

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

16 Victoria – Chapter 248

**An Act to incorporate *The Toronto Locomotive Manufacturing Company*. Assented to 14th June, 1853.**

Whereas George A. Phillpotts, Messrs. Bowes and Hall, Moffalt and Murray, Ezekiel F. Whittemore, Ross Mitchell and Company, and James Browne, all of the City of Toronto, in The United Counties of York, Ontario and Peel, have petitioned the Legislature that an Association under the style and title of *The Toronto Locomotive Manufacturing Company* may be incorporated, to enable and empower the said Association or Company to enter into, carry on and conduct all the necessary business connected with or appertaining or belonging to the manufacture of Locomotive Power and Engines required for Railroads or otherwise, and for all repairs connected with the same, or for furnishing and supplying all furniture that may be required for Railroads or other purposes connected therewith, and with any thing appertaining to Locomotive power; And whereas it is considered that such an Association would be greatly beneficial to the interests of the Province, and tend to develop the powers and capabilities of the same, and retain a large amount of expenditure which must shortly take place within the Province, instead of being expended in a foreign country: 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 persons aforesaid with Casimir S. Gzowski, James Beaty, Thomas Hayes, Thomas D. Harris, and all such other persons as now are or shall become Shareholders of the said Company, shall be and are hereby ordained, constituted and appointed to be a Body Corporate and Politic in Law, fact and in name, by the style and title of *The Toronto Locomotive Manufacturing Company*, and also that they and their successors by and under the said name, style and title, shall be capable in Law of purchasing, holding or conveying in any way whatever, any estate, real or personal, for the use of the said Corporation, subject to the roles and conditions hereinafter contained; Provided always, that the said Company shall hold no real estate except for the actual use and occupation of the Corporation, save only in the ease hereinafter provided for; Provided also, that the said real estate so held for the use of the said Company shall not exceed in value Twenty Thousand Pounds currency, which shall be included in and form part of the amount of the said Capital.

II. And be it enacted, That the Capital Stock of the said Company shall not exceed the amount of One Hundred Thousand Pounds, to be composed of shares of the value of Twenty-five Pounds for each share, and that the number of shares in the said Company shall not exceed the number of four thousand shares.

III. And be it enacted, That it shall be lawful for any person or persons, or body politic or corporate, to subscribe for such and so many shares as he, she or they may think fit, and two and a-half per cent shall be paid at the time of subscription or within one month thereafter, and the remainder shall be payable as the majority of the Directors hereinafter named shall determine upon: Provided always, that no call shall exceed twenty per cent, and that no instalment shall become payable until after sixty days' notice shall be given by the said Directors in two or more public newspapers published in the City of Toronto; and if any Stockholder or Stockholders shall, after such notice, refuse or neglect to pay to the said Directors such call or instalment due upon such share or shares held by him, her or them, such share or shares shall or may, in the option of the said Directors, or of the Directors for the time being hereinafter provided for, become forfeited, together with the amount or amounts paid thereon, and such forfeited share or shares may be disposed of as the Directors for the time being may think fit, in any manner whatsoever, or the same may become vested in and for the benefit of the said Company, as the said Directors may determine.

IV. And be it enacted, That in case the said share or shares shall not be forfeited for or by reason of the non-payment of any of the calls or instalments thereon to be made as aforesaid, that, the said Company may sue for the same or any thing due thereon, and that in all actions or suits for the recovery of such calls or arrears, it shall be sufficient for the said Company to declare in an action of Debt in manner following:

"For that whereas the defendant heretofore, to wit, on the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred, and \_\_\_\_\_ was indebted to 'The Toronto Locomotive Manufacturing Company' in the sum of \_\_\_\_\_ for calls and dues upon certain stock and shares of the said Company held by the defendant before then due and unpaid upon the paid stock and shares; and, being so indebted, then became liable to pay the said amount to the said plaintiffs, whereby an action hath accrued to the said plaintiffs to ask and demand the same from the defendant; yet the defendant, although often requested so to do, hath not paid the same, or any part thereof, to the plaintiffs' damage of \_\_\_\_\_;  
Wherefore they bring suit, &c."

And, on the trial, it shall only be necessary to prove that, the defendant was owner of certain shares, and the call or calls thereon, and the notice required by this Act, and no other fact or thing whatsoever.

V. And be it enacted, That the business of the said Corporation shall be, and they shall have full power and authority, to make, construct and build all and every kind of Engine, Locomotive, and furniture for or connected with any thing that may be required for Railroads, Steamboats, or machinery of any kind, or for the repair or refitting of the same, and every thing connected with and appertaining thereto.

VI. And be it enacted, That it shall and may be lawful for the said Corporation to purchase, acquire and hold any lands, tenements, real or personal estate, necessary for carrying on the business of the said Corporation, or any Debentures or other securities, public or private, which

shall come into their hands *bonâ fide* in the course of their business aforesaid, in payment of or for securing the payment of any debt due to them in the course of such business, or any lands or real property which, having been mortgaged or pledged to them for securing debts to them incurred *bonâ fide* in the course of their business aforesaid, may by reason of such pledge or mortgage become their property, or shall be purchased by them at any sale thereof in execution of any order or judgment of a competent Court in their favor, and to sell, exchange and dispose of any property, real or personal, which they may lawfully purchase or acquire under this Section, in such manner as the said Company or the Directors thereof for the time being may deem expedient.

VII. And be it enacted, That, nothing in this Act shall authorize the said Company to issue Bank Notes, or in any way to act as Bankers.

VIII. And be it enacted, That the Company shall keep a book to be called "The Register Book of Shareholders," and in such book shall be fairly and distinctly entered, from time to time, the names of the several Corporations, and the names and additions of the several persons being Shareholders of the Company, the number of shares to which such Shareholders shall be respectively entitled, distinguishing each Share by its number, and the amount of the subscriptions paid on such shares; and such book shall be authenticated by the Common Seal of the Company affixed thereto.

IX. And be it enacted, That the Shares in the Stock of the said Company shall be assignable by delivery of the certificates to be issued to the holders of such Shares respectively, and by assignment in the form of the Schedule annexed to this Act, or in any other convenient form to be prescribed by any By-law of the said Company, and that by such assignment, and the same being duly entered on the Register Book of the Company, the party accepting such transfer shall thenceforth become, in all respects, a Member of the said Corporation, in respect of such Share or Shares, in the place of the party transferring the same, but no such transfer shall be valid until all the calls or instalments, due on the Share or Shares purporting to be transferred, and all debts due to the Corporation thereon, shall have been paid; and a copy of such transfer, extracted from the Register Book of the Company, signed by the Clerk or other Officer of the Company, shall be *primâ facie* evidence of such transfer in all the Courts of this Province.

X. And with respect to the Registration of Shares, the interest in which may become transmitted in consequence of the death, or bankruptcy, or insolvency of any Shareholder, or in consequence of the marriage of a female Shareholder, or by any other legal means than an assignment, according to the provisions of this Act, Be it enacted, That no person claiming, by virtue of any such transmission, shall be entitled to receive any share of the profits of the said undertaking, nor to vote in respect of any such share or shares, as the holder thereof, until such transmission has been authenticated by a declaration in writing as hereinafter mentioned, or in such other manner as the Directors shall require; and every such declaration shall state the manner in which, and the party to whom such share or shares shall have been so transmitted, and shall be made and signed by some credible person before a Justice of the Peace, or before a Master or Master Extraordinary in the Court of Chancery, and such declaration shall be left with the Secretary, and thereupon he shall enter the name of the person entitled under such transmission in the Register Book of

Shareholders of the Company, whereby such person shall be and become a Shareholder in the said undertaking; and for every such entry the Secretary may demand any sum not exceeding Five Shillings.

XI. And be it enacted, That if such transmission be by virtue of the marriage of a female Shareholder, the said Declaration shall contain a sufficient proof of such marriage, and shall declare the identity of the wife with the holder of such Share; and if such transmission have taken place by virtue of any testamentary instrument, or by intestacy, the probate of the Will or Letters of Administration, Act of Curatorship, or other document proving the right, or an official extract, therefrom, shall together with such Declaration, be produced to the Secretary, and upon such production, in either of the cases aforesaid, the Secretary shall make an entry of the Declaration in the said Registry of Transfers.

XII. And be it enacted, That the Shareholders shall not, as such, be held liable for any claim, engagement, loss or payment, or for any injury, transaction, matter or thing relating to or connected with the said Company, or the liabilities, acts or defaults of the said Company, beyond the amount of their shares in the said Company, or the sums, if any, remaining due to complete the amount thereof.

XIII. And be it enacted, That if before or on the day appointed for payment, any Shareholder do not pay the amount of any call to which he may be liable, then such Shareholder shall be liable to pay interest on the same, at the rate of six per centum per annum, from the day appointed for the payment thereof to the time of the actual payment.

XIV. And be it enacted, That the Company may, if they think fit, receive from any of the Shareholders, willing to advance the same, all or any part of the money due upon their respective shares, beyond the sums actually called for; and upon the principal money so paid in advance, or so much thereof as from time to time shall exceed the amount of the calls made upon the shares in respect of which such advance shall have been made, the Company may pay interest.

XV. And be it enacted, That the production of the Register Book of the Shareholders of the Company shall be, *primâ facie* evidence of such Defendant being a Shareholder, and of the number and amount of his shares, and of the sums paid in respect thereof.

XVI. And be it enacted, That before declaring any share forfeited, the Directors shall cause notice of such intention to be left at the usual or last known place of abode of the person appearing by the Register Book of Proprietors to be the proprietor of such share; and if the proprietor of any share be abroad, or if the interest in any such share shall be known by the Directors to have become transmitted otherwise than by assignment, as hereinbefore mentioned, but a declaration of such transmission shall not have been registered as aforesaid, and so the address of the parties to whom the same may have been transmitted, shall not be known to the Directors, the Directors shall give public notice of such intention by advertisement in the *Canada Gazette*, and in some other newspaper, as hereinafter provided, and the several notices aforesaid shall be given twenty-one days at least before the Directors shall make such declaration of forfeiture.

XVII. And be it enacted, That such declaration of forfeiture shall not take effect, so as to authorize the sale or other disposition of the share, until such declaration shall have been confirmed at some General Meeting of the Company, to be held after the expiration of two months at the least, from the day on which such notice of intention to make such declaration of forfeiture shall have been given, and it shall be lawful for the Company to confirm such forfeiture at any such meeting, and by an order at such meeting, or at any subsequent General Meeting, to direct the shares so forfeited to be sold or otherwise disposed of; and after such, confirmation, the Directors may sell the forfeited shares, either separately or together, or in lots, as to them shall seem fit.

XVIII. And be it enacted, That a declaration in writing by an officer or servant of the Company, or by some credible person (not interested in the matter,) made before any Justice of the Peace or before any Master or Master Extraordinary in the Court of Chancery, that the call in respect to a share was made, and notice thereof given, and that default in the payment of the call was made, and that the forfeiture of the share was declared and confirmed in manner hereinbefore required, shall be sufficient evidence of the facts therein stated; and such declaration and the receipt of the Secretary of the Company for the price of such share, shall constitute a good title to such share, and thereupon the purchaser shall be deemed the proprietor of such share, discharged from all calls made prior to such purchase; and a certificate of proprietorship shall be delivered to such purchaser, upon his signing the undertaking to hold the shares so purchased by him as aforesaid, subject to the provisions of this Act, and he shall not be bound to see to the application of the purchase money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to any such sale.

XIX. And be it enacted, That the Company shall not sell or transfer more of the shares of any such defaulter than will be sufficient, as nearly as can be ascertained at the time of such sale, to pay the arrears then due from such defaulter on account of any calls, together with interest and the expenses attending such sale and declaration of forfeiture; and if the money produced by the sale of any such forfeited share or shares be more than sufficient to pay all arrears of calls and interest thereon due at the time of such sale, and the expenses attending the declaration of forfeiture, and sale thereof, the surplus shall, on demand, be paid to the defaulter, or in default thereof, applied in and towards satisfaction of any calls made thereafter, but prior to such demand being made as last aforesaid, in respect of the remaining unsold shares of such defaulter.

XX. And be it enacted, That if payment of such arrears of call and interest, and expenses be made before any share so forfeited and vested in the Company shall have been sold, such share shall revert to the party to whom the same belonged before such forfeiture, in such manner as if such calls had been duly paid.

XXI. And be it enacted, That it shall be lawful for the Company to borrow, on mortgage of any or all their real property, except such as shall be used by the Company for Manufacturing purposes, or bond, such sums of money as may appear to them necessary; Provided that the sum so owing by the Company at any one time, shall not- exceed Twenty-five Thousand Pounds, not including the real property as aforesaid used by them.

XXII. And be it enacted, That the affairs and concerns of the said Company shall be managed by a Board of five Directors, one of whom shall be chosen President and Manager of the said Company, which Board shall consist, in the first instance, until others be chosen according to the provisions hereinafter mentioned, of Casimir S. Gzowski, James Beaty, Thomas Hayes, Thomas D. Harris and John G. Bowes, and which said persons shall hold office and shall have full power and authority to organize the said Company, and for the said purposes appoint any officer of the said Company whom they may deem requisite; and they shall, within one year from the passing of this Act, open books in the City of Toronto to receive subscriptions to the Capital Stock of the Corporation, and thirty days' notice shall be given of the same in two or more Newspapers published in the City of Toronto, and the said books shall remain open for thirty days at the said place unless the whole stock shall have been subscribed before that time, under the direction of the persons above named; and such sum as they may think expedient, not less than two and one half per centum per share shall be paid on each share at the time of subscribing.

XXIII. And be it enacted, That so soon as one half of the Capital Stock of the said Company shall be subscribed, and one fourth part thereof shall be paid up, the business and affairs of the said Company shall and may commence, and the said Company be considered to be in operation and existence from the time hereinafter provided; and the said Directors to be elected as herein provided shall thereafter have full power and authority to conduct and manage the affairs of the said Company, and to enter into any or all engagements or contracts for or on behalf of the said Company, and the business connected therewith, and to carry on the same and do every thing necessary therefor; Provided always, that this Act shall not go into operation or have effect for the purposes of the Company until the subscription and payment of the Stock as provided in this clause shall have been established to the satisfaction of the Governor, who shall thereupon, by Proclamation to be published in the usual manner, notify the same to the public, and give operation to this Act.

XXIV. And be it enacted, That the first Annual General Meeting of the Company shall be held not sooner than one month nor later than six weeks after the publication of the Proclamation aforesaid; and on the same day (not being a Sunday or statutory holiday) in each year following, it shall and may be lawful to and for the Shareholders and Subscribers of such Stock, to proceed to the election of five Directors by ballot, notice having been given in some two or more public newspapers published in the City of Toronto, at least sixty days before such Election; and any person (but no other) who shall be holder of at least twenty shares of the said stock, shall be eligible to be appointed such Director or Directors; and such Directors, who shall be so chosen, shall proceed within ten days to appoint one of the said Directors so chosen, to be the President and Manager of the said Company: and the said Directors shall go out of office annually, but shall be eligible for re-election, and may be replaced by others to be appointed at the Annual Meetings; Provided that no person shall be eligible to be elected such Director, if he shall be in any way in default to the said Company for or on account of any share or shares held by him; And provided also, that the Directors hereby appointed shall have full power and authority at any time after the said Company shall go into operation, or in case of the death of any Director, to call a meeting of

the Shareholders of the said Company and proceed to the election of other Directors or Director as herein provided for.

XXV. And be it enacted, That every Stockholder shall be entitled to vote for every share that he may at the time of such election hold or be entitled to, provided he be not in default in any way, and that he may vote personally or by proxy, provided such proxy be a Stockholder not in default, whose appointment as such proxy shall bear date within twelve months of the time of such Election, and sufficient proof be given thereof.

XXVI. And be it enacted, That the said Directors to be appointed at the said Annual Meetings, or the majority of them, shall have full and ample power and authority to make, alter and enact all and every necessary By-law and By-laws, Rules and Regulations for the regulation and management of the said Company, either as to the amount of the calls or instalments on the said stock, the way or manner or time in or at which the same shall be paid, and to do every thing they deem expedient as to the direction, management, carrying on and satisfactory working and progress of the said Company, and to declare and distribute any dividend or dividends or profits arising from the business of the said Company at such times or seasons as they shall deem expedient, and to appoint any officer or officers of or for the said Company at such salary as they may think fit; Provided such By-laws shall not be repugnant to this Act.

XXVII. And be it enacted, That the Stock of the said Company shall be personal property, and shall and may be transferable and assignable as such; but no shares shall be transferable until after payment of all previous calls thereon, or until their forfeiture for non-payment of calls, and it shall not be lawful for the said Company to use any of its funds for the purchase of any Stock in any other Corporation.

XXVIII. And be it enacted, That in all actions, suits or prosecutions, in which the said Company may be at any time engaged, any Officer or Stockholder in the said Company shall be a competent witness for, on behalf of, or against the said Company, notwithstanding any interest he may have therein.

XXIX. And be it enacted, That if several persons be jointly entitled to a share, the person whose name stands first on the Register of Shareholders as one of the holders of such share, shall, for the purpose of voting at any meeting, be deemed the sole proprietor thereof, and on all occasions the vote of such first named Shareholder alone, either in person or by proxy, shall be allowed as the vote in respect of such share, and proof of the concurrence of the other holders thereof shall not be requisite.

XXX. And be it enacted, That the Directors shall cause notices, minutes or copies, as the case may require, of all appointments made, or contracts entered into by the Directors, to be duly entered in books, to be from time to time provided for the purpose, which shall be under the superintendence of the Directors; and every such entry shall be signed by the Chairman of the Meeting at which the matter in respect of which such entry was made, was moved or discussed, at or previously to the next meeting of the said Company or Directors, as the case may be; and

such entry so signed, shall be received as *primâ facie* evidence in all Courts, and before all Judges, Justices and others, without proof of such respective meeting having been convened, or of the persons making or entering such orders or proceedings, being Shareholders or Directors, or Members of the Committee respectively, or by the signature of the Chairman, all of which last mentioned matters shall be presumed; and all such books shall, at any reasonable time, be open to the inspection of any of the Shareholders.

XXXI. And be it enacted, That all acts done by any meeting of the Directors or of a Committee of Directors, or by any person acting as a Director, shall, notwithstanding it may be afterwards discovered that there was some defect or error in the appointment of any person attending such meeting as a Director, or acting as aforesaid, or that such person was disqualified, be as valid as if such person had been duly appointed and was qualified to be a Director.

XXXII. And be it enacted, That no Director, being a party to, or making, signing or executing, in his capacity of Director, any contract or other instrument, on behalf of the Company, or otherwise lawfully executing any powers given to the Directors, shall be subject to be sued or prosecuted, individually, by any person whomsoever; and the bodies or goods, or lands of the Directors, or any of them, shall not be liable to execution of any legal process, by reason of any contract or other instrument so entered into, signed or executed by them or any of them, or by reason of any other lawful act done by them or any of them in the execution of any of their powers as Directors, and the Directors, their heirs, executors and administrators, shall be indemnified out of the Capital of the Company for all payments made, or liabilities incurred in respect of any act done by them, and for all losses, costs and damages, which they may incur in the execution of the powers granted to them; and the Directors for the time being of the Company, shall apply the existing funds and Capital of the Company for the purposes of such indemnity, and shall, if necessary for that purpose, make calls of the Capital remaining unpaid: Provided always, that no such Director or Directors shall directly or indirectly sell or cause to be sold to the said Company, any goods, wares or materials, so long as, or during the time he or they shall remain a Director or Directors of the said Company.

XXXIII. And be it enacted, That the Directors shall have power to make dividends on the paid up Capital, each half year, when in their opinion, it shall be advisable; Provided always, that no such dividend shall be declared or made, whereby the Capital Stock will be in any degree reduced.

XXXIV. And be it enacted, That the word "land" in this Act, shall include all lands, tenements and hereditaments, and real and immoveable property whatsoever; and the word "Shareholders" shall include the heirs, executors and administrators, curators, legatees or assigns of such Shareholders, or any other party having the legal possession of any share, whether in his own name or that of any other, unless the context shall be inconsistent with such construction.

XXXV. And be it enacted, That the said Company shall annually submit to the three Branches of the Legislature, within the first fifteen days of each Session, a Statement shewing the amount of landed or other property held by the said Company, the total amount of money borrowed by



them under the provisions of this Act, with the rates of interest paid thereon, and the statement of the various sums loaned by them, with the rate of interest thereon.

XXXVI. And be it enacted, That this Act be and is hereby declared a Public Act, and the Interpretation Act shall apply to this Act.

XXXVII. And be it enacted, That this Act shall be null and void, unless the Company shall go into operation within five years from the passing thereof.