be Stockholders in the said Company, and shall hold to their own use five 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 copartnership 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.

XV. And be it enacted. That of the persons as aforesaid nominated and balloted for in the manner 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 first Saturday 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 to four 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, he 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.

XVI. 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.

XVII. 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 first Saturday in January following, by the remaining Directors, at a Special Meeting of the Board, called by the President.

XVIII. 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 always, however, that the President of the said Company shall have no other than a casting vote.

XIX. 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.

XX. And be it enacted, That it shall and maybe 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 however 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 grain thrashed or unthrashed to the barn, potatoes or any other farm produce grown upon the farm, or taking any seed or plants to the fields of the farm, dung, soil or compost of 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.

XXI. And be it enacted, That Her Majesty's Mail, and all 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 hired or private vehicles,) and all carriages or 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 of the week, or going to or returning from Divine Service on the Ford's Day, shall pass toll free through any turnpike or toll gate to be erected under the authority of this Act.

XXII. 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 or roads, 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.

XXIII. 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 or any other Justice of the said District to the Common Gaol of the Home District for any period not exceeding twenty days.

XXIV. 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 currency, which said sum shall be expended on the said road, of towards discharging any debt or 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.

XXV. 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 severally forfeit and pay any sum not exceeding five pounds currency, which shall be laid out in improving such road.

XXVI. 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.

XXVII. 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.

XXVIII. 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.

XXIX. And be it enacted, That if in the making of such contract, composition, compromise or agreement, any obstacles 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.

XXX. 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, 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.

XXXI. 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.

XXXII. 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 said Arbitrators, and to macadamize or plank it in the same manner as other portions of the said road.

XXXIII. 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 may be 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 or for the 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.

XXXIV. 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.

XXXV. 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 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.

XXXVI. 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.

XXXVII. 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 then next ensuing Session of the Provincial Parliament.