

Laws of Her Majesty's Province of United Canada, passed in the year 1851. Quebec: Stewart Derbyshire and George Desbarts, 1852.

16 Victoria – Chapter 140

An Act to vest the Harbor of Port Hope and adjacent premises in Commissioners. Assented to 23rd May, 1853.

Whereas the Harbor at Port Hope has never been completed, notwithstanding that the time allowed to President, Directors and Company of the Port Hope Harbor and Wharf Company for that purpose, has long since expired;

And whereas an Information at the suit of Her present Majesty has been exhibited in the Court of Common Pleas, for Upper Canada, at Toronto, at the instance of the Town Council of Port Hope, against the said President, Directors and Company of the Port Hope Harbor and Wharf Company, for the purpose of having the powers given to the said President, Directors and Company of the Port Hope Harbor and Wharf Company, under and by virtue of an Act of the Parliament of the Province of Upper Canada, passed in the tenth year of the Reign of King George the Fourth, intituled, *An Act to incorporate certain persons therein named under the style and title of the "Port Hope Harbor and Wharf Company,"* declared forfeited for such non-completion, and a verdict has been rendered in favor of Her said Majesty, on such Information;

And whereas by an agreement bearing date the third day of January, one thousand eight hundred and fifty-two, and made between James Madison Andrews, of the Town of Port Hope, in the County of Durham, Esquire, as well individually in their private capacity, (the said James Madison Andrews and Henry Howard Meredith having been, or assuming to have been, owners of the entire Stock of the said Port Hope Harbor and Wharf Company, and with their respective wives, seized of the lands in said agreement mentioned and described,) as also the former as President, and the latter as Treasurer of the said Port Hope Harbor and Wharf Company, of the first part, and the Town Council of Port Hope aforesaid, of the second part, the said parties of the first part, in their respective capacities aforesaid, did agree with the said Town Council to sell to them, the Harbor, lands, stock and premises thereafter described, (and being the premises belonging and appertaining to, and the entire capital stock of the said Port Hope Harbor and Wharf Company,) for the sum of Eleven Thousand Five Hundred Pounds, and upon the terms in the said agreement contained;

And whereas by a resolution of the said Town Council of Port Hope, at a special sitting thereof, held on the thirty-first day of January aforesaid, it was resolved amongst other things, that "Whereas, in order to raise the amount required to defray the purchase money of the said Harbor and premises adjacent, it was necessary that personal security should be given," and that "whereas Thomas Gibbs Ridout, Elias P. Smith, Robert Armstrong, Peter Robertson, William M. Smith, Francis Beamish, John Ross and John Shuter Smith, were willing to give such personal security, upon receiving from the said Town Council, a counter security therefor," the said above named parties should be, and were thereby authorized to take and receive the proper

conveyances, (in trust for the sole and only use and benefit of the said Town Council,) and to apply to obtain from the Legislature of the Province, an Act to vest the said Harbor and premises in themselves and the Mayor of the Town, for the time being, as Commissioners on behalf of the Town, to manage, conduct, control and complete the same, with certain stipulations as to the provisions which it should be sought to obtain in the said Act of Parliament, for the regulation and management of the said Harbor, and the powers of the said Commissioners in relation thereto;

And whereas the said Thomas Gibbs Ridout, Elias Peter Smith, Robert Armstrong, Peter Robertson, William Miller Smith, Francis Beamish, John Ross and John Shuter Smith, in the said resolution named, did, for the purpose of so raising the amount required to defray the purchase money of the said Harbor and premises, give their personal security for the repayment of such purchase money;

And whereas the said Town Council of Port Hope did, by and through the Mayor of the said Town, assign the said contract or agreement to the said Commissioners, as and for such counter security to said Commissioners;

And whereas by certain deeds and conveyances made between the respective parties in pursuance of the said agreement, and the said assignments thereof, bearing date respectively on the twenty-sixth day of February, in the year of Our Lord one thousand eight hundred and fifty-two, the said Harbor and premises, with the appurtenances thereunto belonging, and the lands hereinafter described, and all the corporate rights of the said Company, and all the Capital Stock thereof mentioned and referred to in the said agreement, were expressed and intended to be conveyed to the said Thomas Gibbs Ridout, Elias Peter Smith, Robert Armstrong, Peter Robertson, William Miller Smith, Francis Beamish, John Ross and John Shuter Smith, as such Commissioners as aforesaid, which said lands were in the said deeds or some of them, described as follows, that is to say: "All and singular that certain parcel or tract of land and premises, situate, lying and being in the said Town of Port Hope, in the County of Durham aforesaid, and being composed of part of the broken front of lot number six, south of the first concession of the Township of Hope, and part of the east part of the broken front of lot number seven, south of the said first concession of the said township of Hope, containing by admeasurement six acres, be the same more or less, which said parcel or tract of land is butted and bounded, or may be otherwise known as follows, that is to say: commencing at the Lake shore on Lake Ontario, at low water mark on the eastern limit of the allowance for road between lots numbers six and seven, thence, north sixteen degrees west, along the eastern side of said allowance for road until it intersects the west bank of Smith's Creek, thence following the west bank of said Creek in an upward or northerly direction, in all its various windings, until it again intersects the eastern limit of the allowance for road between lots numbers six and seven, thence, north sixteen degrees west along the eastern side of said allowance for road one chain and fifty links more or less to the north westerly angle of the lands formerly belonging to the Port Hope Harbor and Wharf Company, thence, south seventy-four degrees east along the northern bounds of said Harbor lands to the east line of Mill street, thence, southerly along the east line of Mill Street to a point thirty feet south of the Mill Street to a point thirty feet south of the Bill Street Bridge, and seven and a half feet south of the south-west angle of the dwelling house now in the occupation of John McCaffrey, to an iron spike driven in the ground, being the

northerly bounds of a new street forty feet in width, called Madison Street, thence, easterly at right angles with Mill Street, and along the northerly bounds of Madison Street aforesaid to the west bounds of King Street, thence, southerly along the west bounds of King Street, to the shore of Lake Ontario, thence, westerly along the shore of Lake Ontario in all its several windings at low water mark to the place of beginning, comprising and being all the lands originally conveyed by the late John D. Smith, Esquire, to the said Port Hope Harbor and Wharf Company, excepting and reserving thereout all that portion of said lands lying to the east side of Mill Street and to the north of Madison Street aforesaid, and save and except such pieces or parcels of land as are laid out for roads and streets running through the said lands above described and mentioned in the survey of the said Town of Port Hope, in the Registry Books, and excepting also Madison Street, as above described, and any other street which may have been laid out through the said lands or any part thereof since such survey and Registry.”

And whereas in order to carry into effect the said agreement and resolution, it is necessary that some Legislative provision should be made, and it is desirable that the said Harbor and premises, and the said lands above mentioned and described, should be vested in the said Commissioners and their successors, to be appointed as hereinafter mentioned, as well in order to secure them in the repayment of the said purchase money, for which they have so given their personal security as aforesaid, according to the terms and conditions of the said agreement, resolution and conveyances above mentioned, as for the purpose of rendering the said Harbor as safe, commodious and convenient as possible, for the purposes of the trade of the said Town, and attracting thither vessels navigating Lake Ontario: 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 Corporation of *The President, Directors and Company of the Port Hope Harbor and Wharf Company*, created by the said first above mentioned Act, shall be, and the same is hereby dissolved, and the said Act, and the Acts amending it, shall cease from and after the passing of this Act, so far as regards any thing to be done by the said Corporation or Stockholders thereof, and the assignment made by the President and Directors of the said Corporation, and the said James Madison Andrews and Henry Howard Meredith, to the said Commissioners, under and by virtue of the said indentures, is hereby confirmed and made valid, subject to such rules of succession as are hereinafter declared.

II. And be it enacted, That the said Thomas Gibbs Ridout, Elias Peter Smith, Robert Armstrong, Peter Robertson, William Miller Smith, Francis Beamish, John Ross, and John Shuter Smith, and their successors, to be appointed as hereinafter provided, and the Mayor of the said Town of Port Hope, for the time being, shall be a body corporate, by the name and style of “The Commissioners of the Port Hope Harbor,” and shall by that name have and may exercise the powers vested in bodies corporate by the interpretation Act, and have a Common Seal, and that the said Thomas Gibbs Ridout, Elias Peter Smith, Robert Armstrong, Peter Robertson, William Miller Smith, Francis Beamish, John Ross, and John Shuter Smith, and the Mayor of the said Town, shall form the first

Board for the management of the affairs of the said Corporation, a majority of whom or of the Members of the said Board for the time being shall form a quorum for the transaction of business.

III. And be it enacted, That the said Harbor and the lands attached thereto, and above mentioned and described, and the moles, piers, wharves, buildings, erections and appurtenances, and all other things now erected, or being, or belonging to, or used with or in the said Harbor, and all other moles, piers, wharves, buildings and erections to be hereafter erected, set up, or established in the said Harbor, and all materials which shall be from time to time got or provided for constructing, building, repairing or maintaining the said Harbor, or the erections therein made, or the appurtenances thereto, and all the tolls which the said Commissioners are by this Act authorized to levy, and all the rents, issues, profits, tolls, fees and emoluments derivable or to be derived from the said Harbor and appurtenances, and every thing thereto belonging, shall be, and the same are hereby vested in the said Commissioners, and their successors for ever, in trust as aforesaid, and the said Harbor in its present or future state, and with any additions that may be made thereto, shall, and the same is hereby declared to be, within the limit, and to be part of the said Town of Port Hope.

IV. And be it enacted, That the said Thomas Gibbs Ridout, Elias Peter Smith, Robert Armstrong, Peter Robertson, William Miller Smith, Francis Beamish, John Ross, and John Shuter Smith, shall hold Office respectively as Members of the said Board, for a period of five years, from personal responsibility in respect of the debt contracted in the purchase of the said Harbor as above mentioned, two of the above named parties, to be determined or appointed, as hereinafter mentioned, shall retire from the said Board, and cease to be Members thereof, their places to be supplied by two persons duly qualified, and eligible to be elected as Town Councillors, to be nominated and appointed by the said Municipality of the said Town, and at the expiration of every year thereafter, two others of the above named parties shall in like manner retire, and their places be supplied by two others duly qualified as aforesaid, to be likewise nominated and appointed by the said Municipality of the said Town, until the whole number of the said above named Commissioners shall in turn have retired from the said Board; and that such persons so to be nominated by the Municipality of the said Town, shall each hold Office for the period of five years, and at the expiration of every such respective period, other persons, duly qualified as aforesaid, shall in like manner be nominated and appointed in their places; and that at a meeting of the said Board of Commissioners, to be held for that purpose, at least one week previous to each respective time when it shall be necessary for two of the Members of the said Board to retire therefrom, as above mentioned, it shall be determined by lot amongst the than Members of the said Board, which two of such Members shall so retire as aforesaid; and that all vacancies occurring in the said Board, within the first period of five years, by death, resignation, removal or otherwise, shall be filled up by persons to be nominated and appointed by the said Board, and that all vacancies occurring after that period, shall be filled up by the Municipality of the said Town; Provided always, That any retiring Member of the said Board, being otherwise duly qualified, shall be eligible for re-election by the Municipality of the said Town.

V. And be it enacted, That so long as the said above named Commissioners or any of them remain personally liable for the said loan or sum of Eleven Thousand Five Hundred Pounds, or any

part thereof, on the security by them given in that behalf as aforesaid, the Municipal Council of the said Town of Port Hope shall be and are hereby declared to be indebted to the said Thomas Gibbs Ridout, Elias Peter Smith, Robert Armstrong, Peter Robertson, William Miller Smith, Francis Beamish, John Ross, and John Shuter Smith, and the survivor or survivors of them, and the executors and administrators of such survivor, in the same amount of which the said last named parties, or any of them, are or shall or may be or remain liable as aforesaid, and the said last above named parties, or the survivor or survivors of them, or executors or administrators of such survivor, may sue for and recover the same with costs against the said Municipal Council in an action of debt for money paid in any of Her Majesty's Courts of competent jurisdiction in that part of this Province formerly constituting the Province of Upper Canada.

VI. And by it enacted, That the said Board of Commissioners shall and may have power, and they are hereby authorized, from time to time, to make By-laws subject to the approval of the Governor in Council, to fix and determine, and to alter, from time to time, as they may see fit, the rate of tolls to be chargeable and paid, on and by all vessels, crafts, rafts and boats entering or touching at the said Harbor, and on all persons who may, from time to time, partake of the benefits and advantages of the same or of the wharves, shipyard, docks or railways, or of the store-houses or other protections and erections, for the construction, safe-keeping, repairing and refitting, of all vessels, boats, craft or rafts of any description, and on all goods, chattels, wares and merchandize shipped or landed on board or out of any vessel or boat in the said Harbor, or between the eastern boundary of lot number one, and the western boundary of lot number ten in the first and broken front concession of the Township of Hope, in the County of Durham, and to ask, demand, recover, and receive the same to and for the use of the said Board of Commissioners, and in case of neglect or refusal by any person or persons owning or in charge of any such vessel, boat, good, chattels, wares, or merchandize to pay the tolls legally collectable thereon, under this Act, or in case of any vessel, boat, goods, chattels, wares or merchandize on which such tolls may be chargeable, lying or remaining in, or adjacent to such Harbor unclaimed, and without the tolls thereon being paid, to seize and detain the vessels, boats, goods, chattels, wares, or merchandize on which such tolls may be due, payable, or chargeable, and if such tolls shall remain unpaid therein, for the space of twenty days after such seizure, then to sell and dispose of such goods, chattels, wares, merchandize, vessels or boats, by and at public auction, or the best price that can be obtained for the same, first giving ten days' notice thereof, by inserting the same in a newspaper (if any) published in the Town of Port Hope, and by putting up a notice in some conspicuous place near the said Harbor, and out of the proceeds of such sale to deduct and pay the tolls in arrear and unpaid upon the things sold, and the expenses of an incident to such sale, and the residue, if any, to pay over, when demanded, to the owner or owners of things so sold: Provided always, that until the said Board of Commissioners shall make or adopt such By-law to fix and determine the said rate of tolls, it shall be lawful for the said Commissioners to remand and receive the tolls fixed by the said Act incorporating the said the President, Directors and Company of the Port Hope Harbor and Wharf Company, upon all vessels, boats, goods, wares and merchandize, property and effects passing over or calling or touching at the said Harbor or the piers belonging thereto.

VII. And be it enacted, That it shall and may be lawful for the said Board of Commissioners, and they are hereby empowered to make such additions and improvements in and to the said Harbor as they from time to time may think fit, and also a Dry Dock, Railway, and Ship-yard, calculated for constructing, refitting and repairing all vessels, boats, and shipping at such Harbor, and to make and adopt from time to time such By-Laws and regulations for managing and controlling the said Harbor, and for regulating the duties of all master of vessels and other persons using the said Harbor or resorting thereto, and to enter into such contracts as they may approve for leasing any portion or portions thereof, and improving or adding to the said Harbor, and to employ such servants and agents in and about the business of the said Harbor as they shall require, and generally to do and perform all such acts and exercise all such powers as shall be necessary for the efficient management of the said Harbor, and to contract for, purchase, and take conveyances of, to and for the purposes of the said Harbor, in extending or improving the same, as they may think fit, such additional land as they may deem necessary, and the same when so acquired shall vest in the said Board of Commissioners, and their said successors, in the same manner and subject to the same regulations and provisions as the lands and premises above mentioned, and conveyed to them as aforesaid; and in case the said Board of Commissioners shall not be able to agree with the owner or owners for any property which they may desire either to purchase absolutely for the use and purposes of the said Harbor, or in and about which they may desire to make any road, bridge, street, cut, drain or improvement for the purpose of the said Harbor, either for the price of such property or the amount of damages which the party or parties over, in or upon whose land such road, bridge, street, cut, drain, or other improvement may be to be made, shall be reasonably entitled to, such land may be taken and such road, bridge, street, cut, drain, or other improvements made by the said Board of Commissioners, in the manner and subject to the provisions made respecting Municipal Corporations, in and by the one hundred and ninety-fifth, one hundred and ninety-sixth, and one hundred and ninety-seventh sections of the Act passed in the twelfth year of Her Majesty's reign, and intituled, *An Act to provide, by one general law for the erection of Municipal Corporations, and the establishment of regulations of Police, in and for the several Counties, Cities, Towns, Township and Villages in Upper Canada*, which shall apply as if the said Board of Commissioners had been authorized by the said Act to take such land or do such thing as aforesaid without the consent of the owner or owners of the property taken or affected.

VIII. And be it enacted, That for the purpose of re-paying the said sum of Eleven Thousand Five Hundred Pounds, and of completing and improving the said Harbor, and of erecting additional wharves, moles and piers, dry dock and other works therein, as the said Board of Commissioners shall resolve on and approve, it shall and may be lawful for the said Board of Commissioners, and they are hereby authorized to borrow, on the security of the said Harbor, or on the security of the Tolls thereof, such sum or sums of money as they may deem requisite, not to exceed the sum of Thirty Thousand Pounds, and to secure and provide for payment of the same, by issuing from time to time, in the name of the said Board, Debentures of sums not less than Five Hundred Pounds, and redeemable within twenty years after the issue thereof, with interest at a rate not exceeding eight per cent per annum, and such Debentures shall be transferable, and the holder or holders of such of them as are not paid within or at the time at which they shall be made redeemable, shall and may sue for and recover the amount thereof, with the interest thereby agreed to be paid.

IX. And be it enacted, That the said Board shall keep regular books of accounts shewing their whole receipts and expenditure, which shall be public accounts, and be annually audited by the Auditors of public accounts for the said Town of Port Hope, and published with the accounts of the said Municipality of said Town.

X. And be it enacted, That the proceeds of the tolls and revenues to be received by the said Board under this Act, shall be applied by them:

Firstly — To the payment of all reasonable expenses of collecting the same, and of managing the said Harbor and works, and keeping the same in efficient repair;

Secondly — To the payment of the interest of the debt or debts contracted or to be contracted by said Board;

Thirdly — To the formation of a sinking fund, to be applied towards paying off the principal of such debt or debts, and the balance (if any) shall be paid over to the Treasurer of the Municipality of the said Town for the public uses of the Town; Provided always, That in case the said above named Commissioners shall be unable to borrow money as hereinbefore provided, for paying off the debt for which they have become personally responsible as aforesaid, the said Board shall be at liberty to apply the said tolls in liquidation of the said debt, and the interest thereof, until the same shall be wholly paid off and discharged.

XI. And be it enacted, That if at any time or times hereafter, it shall be considered expedient by the said Board of Commissioners so to do, it shall and may be lawful for the said Board, and they are hereby authorized to sell, lease, exchange, or dispose of such parts or parcels of the land appertaining to the said Harbor, or which may be hereafter purchased or owned by the said Board for the purposes of the said Harbor, as the said Board may think proper, for such price sum, or equivalent as they may reasonably get for the same; and by the signatures of the President or Chairman or Secretary, and the Corporate Seal of the said Board, to execute the necessary deeds and conveyances of transferring the same.

XII. And be it enacted, That the said Board of Commissioners shall be and are hereby authorized to sue for, collect and receive all the tolls accruing or which may have accrued at the said Harbor since the date of the said contract or agreement hereinbefore first mentioned and up to the time of the passing of this Act, and until other rates and tolls shall be established in the manner provided by this Act, according to the rates established by the said Act incorporating the said The President, Directors and Company of the Port Hope Harbor and Wharf Company.

XIII. And be it enacted, That this Act shall be held to be a Public Act.