

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

12 Victoria – Chapter 177

An Act further to amend the Act incorporating The Montreal and Lachine Rail-Road Company, and for other purposes. 30th May, 1849.

Whereas it is expedient to amend further a certain Act made and passed in the ninth year of Her Majesty's Reign and intituled, *An Act to incorporate the Montreal and, Lachine Rail-Road Company*; And whereas the capital of seventy-five thousand pounds currency, which the said Company was authorized by the said Act to raise, has been found insufficient for the purposes of the said Act, and in consequence of the existing shares of the said Company having for a long time been and now being below par, it has been and is impossible for the said Company to raise a further sum of money sufficient for completing and perfecting the said Rail-Road, in the manner and upon the terms and conditions in the said Act mentioned; And whereas it is expedient to give the said Company certain additional powers, as well for the raising of the said sum of money as for other purposes: 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 it shall be lawful for the said Company to raise among themselves, or by the admission of new subscribers, or in both those ways, a further sum for completing and perfecting the said Rail-Road and other works or conveniences incidental or relative thereto, not exceeding the sum of forty thousand pounds currency; and if it be determined to raise the said sum or any part thereof by the admission of new subscribers, it shall be lawful for the said Company to cause a book or books of subscription to be opened in the City of Montreal, at such place or places as they may appoint, and every person who, or whose attorney shall write his or her signature in any such book shall thereby become a proprietor in the said Company, to the extent of the number of shares for which he or she shall so subscribe; and it shall be lawful for the said Company to divide the said further sum of money to be so raised into such number of shares as the said Company shall think fit, and the said last mentioned shares shall be issued upon such terms and conditions with respect to the right of voting to be given to, and the share of profits to be received by the holders of such new shares, and the preference to be given them over other Shareholders with regard to such share of profits, and with respect to the repayment of the Capital to be subscribed by them, in the event of the said Rail-Road or any part of the property, moveable or immoveable, of the said Company being sold, and in all other respects as the said Company shall think fit; and it shall be in the power of the said Company from time to time to change the said terms and conditions with respect to any part of the said additional sum of money not then actually subscribed for, but so as not to affect the rights or security of any party having previously subscribed for any part thereof; and no subscriber for, or holder of any of the said shares to be so issued, shall be in any manner whatsoever liable for, or charged with, the payment of any debt or demand due by the said Company, beyond the extent

of his, her or their share in the additional Capital of the said Company, not paid up by him, her or them respectively: And the shares to be subscribed for and issued under the present Act, shall be sold and transferred in the manner provided by the said Act with respect to the now existing shares in the Stock of the said Company; And all the provisions of the said Act, namely, of the Act to incorporate The Montreal and Lachine Rail-Road Company, shall be applicable to the shares to be subscribed for and issued under the provisions of the present Act, excepting in so far as the provisions of the said Act are inconsistent with the provisions of the present Act, or with any agreement, contract, regulation or By-law lawfully made by the said Company under this Act.

II. And be it enacted, That as soon as the said sum of forty thousand pounds currency, or any part thereof, shall have been subscribed for as aforesaid, it shall be lawful for the said Company from time to time to call in and require the payment of the sums so subscribed for, as the same may be required for the use of the Company; Provided, however, that no call do exceed one fifth part of the whole of each share, and that no calls be made payable but at the distance of at least one calendar month from each other; and the owner or owners of any of the said shares to be issued under the authority of this Act, shall pay any call or calls that may be so made upon his, her or their shares, to such person and persons and at such time and place as shall be appointed and directed by the said Company, of which three weeks' notice shall be given in the Canada Gazette, and in any other newspaper published in the District of Montreal; and any call or calls made by the said Company, and not paid at the time appointed for payment thereof, shall bear interest in favor of the Company, at the rate of six per centum per annum from the time the same shall be made payable until paid; and the holder of the shares in respect of which such default shall be made, shall thereby forfeit in favor of the said Company a sum equal to five per centum, on the amount of the calls so not paid at the time appointed for the payment thereof, and it shall be lawful for the said Company to sue for and recover the said calls with interest as aforesaid, and the penalty aforesaid together with costs of suit, in any Court having jurisdiction in civil cases to the amount sued for.

III. And be it enacted, That in actions or suits at Law by the Company, either for calls made by virtue of the said Act incorporating the said Company, and for the interest thereon by virtue of an Act passed in the Session of the Provincial Parliament, held in the tenth and eleventh years of Her Majesty's Reign, intituled, *An Act to amend the Act to incorporate the Montreal and Lachine Rail-Road Company, and for other purposes therein mentioned*, or without such interest, or for calls made by virtue of the present Act, with or without interest, and with or without the penalties aforesaid, it shall not be necessary to set forth the special matter, but it shall be sufficient for the Company to declare that the Defendant is a holder of one or more shares in the said Company, as the case may be, and is indebted to the Company in the sum of money to which the call or calls in arrear and penalties shall amount, with interest as aforesaid; and in any such action it shall not be competent to the Defendant to plead the general issue, but he may, by a plea in denial, traverse any particular matter or matters of fact alleged in the Declaration, or specially plead some particular matter or matters of fact in confession and avoidance and in order to maintain any such action for calls made under the present Act, either with or without interest, and with or without the penalties aforesaid, or for calls and interest either under this Act, or for calls under the Act incorporating the said Company, with or without the interest payable thereon as aforesaid, it shall

be sufficient to prove by any one witness whether in the employment of the Company or not, that the Defendant subscribed or caused his name to be subscribed for the shares in respect of which he is sued, or that he has become the holder, of those shares, and that the calls in arrear have been made as aforesaid, and that he is indebted to the Company in the sum of money so sued for, or in any less amount, and thereupon, unless legal proof to the contrary be adduced, the Court shall give judgment in favor of the Company for the sum of money and interest and penalties so sued for and proved to be due, with costs of suit, and if any person or persons shall neglect to pay any such call or calls so due by him, her or them, for the space of one calendar month after the time appointed for the payment thereof, then it shall be in power of the said Company, if they think fit so to do, to declare the share or shares in respect of which such default shall have been made forfeited, and to cause the same to be sold by public auction for the payment of any calls, interest or penalties due in respect thereof, and the proceeds of the sale, after deducting the costs thereof, and after the Company shall have been paid the calls, interest and penalties due in respect of the shares so sold, shall be paid over to such defaulter, and the President or Vice-President of the Company shall have power to transfer the shares to the purchaser thereof, and thereupon, if the proceeds of the sale be sufficient to pay the costs thereof, and all calls made at any time before such sale and all penalties due in respect of the shares so sold, with all interest due on such calls, such defaulter shall be absolved from all his or her obligations in respect of the shares so sold, as with respect to the said Company and as with respect to the creditors thereof; but if the proceeds of such sale be insufficient to pay the costs thereof and all calls made as aforesaid, at any time before such sale, and all penalties due in respect of such sale, and all interest due on such calls, then such defaulter shall remain liable for the deficiency to the Company, who may sue for the same in any Court having competent jurisdiction.

IV. And be it enacted, That the twenty-seventh section of the said Act first above cited and amended, shall be, and the same is hereby repealed; and in lieu thereof, it is hereby enacted, that the said Company may from time to time lawfully borrow, either in this Province or elsewhere, such sum or sums of money, not exceeding in the whole at any one time the sum of fifty thousand pounds currency, as they may find expedient, and at such rate of interest even exceeding six per centum per annum, as they may think proper, and may make the bonds, debentures or other securities they shall grant for the sum so borrowed, payable either in currency or in sterling, and at such place or places within or without this Province, as they may deem advisable, and may by such bonds, debentures or other securities, hypothecate or pledge the lands, tolls, revenues and other property of the said Company, for the due payment of the said sums and of the interest thereon; and any of the said debentures whereby it is intended to mortgage and hypothecate the Real Estate of the Company, may be in the form number one, annexed to this Act, or in any other form that may lie determined on by the said Company; and the Registrar of the County of Montreal, and any other Registrar in whose office, it may at any time hereafter be necessary to register the said debentures, in order to give full effect thereto, and their Deputies respectively, are hereby empowered and required to enter and register, at full length, any of the said debentures which may be brought to be registered, on receiving the usual fee in that behalf, and on proof of the execution thereof, by the oath of one witness, which oath any such Registrar or his Deputy is hereby authorised to administer; and if at any time after the registration of any such debenture as aforesaid, the same shall be brought to such Registrar or his Deputy with the word cancelled, and

the signature of the President, or other duly authorized Director of the said Company, written across the face thereof, the said Registrar or his Deputy shall make an entry in the margin of the Register against the Registry of such debenture, to the effect that such debenture has been cancelled, adding the date of such entry, and shall thereupon file such debenture, to remain of record in the said Registry Office, in the same manner as certificates of discharge; and any of the said debentures whereby it is not intended to mortgage and hypothecate the Real Estate of the said Company, may be in the form number two, to this Act annexed, or in any other form that may be determined on by the said Company; and it shall be lawful for the said Company, if they see fit, to make the said debentures to be so issued by the said Company, or any part thereof that they may think proper, payable to bearer, and every debenture so issued payable to bearer, shall be transferable by delivery, and shall, with all interest due thereon, be payable to the bearer thereof, who shall, until the contrary be proved, in all law proceedings and on all other occasions, be held to be the proprietor of such debenture, and of the debt and interest intended to be secured thereby, with all the hypothecary and other rights and privileges attached thereto; and it shall also be lawful for the said Company to grant such debentures to any person or persons, corporation or corporations to whom the said Company may be indebted and who may be willing to receive the same; Provided always, that nothing herein contained shall defeat or in any way impair any bond, debenture, obligation, hypothec, mortgage, or other security heretofore granted by the said Company; And it shall be lawful for all Corporations, whether Ecclesiastical or Civil, to subscribe for any part of the sum of money which by virtue of the present Act may be raised by the issuing of shares as aforesaid, and for any such Corporation to exercise all the rights of shareholders in the said Company, with respect to the shares for which they may so subscribe, and it shall also be lawful for any such Corporation whether Ecclesiastical or Civil, to loan any part of the sum of money authorized to be borrowed by the present Act, and in respect of any such loan to receive, hold and dispose of any security or securities which the said Company is empowered to give by the present Act; any Law, Ordinance, usage or custom, to the contrary notwithstanding; Provided always, that it shall not be lawful for the said Company to issue any debenture payable to bearer under this Act for a less sum than one hundred pounds.

V. And be it enacted, That in the event of its being determined by a majority consisting of not less than two thirds of the votes of the proprietors of the said Company, present in person or by proxy, at any General Meeting of the Proprietors of the said Company, that it is necessary to sell the said Rail-Road, it shall be lawful for the said Company at any time thereafter to sell the said Rail-Road, and all the property, moveable and immoveable of the said Company, without any reservation or exception; and the sale of the said Rail-Road and other property shall be made by Notarial Instrument in the usual form, which shall expressly set forth in what proportions the shares in the said Company and undertaking shall from and after such sale vest in the purchasers respectively; and on such sale being made, the persons who immediately before the making of such sale, shall be proprietors of shares in the said Rail-Road and in the Stock of the said Company, shall cease to be so proprietors, and the persons so purchasing the said Rail-Road, shall under and by virtue of such sale become the proprietors of all the said shares and of the said Rail-Road, and of all the property, moveable and immoveable belonging to the said Company, excepting only such part thereof as may by such deed of sale be expressly exempted from the operation thereof; and the said persons so purchasing the said Rail-Road shall, under and by virtue of such deed of

sale, become the proprietors of the whole of the stock or shares of the said Company, in the proportions to be determined as aforesaid, in and by such deed of sale, and may at any time after the execution of such deed of sale, proceed to appoint Directors, and to exercise all the rights, powers, privileges, and authorities, without any exception, which, either under this Act or any former Act, could, immediately before the execution of such deed of sale, have been exercised by the persons who were then the proprietors of the said shares; and the sale to be so made shall not cause a dissolution of the Corporation created by the said Act, namely, of The Montreal and Lachine Rail-Road Company, but the said Corporation shall be continued in and by the persons so purchasing the Capital Stock and Shares in the said Company, and their respective assigns and *ayants cause*, as fully and effectually to all intents and purposes as the same would have been continued in and by the former proprietors of the said Capital Stock and Shares, and their respective assigns and *ayants cause*, if no such sale had taken place; and such sale shall not defeat or in any way impair the rights of third parties against the said Corporation, nor the rights of the said Corporation against third parties, nor shall such sale in any way affect any suit or suits in which the said Corporation shall or may be parties or interested at the time of making such sale; and the persons who shall be Directors of the said Company, immediately previous to such sale, shall from and after such sale cease to be, or to have any power or authority as such Directors, but as having been such Directors, and as being the vendors named in such deed of sale as aforesaid, they and the survivors and survivor of them shall have power and authority to enforce in their own names and in the names of the survivors and survivor of them, by all suits at law and other lawful ways and means, all obligations contracted in and by any such deed of sale, in their favour or in favour of the proprietors represented by them, and to apply the proceeds of the sale and of any property belonging to the Company excluded from the operation of the said sale, (and which shall be thereafter vested in the said *quondam* Directors and the survivors or survivor of, them, with full power to sell and convey the same or any part thereof,) for the purposes hereinafter mentioned, to wit, firstly to the payment of any debts due by the said former proprietors, and then to distribute the balance among the said former proprietors according to their rights and interests therein; and any deed of sale to be so executed shall not be invalid, or be liable to be objected to in any way, on account of any of the persons acting therein as Directors of the said Company being among the persons so purchasing the said Rail-Road, nor shall any suit or action under it be liable to be objected to, because the same parties or any of them shall be at the same time Plaintiffs and Defendants; and any act, deed or thing done or executed by any majority of the *quondam* Directors or of the survivors of them, on their own behalf and on that of the other *quondam* Directors, shall have the same legal effect as if done or executed by all of them.

VI. And whereas doubts have been entertained as to the power of the said Corporation to become a party to promissory notes or bills of exchange—Be it therefore declared and enacted, That the said Corporation have, and shall continue to have power to become parties to promissory notes and bills of exchange; and any promissory note made or endorsed, and any bill of exchange drawn, accepted or endorsed by the President of the Corporation or any two of the Directors for the Corporation, and under the authority of a majority of a quorum of the Directors, is and shall be binding upon the Corporation; and every promissory note or bill of exchange made, drawn, accepted, or endorsed by the President of the said Corporation or any two of the Directors, as such, shall be presumed to have been properly made, drawn, accepted or endorsed, as the case

may be, for the Company, until the contrary be shown; and in no case shall it be necessary to have the seal of the Company affixed to any such bill of exchange or promissory note, nor shall the President or Directors of the Company so making, drawing, accepting or endorsing any such promissory note or bill of exchange be thereby subjected individually to any liability whatever: Provided always, that nothing in this clause shall be construed to authorize the said Company to issue any note payable to bearer or any promissory note intended to be circulated as money, nor shall any note issued or to be issued by the said Company be assignable or transferable otherwise than by endorsement in full.

VII. And whereas doubts have arisen as to the meaning of certain parts of the thirty-sixth and thirty-seventh sections of the said Act herein first cited and amended, and it is expedient to remove such doubts—Be it therefore declared and enacted, and it hereby is declared and enacted, That no person or persons who shall have failed or shall fail even for a space of two calendar months or more, to pay his, her or their rateable calls on any share or shares issued under the provisions of the said Act incorporating the said Company, has or have, by reason of any such default, been freed, nor shall by reason of such default be freed or discharged from his, her or their liability to pay the said calls to the said Company, nor from any other liability to the said Company, unless the share or shares in relation to which such default shall have been made, shall have been declared to be forfeited at some annual or special meeting of the said Company, as mentioned in the thirty-seventh section of the said last mentioned Act.

VIII. And be it enacted, That so much of the thirty-sixth section of the said Act as provides that if any person or persons shall neglect or refuse to pay his, her or their rateable or proportionable part or share of the said money, to be called for as aforesaid, at the time and place so appointed, he, she or they neglecting or refusing shall forfeit a sum not exceeding the rate of five pounds for every one hundred pounds of his, her or their respective share or shares in the said undertaking, shall be and the same is hereby repealed.

IX. And be it enacted, That for and notwithstanding any thing in the eighth section of the said Act, the said Company shall not be obliged to keep a person at each place where their Rail-road crosses any public highway upon a level, but shall be obliged to do so only at the places where the said Rail-road crosses the main turnpike road from the city of Montreal to Lachine, but the said Company shall at each and every other place where the said Rail-road shall cross any highway on a level, erect and keep up a sign board stretching across the highway at such a height as to leave sixteen feet from the highway to the lower edge of the signboard, and having the word Rail-way Crossing, and *Traverse de chemin à Rails*, painted on each side thereof in letters not less than six inches in length; and for each and every neglect to comply with this requirement, the said Company shall incur a penalty of five pounds currency.

X. And be it enacted, That if at the time of any meeting for the choosing of Directors to manage the affairs of the said Company, there shall not be thirteen Shareholders qualified to act as Directors of the said Company, then and in that case the number of Directors shall be limited to the number of Shareholders qualified to act as Directors; but the want of a sufficient number of

qualified Shareholders at any one meeting shall not prevent the election of the full number of Directors at any subsequent meeting.

XI. And be it enacted, That all and every the powers granted to the said Company by the present Act or by the Act herein cited and amending the said Act herein first cited, shall and may without any exception be exercised by a majority of a quorum of the Directors of the said Company present at any meeting of the Directors regularly held, or by any greater number of the said Directors.

XII. And be it enacted, That the forty-seventh section of the Act herein first cited, and the twelfth section of the Act herein cited amending the said Act, be and the same are hereby repealed; and that the said Company shall at all times when thereunto required by Her Majesty's Deputy Post Master General, the Commander of the Forces, or any person having the superintendence or command of any Police Force, and with the whole resources of the Company if necessary, carry Her Majesty's Mails, Her Majesty's Naval or Military Forces or Militia and all Artillery, ammunition, provisions or other Stores for their use, and all Policemen, Constables and others travelling on Her Majesty's Service, on their said Rail-road, on such terms and conditions and under such regulations as the said Company and the said Deputy Post Master General, the Commander of the Forces, or person in command of any Police Force, respectively, shall agree upon, or if they cannot agree then on such terms and conditions and under such regulations as the Governor or person administering the Government shall in Council make; Provided that any further enactments which the Legislature of this Province may hereafter deem it expedient to make, with regard to the carriage of the said Mail, or Her Majesty's Forces, and other persons and articles as aforesaid, or the rates to be paid for carrying the same, or in any way respecting the use of any Electric Telegraph or other service to be rendered by the Company to the Government shall not be deemed an infringement of the privileges conferred by the said Acts or either of them, or by this Act, or intended so to be.

XIII. And be it enacted, That for and notwithstanding any thing in the said Acts or either of them, no By-law, Rule or Order which may be made by the said Company after the passing of this Act, shall have any force or effect until the same shall, have been sanctioned and confirmed by the Governor of this Province under His Hand and Seal at Arms, and shall thereafter have been published in the Canada Gazette.

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

Form No. 1
(Referred to in the foregoing Act.)
Montreal and Lachine Rail-Road Company Loan.

No.
£ _____ Currency.

This Debenture witnesseth, that the Montreal and Lachine Rail-Road Company, under the authority of the Provincial Statute passed in the _____ intituled, *An Act further to amend the Act incorporating the Montreal and Lachine Rail-Road Company, and for other purposes*, have received from A. B., of _____ &c., the sum of _____ currency, as a loan to bear interest from the date hereof at the rate of _____ per cent. per annum, payable half yearly, on the _____ day of _____ and on the _____ day of _____, which sum of _____ pounds currency, the said Company hereby bind and Oblige themselves to pay on the _____ to the said A. B., or to the bearer hereof, and to pay the interest thereon half-yearly as aforesaid.

And for the due payment of the said sum of money and interest, the said Company, under the power given to them by the said Statute, do hereby mortgage and hypotheca e the Real Estate and appurtenances hereinafter described, that is to say: describe the premises to be hypothecated, or say, "the Rail-Road from the City of Montreal to Lachine, and all the lands purchased or taken for the same, and the buildings, wharves and appurtenances thereon constructed or erected, and lying partly in the Parish of Montreal and partly in the Parish of Lachine, in the District of Montreal," which words shall include all the Real Estate and property of the said Company, unless any part be expressly excepted, as it may be.

In testimony whereof I (or we, give name of President or Directors authorized as mentioned in sixth section of 10 and 11 Vict. cap. 63,) have hereto affixed the Common Seal of the said Company, at the City of Montreal, this _____ day of _____ one thousand eight hundred and _____

(Signature.)

[L. S.]

Form No. 2.
(Referred to in the foregoing Act.)
Montreal and Lachine Raid-Road Company Loan.

No.
£ _____ Currency.

This Debenture witnesseth, that the Montreal and Lachine Rail-Road Company, under the authority of the Provincial Statute passed in the _____ intituled, *An Act further to amend the Act incorporating the Montreal and Lachine Rail-Road, Company, and for other purposes*, have received from A. B., of _____ &c., the sum of _____ currency, as a loan to hear interest from the date hereof, at the rate of _____ per cent. per annum, payable half-yearly, on the _____ day of _____ and on the _____ day of _____, which sum of _____ pounds currency, the said Company hereby bind and oblige themselves to pay on the _____ to the said A. B., or to the bearer hereof, and to pay the interest thereon half-yearly as aforesaid.

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In testimony whereof, I (or we, give name of President or Directors authorized as mentioned in 6th section of 10 and 11 Vict. cap. 63,) have hereto affixed the Common Seal of the said Company, at the City of Montreal, this _____ day of _____ one thousand eight hundred and

(Signature.)

[L. S.]