

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

16 Victoria – Chapter 41

An Act to amend the Act incorporating The *Toronto and Guelph Rail-way Company*. 10th November, 1852.

Whereas since the passing of an Act in the Session held in the fourteenth and fifteenth years of Her Majesty's Reign, intituled, *An Act to incorporate the Toronto and Guelph Rail-way Company*, the Mayor, Aldermen and Commonalty of the City of Toronto, have, in pursuance of the provisions of the Rail-way Clauses Consolidation Act, subscribed for Stock in the said *Toronto and Guelph Rail-way Company*; And whereas the Municipal Corporations of the Town and Township of Guelph, and of the Township of Chinguacousy, have in like manner respectively subscribed for Stock in the said Company, and the calls hitherto made by the said Company, in respect of the shares subscribed for by the said Municipal Corporations have been paid in Debentures of the said Corporations respectively; And whereas shares exceeding the sum of one hundred and fifty thousand pounds, as prescribed by the seventh Clause of the Act to incorporate the said Rail-way, have been taken and ten pounds per cent thereon hath been paid in; And whereas by the third Clause of the said Act incorporating the said *Toronto and Guelph Rail-way Company*, the Capital Stock of the said Company is expressed to be limited to the sum of two hundred and fifty thousand pounds of Provincial currency, and doubts have been raised whether the said Clause does not limit the powers contained in the said Rail-way Clauses Consolidation Act, for increasing the capital of the said Company; And whereas the said sum of two hundred and fifty thousand pounds has been found to be insufficient for the proper and efficient construction of the Rail-way by the said Act authorized to be constructed, and it is desired to increase the same to the sum of three hundred and twenty-five thousand pounds, like currency, with such powers to increase the same as are contained in the said Rail-way Clauses Consolidation Act; And whereas the said *Toronto and Guelph Rail-way Company*, have executed under their corporate seal, bonds to the amount of two hundred and seventy-five thousand pounds sterling money of Great Britain, payable to bearer, which bonds are secured by a Mortgage Deed bearing date the thirtieth day of June, one thousand eight hundred and fifty-two, executed under the corporate seal of the said Company, whereby the said intended Rail-way and all the works of the said Company, together with all stations, buildings, carriages, engines and other property attached or to be attached to or belonging to the said Rail-way, and all the Revenues and Tolls to be derived from the said works, are mortgaged and pledged to the Canada Company, in trust as a security for the payment of the said entire sum of two hundred and seventy-five thousand pounds sterling, on the first day of July, one thousand eight hundred and seventy-three, and for the payment of the half yearly interest thereon at the rate of six pounds per centum per annum in the meantime, and whereby the Municipal debentures which have already been and which hereafter shall be issued for the Stock already subscribed, and which hereafter shall be subscribed by Municipal Corporations of the Province of Canada, under the provisions of the Rail-way Clauses Consolidation Act are also mortgaged and pledged to the said Canada Company, in trust as a collateral security for the due payment of the principal and interest on the said bonds; And whereas doubts have arisen whether

the said third Clause of the said Act incorporating the said Toronto, and Guelph Rail-way Company does not limit and restrict the powers contained in the Rail-way Clauses Consolidation Act, of borrowing money, and other doubts have arisen as to the validity, negotiability and security of the said bonds, and the validity of the said mortgage; And whereas it is expedient to remove such doubts, and to affirm the validity, negotiability and security of the said bonds of the said Company so as aforesaid executed to the amount of two hundred and seventy-five thousand pounds sterling money of Great Britain, and of any further bonds which may be executed by the said Rail-way Company, to an aggregate amount (with the said sum of two hundred and seventy-five thousand pounds) not exceeding the amount of capital for the time being, authorized to be raised by the said Company, and the validity of the said mortgage and of any mortgage or mortgages to be hereafter executed as a security for any moneys to be borrowed by the said Company, within the limit of their prescribed capital for the time being; And whereas the said *Toronto and Guelph Rail-way Company* have by their petition prayed that the said Act incorporating the said *Toronto and Guelph Rail-way Company* may be amended: 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 Capital Stock of the said Company shall be, and is hereby declared to be the sum of three hundred and twenty-five thousand pounds, Provincial currency, divided into sixty-five thousand shares of five pounds each, and that the said Capital Stock may, if necessary, from time to time be increased in the manner provided for by the Rail-way Clauses Consolidation Act.

II. And be it enacted and declared, That the said bonds of the said *Toronto and Guelph Rail-way Company* so as aforesaid executed to the said amount of two hundred and seventy-five thousand pounds sterling money of Great Britain, and the said mortgage for securing the same are, and shall continue to be, and subsist as good and valid and obligatory upon the said *Toronto and Guelph Rail-way Company* according to the tenor and purport thereof respectively, and that all bonds, debentures or other securities of the said Rail-way Company, may be made payable to bearer, and that the said bonds which have been so executed, as aforesaid, and all future bonds, debentures and other securities of the said Rail-way Company, and all dividends or interest warrants thereon respectively, which shall purport to be payable to bearer, shall be assignable at law by delivery, and may be sued on and enforced by the respective bearers and owners thereof for the time being, in their own names.

III. And be it enacted and declared, That the respective *bonâ fide* Bondholders and Mortgagees of the said Rail-way Company, as well under any bonds, debentures, mortgages or other special securities to be hereafter lawfully executed by the said Rail-way Company within the limit of their Capital for the time being prescribed, as under the said bonds already executed, shall be entitled one with another to their respective proportions of the Tolls and other property of the said Railway Company, according to the respective sums in such securities mentioned, and to be repaid the principal and interest moneys thereby secured, without any preference one above another by reason of priority of the date of any such security or of the resolution by which the

same was authorized or otherwise howsoever; provided that this enactment shall not operate either to accelerate or to delay the right of the holder of any such security to demand and enforce payment of the principal moneys thereby secured on the day or respective days therein mentioned for payment thereof.

IV. And be it enacted and declared, That if any interest or principal due on any such security as aforesaid, be not paid by the said Rail-way Company on the day, and at the place appointed for payment thereof, and if the Canada Company shall neglect for sixty days after notice in writing by the holder of any such security, to enter into possession of the said Rail-way, or appoint a Receiver of the Rates and Tolls and other profits of the said Rail-way and works, under and by virtue of the aforesaid mortgage, then in such ease the holder of such security (without prejudice to his right to sue for the interest or principal so in arrear, in any of the Superior Courts of Law or Equity) may if his debt amount to the sum of five thousand pounds alone, or if his debt do not amount to the sum of five thousand pounds, may in conjunction with other creditors of the said Rail-way Company holding any such securities as aforesaid, whose debts on such securities being so in arrear after such demand as aforesaid, shall, together with his amount to the sum of five thousand pounds, require the appointment of a Receiver by an application to be made to the Court of Chancery at Toronto, in a summary manner without suit, and on any such application, it shall be lawful for such Court, after hearing the parties, or giving them an opportunity to be heard, to appoint some person to receive the whole or a competent part of the Tolls or sums liable to the payment of such interest, or principal and interest, until the same, together with all costs, including- the charges of receiving the Tolls or sums aforesaid, shall be fully paid; and upon such appointment being made, all such Tolls and sums of money as aforesaid, shall be paid to, and received by the person so to be appointed, and the moneys so to be received shall be so much money received by or to the use of the party or parties to whom such interest or principal and interest shall be then due, and on whose behalf such Receiver shall be appointed, and after such interest or principal and interest and costs shall have been so received, the power of such Receiver shall cease; Provided always, that during the possession of any such Receiver, it shall be lawful for the said Court of Chancery from time to time, on the application of any creditor or creditors of the said Rail-way Company under any such security as aforesaid, whose interest or principal, or both shall be in arrear, by order to direct that such last mentioned creditor or creditors shall be entitled to the benefit of such Receivership from the time of the service of the same order on such Receiver, and upon such order being so made, and served on such Receiver, the creditor or creditors mentioned therein, shall thenceforth be entitled to the benefit of such Receivership, in the same manner as if he or they had joined in the original application for the appointment of the Receiver.

V. Provided always, and it is hereby enacted and declared, That every appointment of a Receiver to be made as aforesaid, and also every mortgage or other specific lien or charge on all or any part of the present or future property, tolls or credits of the said Rail-way Company shall be subject to the right of the said Canada Company under the said Mortgage Deed to enter upon, take possession of, or otherwise deal with the property included in or charged by the said Mortgage, or expressed or intended so to be, and if the said Canada Company shall think fit to have a Receiver of the tolls and profits of the said undertaking appointed on their behalf, as such Mortgagees, the

said Canada Company may apply to the Court of Chancery, and procure the dismissal of any Receiver appointed by the said Court as aforesaid, in a summary manner and without suit; Provided nevertheless, that the said Mortgage Security to the said Canada Company shall be held and enforced by the said Canada Company, in trust for the benefit not only of the said Bondholders, to the amount of two hundred and seventy-five thousand pounds sterling, but also of the holders of all other bonds, debentures or securities of the said Rail-way Company, which shall be lawfully issued by the said Rail-way Company, and shall be expressed to be issued or made on the security of the said Mortgage, rateably and in proportion to the sums which for the time being shall have become actually due and payable thereon for interest or principal, or both.

VI. And be it declared and enacted, That the third Clause of the *Toronto and Guelph Rail-way Act* of one thousand eight hundred and fifty-one, or any thing in that Clause or in this Act expressed, does not in any respect take away, lessen, restrict, prejudice, or otherwise affect any of the powers, authorities, indemnities, rights and privileges which are granted and conferred by and may be had, exercised and enjoyed by virtue of the incorporation with that Act, of such of the Clauses of the Rail-way Clauses Consolidation Act, as in and by the Fourth Clause of the *Toronto and Guelph Rail-way Act*, of one thousand eight hundred and fifty-one, are expressed to be and are incorporated with that Act.

VII. And be it enacted and declared, That at the next annual general meeting of the said Company, and at every annual general meeting thereafter, six of the thirteen elected Directors of the said Company shall annually retire in rotation, the selection of the first six to retire being decided by lot, or in such other manner as shall be provided by the Directors of the said Company by rule or regulation in that behalf to be passed, but the Directors so from time to time retiring shall be eligible for re-election; and all votes hereafter to be given at annual or general or special meetings of Proprietors in respect of the stock subscribed, or hereafter to be subscribed, by Municipal Corporations, shall be given by the Mayor or Reeve of such Municipal Corporations respectively, under and subject to such resolutions as shall from time to time in that behalf be made by such Municipal Corporations respectively.

VIII. And be it enacted, That it shall and may be lawful for the Directors of the said Company for the time being, to issue shares for stock to be subscribed in England, or elsewhere, in such amounts respectively of sterling money of Great Britain as to such Directors shall from time to time seem fit, and to make the dividends thereon payable in like sterling money in England, or elsewhere, at such place or places as to such Directors shall from time to time seem fit, and to regulate from time to time the number of votes which the holders for the time being of such shares to be issued in England, or elsewhere, shall have respectively, relatively to the amount of stock held by the respective Proprietors for the time being of such shares to be issued in England, or elsewhere, and in the proportion which the amount of a share issued in Canada shall bear to the amount of a share issued in England, or as near as possible thereto as the difference between currency and sterling will permit, and from time to time to appoint agents of the said Company in England, or elsewhere, and to delegate to such agents such powers as to the Directors of the said Company shall from time to time seem fit, and to make such rules and regulations as to the Directors of the said Company shall from time to time seem fit, as to the issuing of such shares in

England, or elsewhere, and as to the mode, time and place or places of transfer of such shares, and as to the mode, time and place of paying the dividends from time to time to accrue thereon, and otherwise, as shall be deemed requisite or beneficial for giving full effect to the power hereby vested in the Directors of the said Company, in respect of issuing such shares in England or elsewhere.

IX. And be it enacted and declared, That all calls upon the Capital Stock of the *Toronto and Guelph Rail-way Company*, already made, or which hereafter shall be made, the amount of which respectively has been prescribed, or which hereafter shall be prescribed by any By-law passed or to be passed at a general meeting of the Shareholders of the said Company, and of which due notice shall have been given in accordance with the provisions of the Rail-way Clauses Consolidation Act, shall be, and the same are hereby declared to be good and valid calls, in the same manner as if the maximum limit of the amount of such calls respectively had been prescribed in the said Act, intituled, *An Act to incorporate the Toronto and Guelph Rail-way Company*, or in this Act.

X. And be it enacted, That this Act shall be construed as if the same formed part of the said Act, intituled, *An Act to incorporate the Toronto and Guelph Rail-way Company*, and that the several Clauses of the Rail-way Clauses Consolidation Act, mentioned in the fourth Clause of the said Act to incorporate the *Toronto and Guelph Rail-way Company*, shall be, and the same are hereby declared to be incorporated with this Act, and that in reciting for any purpose the said Act to incorporate the *Toronto and Guelph Rail-way Company*, it shall be sufficient to use the expression, *The Toronto and Guelph Rail-way Company Act*. And in reciting this Act, it shall be sufficient to use the expression, *The Toronto and Guelph Rail-way Amendment Act of 1852*.

XI. And be it enacted and declared, That it shall and maybe lawful for the said *Toronto and Guelph Rail-way Company* to extend their said Rail-way from the Town of Guelph, and to construct a single, double, or other line of Rail-way, westerly from the said Town of Guelph through the Village of Stratford, and to the waters of the River St. Clair at the Port of Sarnia, and to make and erect all necessary erections, works and buildings for the proper use and enjoyment of such extension, and for that purpose to raise in such manner by loan, subscription of stock, issuing of shares, or otherwise, as to the Directors of the said Company for the time being shall seem fit, a further sum of one million Pounds, Provincial currency, or such further amount of Capital as shall from time to time be deemed to be necessary for the proper and efficient construction, maintenance and working of such extension; and that all Clauses of the Rail-way Clauses Consolidation Act which are incorporated with, or made part of the said Act incorporating the *Toronto and Guelph Rail-way Company*, and which are incorporated with or made part of this Act for the purpose of or in relation to the said Rail-way from the City of Toronto to the Town of Guelph, shall be, and the same are hereby declared to be incorporated with this Act for the purpose of constructing, maintaining and working the extension by this Clause authorized to be constructed westerly as aforesaid from the Town of Guelph, and that all the powers, authorities, indemnities, rights and privileges which from and after the passing of this Act shall and may be had, exercised and enjoyed by the said *Toronto and Guelph Rail-way Company*, and the Directors thereof respectively, in respect of the Rail-way authorized to be constructed by the said Company

from the City of Toronto to the Town of Guelph, shall be had, held exercised and enjoyed by the said Company, and by the Directors thereof respectively, for the better and more effectual constructing, maintaining and working the extension by this Clause authorized to be constructed westerly from the said Town of Guelph, in the same manner and to the same extent as if such several and respective powers, authorities, indemnities, rights and privileges were herein separately, severally, distinctly and at large re-enacted or declared in respect of or for the purpose of or in relation to the constructing, maintaining and working the said extension by this Clause authorized to be constructed or intended so to be.

XII. And be it enacted, That this Act shall be deemed to be a Public Act, and shall be judicially taken notice of as such by all Judges, Justices and others.