

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

12 Victoria – Chapter 158

An Act to incorporate The City of Kingston Water Works Company. 30th May, 1849.

Whereas the supplying of the City of Kingston with Water would be of great public advantage, and whereas the City of Kingston, under their Common Seal, and Francis Manning Hill, William Ford, Junior, Thomas Weeks Robinson, John Richardson Forsyth, George Baxter, Archibald John Macdonell, William Allan Geddes, Thomas Kirkpatrick, Stephen Aldritch Irons, John Quiggin, George Alexander Gunning, Horatio Yates, and John Mowat, inhabitants of said City of Kingston, have by their petitions, prayed that the said Francis Manning Hill, William Ford, Junior, Thomas Weeks Robinson, John Richardson Forsyth, George Baxter, Archibald John Macdonell, William Allan Geddes, Thomas Kirkpatrick, Stephen Aldritch Irons, John Quiggin, George Alexander Cumming, Horatio Yates, and John Mowat, and others who may become associated with them in the undertaking may be incorporated under the style and title of The City of Kingston Water Works Company, the better to enable such institution to supply the said City of Kingston and its vicinity with Water: 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, intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That the said Francis Manning Hill, William Ford, Junior, Thomas Weeks Robinson, John Richardson Forsyth, George Baxter, Archibald John Macdonell, William Allan Geddes, Thomas Kirkpatrick, Stephen Aldritch Irons, John Quiggin, George Alexander Cumming, Horatio Yates, and John Mowat, and all such persons as shall hereafter become Stockholders of the said Company, shall be, and are hereby ordained, constituted and declared to be a body corporate and politic in law, in fact and in name, by the style and title of The City of Kingston Water Works Company, and by that name and style, they and their assigns or successors, shall and may have continued succession, and shall and may be capable in law of suing and being sued, pleading and being impleaded, answering and being answered unto, defending and being defended in all Courts and places whatsoever, and that they and their assigns or successors, may have a Common Seal, and may change and alter the same at pleasure, and shall and may have power to purchase or lease lands, tenements, and hereditaments, for them and their assigns and successors, for the use of the said Water Works, and also to sell any of the said lands, tenements and hereditaments, to be purchased for the purchase aforesaid, and any person or persons, bodies politic or corporate, may give, grant, sell, bargain, or convey to the Company, in fee simple or otherwise, any lands, tenements or hereditaments, for the purposes aforesaid, and the same may re-purchase from the said Company; Provided always that the said lands, tenements and hereditaments to be holden by the said Corporation, shall be held for the purposes and business of the said Water Works Company, in constructing their necessary works, and for no other purposes whatsoever, and that they shall not exceed at any time the yearly value of five hundred pounds currency, over and above the value of the works thereon erected.

II. And be it enacted, That the said Company of Proprietors may raise and contribute among themselves, such sum as shall not exceed the sum often thousand pounds currency, in shares of twelve pounds ten shillings currency each, and the money so raised shall be appropriated to the purpose of constructing, completing, and maintaining the said Water Works, and to the purposes of this Act, and to no other object or purpose whatsoever.

III. And be it enacted, That within one month after the passing of this Act, a General Meeting of the Proprietors, for carrying this Act into effect, shall be held at such place in the City of Kingston as the majority of such proprietors shall appoint, to choose nine persons being Proprietors in the said undertaking, as Directors, of whom any three or more shall be a Committee for managing the affairs of the Company, and in the event of there not being nine Proprietors or Shareholders in the Company, then, and in that case, the number of Directors shall be limited to the number of Proprietors or Shareholders, each being the owner of at least ten shares of the stock of the said Company, held in his own name and right.

IV. And be it enacted, That the Directors so chosen shall serve until the first Monday in the month of May, one thousand eight hundred and fifty, and shall immediately after their election at their first meeting choose out of their number a President and Vice-President who shall hold their offices respectively during the same period for which the said Directors shall have been elected as aforesaid, and shall thereupon commence the business and operations of the said Corporation, and general meetings of the Proprietors or Shareholders shall be held annually for the purpose of electing Directors as aforesaid on the first Monday in the month of May in each year, at which meeting the Directors of the then past year shall exhibit a full and unreserved statement of the affairs of the Corporation, and of the funds, property and debts due to and from the said Company, which said statement shall be certified by the President under his hand and seal; and in the event of there being no meeting of Shareholders or Proprietors in consequence of the said Shareholders or Proprietors neglecting to attend in conformity with the requirements of this Act, then and in that case the Directors of the previous year shall continue and remain in office until an election shall take place at a future meeting of the said Shareholders or Proprietors, and such Directors subsequently elected or remaining in office shall, at their first meeting after such election, or the period named in this Act for holding such annual meeting, choose out of their number a President and Vice-President who shall hold their offices respectively for the then ensuing twelve months, or until such subsequent election at a future meeting of the said Shareholders or Proprietors, as the case may be, and it shall be lawful for the said Directors, from time to time, in case of death, resignation, absence from the Province, or removal of the persons so chosen to be President or Vice-President or Director, or either of them, to choose in their or his stead from among them, the said Directors, another person or persons to be President or Vice-President, or from amongst the other Shareholders or Proprietors another person or persons to be Director or Directors respectively, to continue in office until the next annual meeting as aforesaid.

V. And be it enacted, That Stockholders or Proprietors may vote by proxy or in person, and all elections shall be by ballot, and each Stockholder or Proprietor shall have one vote; Provided

always that each Stockholder or Proprietor holding more than three shares shall have one vote for every three shares held by such Stockholder or Proprietor.

VI. And be it enacted, That the Directors shall and may have the power to appoint such officers and other persons as may appear to them necessary for carrying on the business of the said Corporation, with such salaries and allowances to each as shall seem meet and advisable, and also shall and may have the power to make and prescribe and alter such By-laws, Rules, Regulations and Ordinances as shall appear to them proper and needful touching the well ordering of the said Corporation, the management and disposition of its stock, property, estate and effects, and also shall and may have the power to declare yearly or half-yearly dividends out of the profits of the said business as they may deem expedient: Provided always, that such By-laws, Rules, Regulations and Ordinances, shall be in no wise inconsistent with the true intent and meaning of this Act, and the powers hereby granted, nor repugnant to the laws of the Province.

VII. And be it enacted, That the stock of the said Company shall be assignable and transferable according to such rules, and subject to such restrictions and regulations as the Board of Directors shall from time to time make and establish, and shall be considered as personal property: Provided also, that such transfer be entered and registered in a book or books, kept for that purpose for the said Company.

VIII. And be it enacted, That it shall and may be lawful to and for the said Corporation to erect, construct, have and use, or cause to be erected, constructed and used in or. near the said City of Kingston, at and upon such site or sites as the said Corporation may from time to time, at any time during the continuance of this Act, procure or have for such purpose, such steam or other engine or engines or machinery, buildings and erections whatsoever, as may be required for the uses or purposes of the said Water Works; and also after three days' notice in writing to the City Clerk of the City of Kingston, to break up, dig and trench so much and so many of the streets, squares, and public places of the said City of Kingston, commencing at the works of the said Corporation, and running through the said City of Kingston, as will be necessary for laying the mains and pipes to conduct the water to and from the works of the said Corporation to the consumers thereof, doing no unnecessary damage in the premises, and taking care, as far as may be, to preserve a free and uninterrupted passage through the said streets, squares and public places, while the work is in progress, and making such openings in such parts of the said streets, squares, and public places, as may be requisite for the construction of such works, and laying such mains and pipes therein with the permission of the City Council of the said City of Kingston; and also placing guards and fences, and taking all such necessary precautions for the prevention of accidents to passengers and others, which might be occasioned by such openings, as such City Council shall at any time order or require; also finishing the work, and replacing the said streets, squares and public places in as good a condition as before the commencement of the work, without any unnecessary delay; and also to break up, dig and trench such roads, streets, and places in the immediate vicinity of the said City of Kingston as may be necessary for laying the mains and pipes aforesaid, and for constructing the said works, doing no unnecessary damage in the premises, and taking all necessary precautions for the prevention of accidents to passengers or others, during the progress of such works, and in case of the neglect of any of the duties herein provided, as aforesaid, the said

Corporation shall be subject to such fine not exceeding Five Pounds currency, for every day such neglect shall continue, to be recovered by information in Her Majesty's Court of Queen's Bench, on behalf of Her Majesty, Her Heirs and Successors, for the public uses of the Province, as the said Court may order or impose, over and above such damages as may be recovered against the said Corporation in any Civil Action.

IX. And be it enacted, That in case the said Corporation shall open or break up any street, square, or public place in the said City, and shall neglect to keep the passage of the said street, square, or public place, as far as may be, free and uninterrupted, or to place guards or fences, or take any unnecessary precaution for the prevention of accidents to passengers or others, or to close and replace the said streets, squares, or public places, without unnecessary delay, as hereinbefore provided, the City Surveyor, under the direction of the City Council of the said City of Kingston, shall cause the duty so neglected to be forthwith performed, and the expense thereof shall be defrayed by the said Corporation on demand of the City Surveyor, from the Cashier, or Treasurer, or any Director of the said Corporation, or in default of such payment, the amount of the said claim, shall and may be recovered from the said Corporation, at the suit of the said City of Kingston, in an action of debt in any Court of competent jurisdiction.

X. And be it enacted, That the said Corporation shall be held and obliged to make, erect, construct, repair, and keep in good order, at the charges and expense of the City of Kingston, in such parts of the City of Kingston as may be fixed upon by the City Council thereof, such number of good and sufficient fire plugs as may be found necessary by the said City Council for the purposes of supplying fire engines, and of giving such other assistance as may be useful and necessary for extinguishing fires, and preventing the communication thereof; Provided always, that the said Water Works Company shall not be compelled to make, erect, or construct any fire plugs as aforementioned in any part of the City of Kingston, where they have not made or constructed pipes for conveying water.

XI. And be it enacted, That if any person or persons, shall lay, or cause to be laid, any pipe or main, to communicate with any pipe or main belonging to the said Corporation or in any way obtain or use the water without the consent of the Board of Directors, or their officer appointed to grant such consent, he or they shall forfeit or pay to the said Corporation the sum of twenty-five pounds, and also a further sum of one pound for each day such pipe shall so remain, which said sum, together with costs of suit in that behalf incurred, may be recovered by civil action in any Court of Law in this Province, having jurisdiction competent for the same.

XII. And be it enacted, That if any person or persons shall wilfully or maliciously break up, pull down, or damage, injure, put out of order, or destroy any main, pipes, engine, water house, pipe, plug, or other work, or apparatus, appurtenances, or dependencies thereof; or any matter or thing already made and provided, or which shall be made and provided for the purposes aforesaid; or any of the materials used and provided for the same, or ordered to be erected, laid down, or belonging to the said Company, or shall in any wise, wilfully do any other injury or damage, for the purpose of obstructing, hindering, or embarrassing the construction, completion, maintaining, or repairing of the said works, or shall cause or procure the same to be done, or shall bathe, or wash,

or cleanse any cloth, wool, leather, skins, animals, or any noisome or offensive thing, or cast, throw, or put any filth, dirt, or any noisome or offensive thing, or cause, permit or suffer the water of any sink, sewer, or drain to run, or be conveyed into, or cause any other annoyance to be done to the water within any reservoirs, cisterns, ponds, courses or fountains, from which the water to supply the said City is to be conveyed, or by wrongfully or improperly wasting the water; every such person or persons shall be guilty of a misdemeanor, and on conviction thereof, the Court before whom such persons shall be tried and convicted, shall have power and authority to condemn such person to pay a penalty not exceeding five pounds, currency, or to be confined in the Common Gaol of the District for a space of time, not exceeding three months, as to such Court may seem meet.

XIII. And be it enacted, That the subscriptions for 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 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 portions 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 in any Court of Law in this Province having jurisdiction in civil cases to the amount, and in any such action, whether for the subscriptions already made or hereafter to be made, it shall not be necessary to set forth the special matter in the declaration, but it shall be sufficient to allege that the defendant is the holder of one or more shares in the Stock, (stating the number of shares) 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 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 employ 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.

XIV. And be it enacted, That no instalment to be paid on account of the shares in the Stock of the said Company shall exceed two pounds ten shillings currency on each share, and notice thereof shall be given by advertising in one or more of the newspapers published in the said City of Kingston, at least two weeks before such instalment shall be called for: Provided always, that no instalment shall be called for except after the lapse of a fortnight from the time when the last instalment was called for, and if any person or persons shall neglect or refuse to pay his or their share of such money to be so paid in as aforesaid at the time or place fixed and appointed by the Directors, such person or persons so neglecting or refusing may be sued as aforesaid, or at the option of the Directors shall thereby incur forfeiture of not more than ten nor less than five per cent on the amount of his or their respective share or shares; and if such person or persons shall refuse or neglect to pay. their portion of the instalments demanded for the space of two calendar months after the time fixed for the payment thereof, then and in that case such person or persons

shall forfeit his or their respective share or shares upon which former instalments shall have been paid, and such share or shares shall be sold by order of the Directors, by public auction, and the proceeds of the sale, after deducting costs and the forfeiture above mentioned, shall be paid over to such defaulter, and the President or Manager of the Company shall have power to transfer the stock to the purchaser or purchasers thereof: Provided always, that no advantage shall be taken of the forfeiture of any share or shares, unless the same shall be declared to be forfeited at some General or Special Meeting of the Shareholders, assembled at any time after such forfeiture shall have been incurred; and every such forfeiture shall be an indemnification to and for every proprietor so forfeiting, against all action or actions, suits or prosecutions whatever, to be commenced or prosecuted for any breach of contract or other agreement between such proprietor and the other proprietors, with regard to carrying on such Water Works.

XV. And be it enacted, That it shall be lawful for the said Company to sell, lease, or hire, interior or service pipes and fittings of any kind, and no service pipes or fittings belonging to the said Company shall be subject to be distrained for rent due to any landlord, or be seized in execution for any debt due by any person or persons to or for whose use or the use of whose house or building the same may be supplied by the Company; any law or practice to the contrary notwithstanding.

XVI. And be it enacted, That if any person or persons, company or companies, or body corporate, supplied with water by the Company, shall neglect to pay any rate, rent or charge due to them, at any of the times of payment thereof, it shall be lawful for the Company, or any person acting under their authority, to stop the water from entering the premises or service pipes of any such person, company or body, by cutting off the service pipe or pipes, or by such means as the said Company shall think fit, and to recover the said rate, rent or charge, together with the expenses of cutting off the water, in any competent Court, by action of debt.

XVII. And be it enacted, That in all cases where it shall be lawful for the said Company to cut off or take away the supply of water from any house, building or premises under the provisions of this Act, it shall be lawful for the Company, their agents or workmen, upon giving twenty-four hours previous notice to the occupier or person in charge, to enter into any such house, building or premises, between nine in the forenoon and four in the afternoon, making as little disturbance and inconvenience as possible, and to remove, take and carry away any pipe, cock, or apparatus, the property of and belonging to the said Company and also, to enter as aforesaid, between the hours aforesaid, for the purpose of repairing and making good any such house, building or premises, or for the purpose of examining any pipe, and examining and repairing any pipe or apparatus belonging to the said Company, or used for supplying their water.

XVIII. And be it enacted, That in case the present limits of the City of Kingston be enlarged by an Act to be passed in the present or any future Session of the Parliament of this Province, it shall be lawful for the said Company to extend their operations over any such enlarged limits or the future Liberties of the said City, and the provisions of this Act shall in all respects be applicable to any such enlarged limits or liberties in the same manner and to the same effect as they are made applicable to the present limits of the City of Kingston.

XIX. And be it enacted, That nothing in this Act contained, shall extend, or be construed to extend to prevent any person or persons, body politic or corporate from constructing any works for the supply of water to his, or their own premises, or to prevent the Legislature of this Province, at any time hereafter, altering, modifying or repealing the powers, privileges or authorities hereinbefore granted to the said Corporation.

XX. And be it enacted, That the penalties by this Act imposed, appertaining to Her Majesty, Her Heirs and Successors, shall be reserved for the public uses of the Province, and for the support of the Government thereof; and the due application of the same shall be accounted for to Her Majesty, Her Heirs and Successors, through the Fords Commissioners of Her Majesty's Treasury, for the time being, in such manner and form as Her Majesty, Her Heirs and Successors shall be pleased to direct.

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

XXII. And be it enacted, That the Water Works hereinbefore mentioned, shall be in operation within three years from the passing of this Act, in default whereof, the privileges and advantages granted by this Act to the said Company shall cease, and be of no effect.

XXIII. And be it enacted, That whenever the word person or persons is used in this Act, it shall be taken to comprehend a body politic or corporate, or its lawful agent or agents, as well as an individual; and every word importing the singular number shall, when necessary, be deemed to extend to several persons or things, and every word importing the masculine gender shall, when necessary, extend to a female as well as a male.

XXIV. And be it enacted, That this Act he and is hereby declared to be a Public Act, and that the same may be construed as such in Her Majesty's Courts in this Province.

XXV. And be it enacted, That this Act shall he and remain in force for fifty years, and no longer.