

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

12 Victoria – Chapter 167

An Act to incorporate The Provincial Mutual and General Insurance Company. 30th May, 1849.

Whereas Robert Easton Burns, Joseph C. Morrison, Richard C. Gapper, Henry Rowsell, James Browne, Duncan McDonell, Esquires, and others, have petitioned the Legislature, praying that an Association under the style and title of The Provincial Mutual and General Insurance Company, may be incorporated as well for the purpose of enabling parties, owners of or interested in property situated in country places and comparatively safe from fire, mutually to insure each other, as also the better to enable such institution to conduct and extend the business of Fire, Marine and Life Assurance, and for granting Annuities and sums of money payable at future periods within Her Majesty's Dominions in North America, and other places abroad; And whereas it hath been considered that it would in many respects be greatly advantageous if such Corporation were established: 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 all such persons as now are or hereafter shall become Members 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 Provincial Mutual and General Insurance Company, and by that name, style and title they and their successors shall and may have continued succession, and shall be capable in law of suing and being sued, pleading and being impleaded, answering and being answered unto, defending and being defended, in all manner of actions, suits, complaints, matters and causes whatsoever; and that they and their successors may have a Common Seal, and may change and alter the same at pleasure; may mutually insure their respective properties under the restrictions, limitations and conditions hereinafter contained, or generally to assure others for such time and at such premiums as shall be agreed upon between the said Corporation and parties insuring; and also, that they and their successors by and under the name of The Provincial Mutual and General Insurance Company, shall be capable in law of purchasing, holding and conveying any estate, real or personal, for the use of the said Company, subject to the rules and conditions hereinafter mentioned.

II. And be it enacted, That the stock and property of the said Company shall be held liable for the payment of all losses that may from time to time occur to the said Company, and for that purpose shall be divided into and consist of two separate and distinct descriptions of stock namely, Mutual and Proprietary, the Mutual Stock being composed of premium notes deposited for the purpose of Mutual Insurance, together with all payments and other property received or held thereon or in consequence of such Mutual Insurance; and the Proprietary Stock being composed of Stock in shares subscribed and paid for the purpose of general assurance to other parties, which

proprietary stock shall not exceed one hundred thousand pounds, divided into shares of twenty pounds each; and also that the Members of or persons composing the said Company shall in like manner consist of, and be divided into two classes, namely: those who deposit Premium Notes for the purpose of Mutual Insurance, denominated Mutual Members; and Proprietary Members, or those who hold shares in the Proprietary Stock of the said Corporation; Provided always, that nothing herein contained shall prevent the same person from holding at the same time both descriptions of Stock.

III. And be it enacted, That persons being Members of the said Corporation by reason of deposit of premium notes for the purpose of Mutual Insurance, shall not be held liable for any claims for losses or payments, beyond the amount of his, her or their premium notes respectively; and neither shall Proprietary Members be held liable for any claims for losses or payments beyond the amount of such share or shares of the Proprietary Stock which each may respectively hold; and also, in all the transactions of the said Company the profits and benefits arising from or on account of the mutual branch of the said Corporation shall be secured to the members thereof; and in like manner the profits and benefits arising from or on account of the Proprietary Branch of the said Company, shall be secured to the proprietary members; and further, all the expenses necessary and incurred for the conducting and management of the said Company, shall be fairly assessed upon and divided between each branch or department of the said Company.

IV. Provided always, and be it enacted, That no dividend or bonus shall be declared or paid out of the capital stock of the Company, whether proprietary or mutual.

V. And be it enacted, That the said Company by their corporate name aforesaid, shall be capable of purchasing, having and holding to them and their successors such estate, real, personal or mixed, as may be requisite for its accommodation in relation to the convenient transaction of its business; and may take and hold any real estate *bonâ fide* mortgaged to the said Company, by way of security for the payment of any debts which may be contracted with the said Company, and to proceed on the said mortgaged securities for the recovery of the moneys thereby secured, either in law or equity, in the same manner as any other mortgagee is or shall be authorized to do, and also to purchase on sales made by virtue of any proceedings at law, or any order or decree of any Court of Equity, or any other legal proceedings or otherwise, to receive and to take any real estate in payment, or towards the satisfaction of any debt previously contracted and due to the said Corporation, and to hold the same until they can conveniently and advantageously sell and convert the same into money or other personal property: Provided always, that the lands, tenements and hereditaments which it shall be lawful for the said Company to hold, shall be only such as shall be requisite for its accommodation in relation to the convenient transaction of its business, or such as shall have been *bonâ fide* mortgaged to it by way of security, or conveyed to it in satisfaction of debts previously contracted in the course of its dealings, or purchased at sales upon judgments which shall have been obtained for such debts.

VI. And be it enacted, That it shall not be lawful for the said Company to deal in, use or employ any part of the funds or moneys thereof in buying or selling any goods, wares or merchandize, in the way of traffic, or in banking operations; but it shall nevertheless be lawful for the said

Company to purchase or hold any stock, Government securities, or other securities of public companies, or funded debt for the purpose of investing therein any part of their funds or money, and also to sell and transfer the same, and again to renew such investment when and as often as a due regard to the interests of the said Company shall require; and also, to make loans of the funds on bond and mortgage, and the same to call in and re-loan as occasion may render expedient.

VII. And be it enacted, That the property, affairs and concerns of the said Company shall be managed and conducted by a Board of eleven Directors, one of whom shall be chosen President, and one Vice-President, which Board in the first instance and until the first General Annual Meeting of the Company, and until others may be chosen and appointed as hereinafter provided, shall consist of William Ledley Perrin, Robert Easton Burns, Richard C. Gapper, Franklin Jackes, J. G. Bowes, James Browne, William Gooderham, Francis Neale, William Clark, being the present Managing Committee of the said Company, together with two others, being Members of the said Company, and qualified for such office as hereinafter provided, to be chosen and appointed by the said present Managing Committee, and of which Board three Directors shall go out of office by rotation each year, but who shall nevertheless be immediately eligible for re-election as Directors; and the election of three Directors in place of those so retiring from office shall be held and made at the General Annual Meeting of the Company by such of the Members thereof as shall attend for that purpose, either in their own proper persons or by proxy; and all elections of such Directors shall be by ballot, and the three 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 persons have an equal number of votes, in such manner that a greater number of persons than three shall by a plurality of votes, appear to be chosen Directors, then the said Members hereinbefore authorized to hold such election, shall proceed to elect by ballot until it is determined which of the said persons so having an equal number of votes shall be Director or Directors, so as to complete the whole number of eleven; and the said Directors so chosen, as soon as may be after the said election, shall proceed to elect one of their number to be President, and one other of their number to be Vice- President; and if any vacancy or vacancies shall at any time happen among the Directors, or in the office of President or Vice-President, by death, resignation, removal from the Province, or ceasing to hold the interest in the Corporation hereinafter required, such vacancy or vacancies shall be filled up 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; Provided always, that no person shall be elected to the office of Director who is not a Member of the Company holding an interest therein, either to the extent of Mutual Insurance to the amount of five hundred pounds, together with five shares of propriety stock, or if mutually insured to a less amount than five hundred pounds, and more than three hundred and fifty, together with ten shares of propriety stock, or if so insured to less than three hundred and-fifty pounds and more than two hundred pounds, to possess fifteen shares; and if not mutually insured, or so insured to a less amount than two hundred pounds, then to hold not less than twenty shares of propriety stock.

VIII. And be it enacted, That the Board of Directors shall name and determine the day for the holding of the General Annual Meetings of the Company; and public notice of all General Meetings shall be given in at least two newspapers that may be published in the Province of Canada, at least one month previous to the time of holding the said General Meeting or Meetings,

and at the first General Annual Meeting of the Company to be held as above directed, the Members then present shall decide and determine by a By-law of the Company to be then passed, the mode and manner in which the three retiring Members shall be then and in future elected, and the notice of all subsequent General Annual Meetings for election of Directors shall contain the names of the three retiring Directors.

IX. And be it enacted, That each Member of the said Company shall be entitled to the number of votes proportioned to the amount of Stock by him, her or them insured or held at least one month prior to the time of voting, according to the following rates, that is to say: Mutual Members for any sum insured in the said Company amounting to fifty pounds, one vote; two hundred pounds, two votes; three hundred and fifty pounds, three votes; and five hundred pounds four votes: Proprietary Members, 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.

X. And be it enacted, That if it shall happen at any time or for any cause that an election of Directors shall not be made on any day when pursuant to this Act or the Ordinances of the Company it ought to have been made, the said Corporation shall not for that cause be dissolved, but it shall be lawful on any other day to hold and make an election of Directors in such manner as shall have been regulated by the By-laws and Ordinances of the Company, and the Directors in office shall so continue until a new election shall be made.

XI. And be it enacted, That any number of the Directors of the said Company being a majority of the said Directors, shall have full power and authority to make, prescribe and alter such By-laws, Rules, Regulations and Ordinances as shall appear to them proper and needful, touching the well ordering of the Company, the rates and amount of insurance and issuing of policies; the management and disposition of its stock, property, estate and effects; and also to call in any instalment or instalments or assessment or assessments, at such time and season and times and seasons as they shall think fit, giving due notice thereof as hereinafter provided, and also to declare and cause to be paid or distributed to the respective Stockholders of the Company any dividend or dividends of profits at such time and seasons as they shall deem expedient; and also to appoint a Secretary and Treasurer, with such salary and allowances to each as well as to other Officers or Agents of the Company, and take security from them for the due performance of their respective duties as they shall think meet and advisable; Provided always, that for the purposes in this section mentioned, except as hereinafter specially provided, a majority of the Directors shall be present and assisting, and it shall not be competent for a Board consisting of a less number of Directors than were present at the time, to alter, repeal or amend any matter or thing so done.

XII. And be it enacted, That there shall be a weekly meeting of the Board of Directors of the said Company, and any three or more of the said Directors shall be a quorum for the purpose of transacting and managing the details of business and affairs of the said Company, and at all meetings of the Board of Directors, all questions before them shall be decided by a majority of voices or votes, and in case of an equality of votes, the President, Vice-President or presiding Director shall give the casting vote over and above his proper vote as a Director: Provided always, that nothing herein contained shall be construed to authorize the making, prescribing, altering or

repealing any By-laws or Ordinances of the said Company, or calling in any installments or assessments on stock, or declaring dividends of profits, or the appointment of Treasurer or Secretary, or the appointments of salaries to or securities from Officers or Agents of the said Company by any less number of Directors, or many other manner than is mentioned and provided in the next preceding section.

XIII. And be it enacted, That the said Directors, and such others as may be chosen by the said Company, shall receive a reasonable compensation for their attendance at the Board, to be ascertained and determined by a By-law or Rule of the Board, which compensation shall not exceed fifteen shillings to members living in the country, nor seven shillings and six pence to those residing in the City of Toronto, and the said Directors shall be indemnified and saved harmless by the members of the said Corporation in proportion to their several interests in the same, in and for their giving out and signing Policies of Insurance, and all other lawful acts, deeds and transactions done and performed in pursuance of this Act; and neither shall the said Directors be answerable for or chargeable with the defaults, neglects or misdeeds of others of them.

XIV. And be it enacted, That any person who as Secretary, Deputy Secretary, Clerk or other Officer of the Company shall be guilty of any designed falsehood or fraud in any matter or thing pertaining to his office or duty, shall be guilty of a misdemeanour: and any person offering to vote in person at any election of Directors in said Company who shall falsely personate another, or who shall falsely sign or affix the name of any other person, a member of this Company, to any appointment of a proxy, shall be guilty of a misdemeanour.

XV. And be it enacted, That the Corporation hereby created shall have power and authority to make and effect contracts of insurance with any person or persons, body politic or corporate, against loss or damage by lire on any houses, stores or other buildings whatsoever, and on any shipping or vessels whatsoever, wheresoever or whithersoever proceeding, against loss or damage by fire, water or any other risk whatever; and in like manner on any goods, chattels or personal estate whatsoever, whether on shore or afloat, and to, make and effect assurance on life or lives or in any manner dependent on life or lives, and to grant annuities for such time or times, and for such premises or consideration, and under such modifications and restrictions as may be bargained or agreed upon or set forth by and between the Company and the person or persons agreeing with them for such insurance, and to cause themselves to be insured against any loss or risk they may have incurred in the course of their business, and generally to, do and perform all other necessary matters and things connected with and proper to promote those objects.

XVI. Provided always, and be it enacted, That in all cases of Mutual Insurance, there shall not be insured more than two thirds the value of any building, nor a sum be involved exceeding five hundred pounds on any one risk; and no Mutual Insurance shall be effected on buildings or other property, situated in blocks or exposed parts of towns or villages; nor on any kinds of Mills, carpenters' or other shops which by reason of the trade or business followed, are rendered extra hazardous, machinery, breweries, distilleries, tanneries or other property involved in similar or equal hazard.

XVII. And be it enacted, That all policies or contracts of insurance, issued or entered into by the said Company, shall be signed by the President and countersigned by the Secretary, or as otherwise directed by the rules and regulations of the Company, in case of their absence; and being so signed and countersigned, and under the seal of the said Company, shall be deemed valid and binding upon them according to the tenor and meaning thereof.

XVIII. And be it enacted, That in all cases of Mutual Insurance, the assured shall have title in fee, unincumbered, to the building or buildings insured, and the land covered by the same; or if the assured shall have a less title therein, or if the premises be incumbered, then the true title of the assured and the incumbrances on the premises shall be expressed therein and in the application therefor, otherwise the Policy of insurance granted thereon shall be void.

XIX. And be it enacted, That at the annual general meeting of the Company, and before the members then assembled, the Board of Directors shall exhibit a full and unreserved statement of the affairs of the Company; of the funds, property and securities, shewing the amount in real estate, in bonds and mortgages, in notes, and the securities thereof, in public debt or other stock, and the amount of debt due to and from the said Company.

XX. And be it enacted, That in case of any loss or damage by fire, happening to any property insured with the said Company, immediate notice thereof shall be given by the assured to the Secretary of the Company or to the Agent of the Company, should there be one acting for it in the neighbourhood of the place where such fire took place; and shall as soon after as may be, furnish to such Agent, or otherwise to the Secretary, a full statement of all particulars of the said fire as far as can be ascertained, together with a detailed account of all damage done, which statement and account shall be verified on oath by the parties making the same, if required; and the Directors upon a view of the same, or in such other way as they may deem proper, shall ascertain and determine the amount of such loss or damage; and if the party suffering shall not be satisfied with the determination of the Directors, the question shall then be submitted to three desinterested persons as referees, one of whom shall be named by the suffering party and one by the Board, and the two referees so named shall name the third; and the decision or award of a majority of them shall be binding; and if the award is not satisfactory, either party may sustain its case in an action at law; and if upon the trial of such action a greater sum shall be recovered than the amount determined upon by the Directors, the party suffering shall have judgment therefor against the Company, with the interest thereon from the time in which payment for such loss or damage should have been made in the terms of the Policy, had no such question or disagreement arisen, with costs of suit; but, if no more shall be recovered than the amount so previously determined, or a less sum be awarded, then the Plaintiff or Plaintiffs in such suit shall not be entitled to costs against the Defendants, but the Defendants shall be entitled to costs, as in the case of a verdict for them: Provided always, that no execution shall issue against the said Company upon any judgment until the expiration of sixty days from the recovery thereof.

XXI. And be it enacted, That every Mutual Member of the Company shall be and is hereby bound and obliged to pay his or her portion of all losses and expenses happening or accruing in or to the Mutual Branch of the Company, during the continuance of his or her Policy of insurance, and all

the right, title, interest and estate at the time of the insurance of the assured of, in or to the building insured, by and with the said Company, to the lands on which the same shall stand and to all other lands thereto adjacent, which shall be mentioned and declared liable to the Policy of assurance, shall stand pledged to the said Company; and the said Company shall have full power to sell, demise and mortgage the same or any part thereof, to meet the liabilities of the assured for his, her or their proportion of any losses or expenses happening or accruing to the said Company, during the continuance of his, her or their Policy, which sale, demise or mortgage shall be made in such manner as shall be specified in the Policy of the assured.

XXII. And be it enacted, That the Directors shall, after receiving notice of any loss or damage by fire sustained by any Mutual Member, with account and proof thereof, and ascertaining the same, or after the recovery of any judgment as aforesaid against the Company for such loss or damage, settle and determine the sums to be paid by the several Mutual Members thereof as their respective proportion of such loss, and publish the same in such manner and form as they shall see fit or as by the By-laws shall have been prescribed; and the sum to be paid by each Mutual Member shall always be in proportion to the original amount of his deposit note or notes, and shall be paid to the Treasurer within thirty days next after the publication of such notice; and if any Member shall for the space of thirty days after the publication of such notice, neglect or refuse to pay the sum assessed upon him, her or them, or his, her or their proportion of any loss or damage as aforesaid, in such case the Directors may sue for and recover the whole amount of his, her or their deposit note or notes with costs of suit; and the money thus collected shall remain in the Treasury of the Company, subject to the payment of such loss or expense as shall or may accrue during the continuance of his, her or their Policy, and the balance, if any remaining, shall be returned to the party from whom it was collected on demand, after thirty days from the expiration of the term for which insurance was made: Provided always, that no payment, assessment or instalment shall be called in on the said premium or deposit notes until all savings, profits or funds arising from or on account of payments made or moneys received on account of the Mutual Branch of Insurance of the said Company shall have been first applied to and expended upon the payment of losses or damage previously occurring therein.

XXIII. And be it enacted, That if it shall ever happen that the whole amount of deposit notes shall be insufficient to pay the loss occasioned by any one fire or fires, in such case the sufferers insured by the said Company shall receive towards making good their respective losses a proportionate dividend of the whole amount of such deposit notes, according to the sums by them respectively insured; and any Member upon payment of the whole of his or her deposit note, and surrendering his or her Policy before any subsequent loss or expense has been incurred, shall be discharged from the said Company.

XXIV. And be it enacted, That whenever any assessment is made on any premium note given to the said Company for any hazard taken by the said Company, or as consideration for any Policy of Insurance issued or to be issued by the said Company, and an action is brought for the recovery of such assessment, the certificate of the Secretary of the Company signed and sworn to by him as such before a Judge of any of Her Majesty's Courts of Law in this Province, or before Commissioner duly authorized to take affidavits within the jurisdiction of the Court in which such

action is brought, and bearing the seal of the said Company, specifying such assessment and the amount due to the said Company on such note by means thereof, shall be taken and received as *primâ facie* evidence of the facts therein stated in all Courts and places whatsoever.

XXV. And be it enacted, That when any house or other building shall be alienated by sale or otherwise, the Policy of Mutual Insurance shall be void and be surrendered to the Directors of the said Company to be cancelled, and upon such surrender, the assured shall be entitled to receive his, her or their deposit note or notes upon payment of his, her or their proportion of all losses and expenses that have occurred prior to such surrender: Provided always, that the grantee or alienee having the Policy assigned to him, her or them, may have the same ratified and confirmed to him, her or them, for his, her or their own proper use and benefit, upon application to the Directors, and with their consent, within thirty days next after such alienation, on giving proper security to the satisfaction of the Directors for such portion of the deposit or premium note as shall remain unpaid; and by such satisfaction and confirmation, the party causing the same shall be entitled to all the rights and privileges, and be subject to all the liabilities to which the original party insured was entitled and subjected under this Act.

XXVI. And be it enacted, That in case any building or buildings situate upon leased lands and mutually insured by the Company, be destroyed by fire, in such cases the Company may retain the amount of the premium note given for insurance thereof until the time for which insurance was made shall have expired, and at the expiration thereof the assured shall have the right to demand and receive such part of the said retained sum or sums as has not been expended in leases or assessments.

XXVII. And be it enacted, That five per cent, on each share of the Proprietary Stock shall be paid at the time of subscribing thereto, and the remainder shall be paid in such instalments as the Directors for the time being shall appoint: Provided, that no instalment shall exceed ten per cent, upon the Capital Stock, or be called for or become payable in less than thirty days after public notice shall have been given in one or more of the several newspapers published in every District where Stock may be held to that effect, and if any Shareholder or Shareholders refuse or neglect to pay to the said Directors the instalment due upon any share or shares held by him, her or them at the time required by law so to do, such Shareholder or Shareholders as aforesaid shall forfeit such shares as aforesaid, together with the amount paid thereon and the said share or shares so forfeited, it shall and may be lawful for the said Directors to sell, and the sum arising from such sale, together with the amount previously paid thereon, shall be accounted for and divided in like manner as the other moneys of the Proprietary Branch of this Corporation.

XXVIII. And be it enacted, That in case the said Directors shall think it more expedient, in every case or cases, to enforce the payment of any instalment or instalments of Proprietary Stock in the said Company held by any person or persons, and called in and unpaid, than to forfeit the same, it shall and may be lawful for the said Company to sue for and recover of and from such person or persons such instalment or instalments aforesaid, which shall be so called in and which shall be unpaid at the time or times when the same shall be due or payable, which said instalment shall be sued for and recovered with interest thereon in any action or actions for debt in any Court 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 (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 a share or a certain number of shares of the Stock of the said Company be proved by one witness whether in the employment of or interested in the Company or not, and that the number of calls in arrear have been made.

XXIX. And be it enacted, That the Proprietary Stock of the said Company shall be assignable and transferable according to such rules as the Board of Directors shall make and establish, and no Stockholder indebted to the Company shall be permitted to make a transfer or receive a dividend until such debt be paid, or security to be paid, to the satisfaction of the Board of Directors, be given.

XXX. And be it enacted, That no transferred share or stock shall entitle the person to whom it is transferred to a vote until the expiration of thirty days after such transfer.

XXXI. And be it enacted, That if any Insurance on any house or building shall be and subsist in the said Company, and in any other office or form, and by any other person or persons at the same time, the Insurance made in and by this said Company shall be deemed and become void unless such double Insurance subsist with the consent of the Directors, signified by endorsement on the Policy, signed by the President, Secretary, or otherwise, as directed by the By-laws and Regulations of the Company.

XXXII. And be it enacted, That in all actions, suits and prosecutions in which the said Company may be at any time engaged, the Secretary or other officer of the said Company shall be a competent witness notwithstanding any interest he may have therein.

XXXIII. And be it enacted, That this Act shall be deemed a Public Act, and shall extend to all Courts of Law or Equity in this Province, and be judicially taken notice of as such by all Judges, Justices and other persons whatsoever, without the same being specially shewn or pleaded.

XXXIV. And be it enacted, That it shall at all times hereafter be lawful for the Legislature of this Province to repeal, alter or amend this Act.