

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

12 Victoria – Chapter 160

An Act to incorporate certain persons under the style and title of The President, Directors and Company of Port Burwell Harbour. 30th May, 1849.

Whereas the construction of a safe and commodious Harbour at Port Burwell, in the County of Middlesex, and District of London, would manifestly tend to the improvement to that part of this Province, as well as be of great advantage to all persons in any way concerned in the navigation of Lake Erie; And whereas J. W. Wrong, Alexander Saxon, Thomas Jenkins, Samuel Arnold, William Francisco, Samuel Garnsey, B. T. Smith, Isaac Titus, Andrew Chute, William Hollowood, John Sibley, James Harris, George Cameron, David C. Rees, Sidney McDermid, Samuel Tedford, John Marr, E. Saxon and David Merrill, have petitioned to be by law incorporated for the purpose of effecting the construction of such Harbour, by means of a Joint Stock Company: 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 the said J. W. Wrong, Alexander Saxon, Thomas Jenkins, Samuel Arnold, William Francisco, Samuel Garnsey, B. T. Smith, Isaac Titus, Andrew Chute, William Hollowood, John Sibley, James Harris, Geo. Cameron, David C. Rees, Sidney McDermid, Samuel Tedford, John Marr, E. Saxon and David Merrill, together with all such other persons as shall become Stockholders in such joint stock or capital as is hereinafter mentioned, shall be and are hereby ordained, constituted and declared to be a body corporate and politic, in fact, by and under the name and style of The President, Directors and Company of Port Burwell Harbour; 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, or suing and being sued, pleading and being impleaded, answering and being answered unto, in all Courts or places whatsoever, in all manner of suits, actions, 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 same name of The President, Directors and Company of Port Burwell Harbour, shall be in law capable of purchasing, having and holding, to them and their successors, any estate real, personal or mixed, to and for the use of the said Company, and of letting, conveying, or otherwise departing therewith, for the benefit and on the account of the said Company, from time to time, as they shall deem necessary and expedient: Provided always, that nothing herein contained shall extend, or be construed to extend, to allow the said Company to carry on the business of banking.

II. And be it enacted, That the said Company are hereby authorized and empowered, at their own costs and charges, to construct a Harbour at Port Burwell aforesaid, which shall be accessible to, and fit, safe and commodious for the reception of such description and burthen of vessels as

commonly navigate the said Lake; and also to erect and build all such needful moles, piers, wharves, buildings and erections whatsoever, as shall be useful and proper for the protection of the said Harbour, and for the accommodation and convenience of vessels entering, lying, loading and unloading, within the same, and to alter and amend, repair and enlarge the same, as may be found expedient and necessary.

III. And be it enacted, That the Directors of the said Company, shall be, and they are hereby empowered to contract, compound, compromise and agree with the owners and occupiers of any land through or upon which they may determine to cut and construct the said intended Harbour, with all necessary and convenient roads, streets and approaches thereto, to be constructed and made, either for the absolute purchase of so much of the said land 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 recover from the said Company in consequence of the said intended Harbour, roads, streets and approaches thereto being cut, made and constructed, in and upon his, her or their respective lands; and in case of any disagreement between the said Directors and the owner or owners, occupier or occupiers aforesaid, it shall and may be lawful, from time to time, as often as the said Directors shall think fit, for each owner or occupier so disagreeing with the said Directors, either upon the value of the lands and tenements 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 Directors 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, adjudge and order the respective sums of money which the said Company shall pay to the respective persons entitled to receive the same, the award of a majority of whom shall be final; and the said arbitrators shall, and they are hereby required to attend at some convenient place in the vicinity of the said intended Harbour, to be appointed by the said Directors, after eight days' notice given them for that purpose by the said Directors, then and there to arbitrate, award, adjudge and determine such matters and things as shall be submitted to their consideration by the parties interested; and that each arbitrators shall be sworn before some one of Her Majesty's Justices of the Peace in and for the said District, any one of whom may be required to attend the said meeting for that purpose, well and truly to assess the damages between the parties according to the best or his judgment: Provided always, that any award made under this Act shall be subject to be set aside on application to the Court of Queen's Bench, in the same manner and on the same grounds as in ordinary cases of submission by the parties, in which case reference may be again made to arbitrators as hereinbefore provided.

IV. And be it enacted, That as soon as the said Harbour shall be so far completed as to be capable of receiving and sheltering vessels, the said Company shall have full power and authority to ask for, demand, receive and take, as tolls, to and for their own proper use and benefit and behoof, on all goods, wares and merchandize, shipped or landed on board or out of any vessel or boat from or upon any part of the Lake shore between the East boundary of lot number nine, and the West boundary of lot number sixteen, in the first concession of the Township of Bayham, on Lake Erie, in the said District of London, and upon all vessels and boats entering the said Harbour, not exceeding the rates following, that is to say:

Pot and pearl ashes, per barrel six pence;

Pork, whiskey, salt, beef and lard, per barrel, four pence;

Flour per barrel, three pence;

Merchandize, per barrel bulk, four pence;

Lard and butter, per keg, one penny half penny;

Merchandize, per ton, five shillings;

West India staves, per thousand, two shillings and six pence;

Shingles, per thousand, six pence;

Shingle bolts, per cord, five shillings;

Pipe staves, per thousand, ten shillings;

Deals, per hundred pieces, three shillings;

Oak timber, per thousand feet, running measure, five shillings; every cord of fire wood, three pence;

Wheat and other grain, per sixty pounds, one penny;

Lumber, per thousand feet, board measure, one shilling and three pence;

Boats, under five tons, free;

Boats and vessels, under twelve tons, one shilling and three pence;

Boats and vessels, above twelve tons and not over fifty, two shillings and six pence;

Vessels, over fifty tons, five shillings.

V. And be it enacted, That the said Harbour, moles, piers, wharves, buildings, erections, and all materials which shall he from time to time got or provided for constructing, building, maintaining or repairing the same, and the said tolls on goods, wares and merchandize, hereinbefore mentioned, shall be and the same are hereby vested in the said Company and their successors for ever.

VI. And be it enacted, That if any person or persons shall neglect or refuse to pay the tolls or dues to be collected under this Act, it shall and may be lawful for the said Company, or their officer, clerk or servant, duly appointed, to seize and detain the goods, vessels or boats on which the same were due and payable, until such tolls are paid; and if the same shall be unpaid for the space of thirty days next after such seizure, the said Company, or their officer, clerk or servant as aforesaid, may sell and dispose of the said goods, vessels or boats, or such part thereof as may be necessary to pay the said tolls, by public auction, giving ten days' notice thereof, and return the overplus, if any, to the owner or owners thereof.

VII. 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, and three of whom shall be a quorum, who shall hold their office for one year; which said Directors shall be Stockholders to the amount of at least eight shares, as well as inhabitants of this Province, and be elected on the third Monday in June in every year, at Port Burwell, at such time of the day as a majority of Directors for the time being shall appoint; and public notice thereof shall be given in the Canada Gazette, or in any newspaper or newspapers that may be published in the said District of London, at least thirty days previous to the time of holding the said election; and the said election shall be held and made by such of the Stockholders of the said Company as shall attend for that purpose in their own proper persons or by proxy; and all 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 manner that a greater number of persons than seven shall by a plurality of votes appear to be chosen Directors, then the said Stockholders hereinbefore authorized to hold such election, shall proceed to elect by ballot until it is ascertained 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, so soon as may be after the said election, shall 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.

VIII. And be it enacted, That each Stockholder shall be entitled to a number of votes proportioned to the number of shares which he or she shall have held in his or her own name at least one month prior to the time of voting, according to the following rates, that is to say: one vote for each share not exceeding four; five votes for six shares; six votes for eight shares; seven votes for ten shares; and one vote for every five shares above ten.

IX. 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 make and hold an election of Directors, in such manner as shall have been regulated by the By-laws and Ordinances of the said Corporation.

X. And be it enacted, That the Directors for the time being, or a major part of them, shall have power to make and subscribe such rules and regulations as to them shall appear needful and proper, touching the management and disposition of the stock, property, estate and effects of the said Corporation, and touching the duties of the officers, clerks and servants, and all such other matters as appertain to the business of the said Company; and shall also have power to appoint as many officers, clerks and servants, for carrying on the said business, with such salaries and allowances as to them shall seem fit.

XI. And be it enacted, That on the third Monday in June after the passing of this Act, a meeting of the Stockholders shall be held at Port Burwell, who, in the same manner as hereinbefore provided, shall proceed to elect seven persons to be Directors, who shall continue in such office until the first Monday in June next after their election, and who during such continuance shall discharge the duties of Directors, in the same manner as if they had been elected at the annual election: Provided always, that if shares to the amount of three thousand pounds of the capital stock of the said Company shall not be taken, then the said meeting shall not be held until that amount of stock shall have been taken up, and at least thirty days notice thereof given in the Gazette, or any newspaper or newspapers that may be published in the said District.

XII. And be it enacted, That the whole capital or stock of the said Company, inclusive of any real estate which the said Company may have or hold by virtue of this Act, shall not exceed in value twenty thousand pounds, to be held in three thousand two hundred shares of six pounds five shillings each; and that the shares of the said capital stock may, after the first instalment thereon shall have been paid, be transferred by the respective persons subscribing or holding the same to other person or persons, and such transfer shall be entered or registered in a book or books to be kept for that purpose by the said Company.

XIII. And be it enacted, That it shall be lawful for the said Corporation from time to time to borrow either in this Province or elsewhere all such sum or sums of money as they may find expedient, and to make the bonds, debentures or other securities they shall grant for the sums so borrowed payable either in currency or in sterling with interest, and at such place or places within or without this Province as they may deem advisable, and such bonds, debentures or other securities may be made payable to bearer or transferable by simple endorsement or otherwise, and may be in such form as the Directors for the time being may see fit; and the said Directors may hypothecate, mortgage or pledge, the lands, revenues and other property of the said Corporation for the due payment of the said sums and the interest thereon: Provided always, that no such bond, debenture or other security shall be made or granted for a less sum than one hundred pounds currency.

XIV. And be it enacted, That as 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 the Canada Gazette, or in any newspaper or newspapers that may be published in the said District, for an instalment of ten per cent upon each share which they, or any of them respectively may subscribe; and that the residue of the share or shares of the Stockholders shall be payable by instalments, in such time and in such proportion as a majority of the Stockholders, at a

meeting to be expressly convened for that purpose, shall agree upon, so as no such instalment shall exceed ten per cent, nor become payable in less than thirty days after public notice in the said Canada Gazette, or in any newspaper or newspapers that may be published in the said District; Provided always, that the said Directors shall not commence the construction of the said Harbour until the first instalment shall be paid in.

XV. And be it enacted, That if any Stockholder or Stockholders 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, 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 that the said share or shares may be sold by the said Directors, and the sum arising therefrom, together with the amount previously paid in, shall be accounted for and applied in like manner as other moneys of the said Company: Provided always, that the purchaser or purchasers shall pay the said Company the amount of the instalment required, over and above the purchase money of the share or shares so purchased by him, her or them as aforesaid, immediately after the sale, and before they shall be entitled to the certificate of the transfer of such shares so purchased as aforesaid: Provided always, nevertheless, that thirty days' notice of the sale of such forfeited shares shall be given in the Canada Gazette, or in any newspaper or newspapers that may be published in the District of London, and that the instalment due may be received in redemption of any such forfeited shares at any time before the day appointed for the sale thereof.

XVI. 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 seem advisable; and that once in each year an exact and particular statement shall be rendered of the state of their affairs, debts, credits, profits and losses; such statement to appear on the books, and to be open to the perusal of any Stockholder at his or her reasonable request.

XVII. And be it enacted, That at any time after fifty years after the making and completing the said Harbour, Her Majesty, Her Heirs and Successors may assume the possession and property of the same, and of all and every the works and dependencies thereto belonging, upon paying to the said Company for the use of the Stockholders thereof, the full amount of their respective shares, or of the sums furnished and advanced by each subscriber towards the making and completing the said Harbour, together with such further sum as will amount to twenty-five per cent upon the money so advanced and paid, as a full indemnification to such Company; and the said Harbour shall from the time of such assumption in manner aforesaid appertain and belong to Her Majesty, Her Heirs and Successors, who shall from thenceforth be substituted in the place and stead of the said Company, upon the conditions and subject to the provisions of any Act of the Legislature of this Province that may be passed of or respecting the same: Provided always, that it shall not be lawful for Her Majesty, Her Heirs or Successors, at any time after the expiration of the said fifty years, to assume the possession and property of the said Harbour, with its appurtenances as aforesaid, unless it shall appear from the accounts of the said Company, to be for that intent laid before the Legislature, that the Stockholders of the said Company have received every year, upon an average,

the sum of twelve pounds, ten shillings, for every hundred pounds they shall be possessed of in the said concern.

XVIII. And be it enacted, That from and after the period when the possession of the right, interest and property in and to the said Harbour shall have been assumed by Her Majesty, Her Heirs or Successors as hereinbefore authorized, all tolls and profits arising therefrom shall be paid into the hands of Her Majesty's Receiver General to and for the public uses of this Province, at the disposition of the Legislature thereof; and shall be accounted for to Her Majesty, Her Heirs and Successors through the Fords Commissioners of Her Majesty's Treasury in such manner and form as Her Majesty, Her Heirs and Successors shall be graciously pleased to direct: Provided always, that the said Harbour shall be commenced within two years and completed within seven years after the passing of this Act, otherwise this Act and every matter and thing herein contained shall cease and be utterly null and void.

XIX. 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, Justices of the Peace, and other persons, without being specially pleaded.