

Laws of Her Majesty's Province of United Canada, passed in the year 1854. Quebec: Stewart Derbyshire and George Desbarts, 1854.

18 Victoria – Chapter 198

An Act to incorporate the “Otter Creek Navigation Company.” Assented to 30th May, 1855.

Whereas the improvement of the Navigation of that part of Big Otter Creek, between the Mill dam of John M. Craufurd, Esquire, on said creek, within the limits of the Corporation of the Village of Vienna, and the outlet of the Creek, at the Harbor of Port Burwell, would manifestly tend to the improvement of that part of this Province, as well as be of great Advantage to all persons engaged in conveying lumber, merchandize and other things between Vienna and Port Burwell aforesaid; And whereas Noah Cook, Thos. Jenkins, Jr., Thomas Edison, W. F. Wallace, John Elliott, S. O. Edison, Alum Marr, Robert Nichol, Wm. Francisco, B. T. Smith, John Dean, John G. McKinnon, Geo. Raymond, Samuel Brake, H. A. Gustin, Geo. Baxter, H. U. Gilbert, Wm. H. Hanvey, John Alexander, A. T. Doud, Geo. Suffel, Jno. Douglass and J. B. Marlatt, have petitioned to be by law incorporated for the purpose of effecting the improvement of such creek by means of a Joint Stock Company: 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, as follows:

I. The said Noah Cook, Thomas Jenkins, Jr., Thos. Edison, W. F. Wallace, John Elliott, S. O. Edison, Alum Marr, Robert Nichol, William Francisco, B. T. Smith, John Dean, John G. McKinnon, Geo. Raymond, Samuel Drake, H. A. Gustin, Geo. Baxter, H. U. Gilbert, Wm. Harvey, Jno. Alexander, A. T. Doud, Geo. Suffel, Jno. Douglass and J. Marlatt, Esquires, together with such other persons as shall become Stockholders in such Joint Stock Company as is hereinafter mentioned, shall be and are hereby ordained, constituted and declared to be a body corporate and politic, in fact, by and under the name and style of “The Otter Creek Navigation Company,” and by that name, they and their successors shall and may have continued succession; and by such name shall be capable of contracting and being contracted with, suing and being sued, pleading and being impleaded, answering and being answered unto, in all Courts or places whatsoever, in all manner of suits, actions, complaints, matters and causes whatsoever; and they and their successors may and shall have a common Seal, and may change and alter the same at their will and pleasure; and also, they and their successors, by the same name of the Otter Creek Navigation Company, shall be in law capable of purchasing, having and holding to them and their successors, to and for the use of the said Company any Estate, real or personal, which may be necessary for the purpose for which the Company is incorporated, and of letting, conveying, and departing therewith for the benefit and on the account of the said Company, from time to time, as they shall deem necessary and expedient; Provided always that nothing herein contained shall extend, or be construed to extend to allow the said Company to carry on the business of Banking.

II. The said Company are hereby authorized and empowered, at their own costs and charges, to widen and deepen that part of Big Otter Creek, in the Preamble of this Act mentioned, and to divert the channel of the same from, to and into any part or parts thereof, and in such manner to improve the navigation thereof, as to the said Company shall seem proper, and so as to allow of boats and vessels navigating the same; and also to make, erect and build all such locks, docks, moles, piers, wharves, buildings and erections whatsoever, as shall be necessary for the protection of the said part of the said Creek, and for the accommodation of boats, vessels, logs, timber, spars and masts, entering, passing up and down, lying, loading and unloading within the same, and to alter and amend, repair and enlarge the same, as may be found expedient and necessary, and the said Company shall have to their own proper use and benefit all water powers that may be created in erecting dams, piers, locks, moles, and other works required for the improvement of the said Otter Creek.

III. The Directors of the said Company shall be and they are hereby empowered to contract, compound, compromise and agree with the owners and occupiers of any land that may be required for the purposes of the Company, either for the absolute purchase of so much of the said land as they shall require for the purposes of the said Company, or for the damage which he, she, or they shall and may be entitled to recover from the said Company, in consequence of the diversion of the stream from its original bed or of the improvement of the navigation of the said part of the said Creek being made, or of any road, street, or approach thereto being made, cut or constructed in and upon his, her, or their respective lands; and in ease of any disagreement between the said Directors and the owner or owners, occupier or occupiers aforesaid, it shall and may be lawful from time to time, for each owner or occupier so disagreeing with the said Directors, either upon the value of the lands and tenements proposed to be purchased, or upon the amount of damages to be paid to them as aforesaid, to nominate and appoint one indifferent person, and for the said Directors to nominate another indifferent person, who, together with one other person, to be chosen by the persons so named, shall be arbitrators to award, determine, adjudge and order the respective sums of money which the said Company shall pay to the respective persons entitled to receive the same, the award of a majority of whom shall be final, and in case of either party refusing after due notice to nominate an arbitrator, then the County Judge may appoint an arbitrator to act in behalf of the party so refusing; and the said arbitrators shall, and they are hereby required to attend at some convenient place in the vicinity of the said intended improvement, to be appointed by the said Directors after eight days' notice given them for that purpose by the said Directors, then and there to arbitrate, award, adjudge and determine such matters and things as shall be submitted to their consideration by the parties interested; and such arbitrators shall be sworn before some one of Her Majesty's Justices of the Peace in and for the County of Elgin, any one of whom may be required to attend the said meeting for that purpose, well and truly to assess the damages between the parties according to the best of his Judgment: Provided always that any award made under this Act shall be subject to be set aside on application to the Court of Queen's Bench, in the same manner and on the same grounds as in ordinary cases of sub-mission by the parties, in which case reference may be again made to arbitrators as herein before provided: and upon payment or tender of the amount of such award to the proper party, and not before, the Company shall have power to take the land or to do the thing to which the award relates.

IV. As soon as the said improvements shall have so advanced as to allow of vessels, boats, logs, timbers, spars and masts passing through any part of the said part of the Creek, the said Company shall have full, power and authority to ask for, demand, receive and take as tolls to and for their own proper use and benefit and behoof, on all goods, wares and merchandize shipped or landed on board or out of any vessel or boat from or upon any part of the said part of the Creek, and upon all vessels and boats and logs, timbers, spars and masts, going through the same or any part thereof, not exceeding the rates following, that is to say:

Sawed lumber per thousand feet, board measure, one shilling and three pence;

Square or round timber in the trunk, per hundred feet running measure, nine pence;

Saw logs, each, three pence;

Shingles per thousand, six pence;

Shingle bolts, per cord, two shillings;

All kinds of grain and seeds, per bushel, one penny;

Pot or pearl ashes, par barrel, six pence;

Whiskey, pork and beer, and all other liquors, per barrel, four pence;

Flour, per barrel, three pence;

All merchandize, per barrel bulk, three pence;

Lard and butter, per keg, two pence;

West India staves per thousand, two shillings and six pence;

Pipe slaves, per thousand, ten shillings;

Fire wood and tan bark, per cord, six pence;

Esculent rods, per bushel, one penny;

All merchandize not enumerated, per ton, three shillings and nine pence;

Boats, vessels and other craft under twenty-five tons, five shillings;

Boats, vessels and other craft above twenty-five tons, and under fifty tons, six shillings and three pence;

Boats, vessels and other craft above fifty tons, seven shillings and six pence;

Provided always, that the company shall have no power to demand any toll for the use of any part of the work which shall be at the time in an insufficient state of repair or incomplete: And provided further, that no scale of tolls shall be established without having been submitted to and approved of by the Governor in Council.

V. If any person or persons shall neglect or refuse to pay the tolls or dues to be collected under this Act, it shall and may be lawful for the said Company, or their officer, clerk or servant duly appointed, to seize and detain the goods, wares, merchandize, vessels, boats, logs, timber, spars or masts on which the same are due and payable, until such tolls are paid; and if the same shall be unpaid for the space of thirty days next after such seizure, the said company or their officer, clerk or servant as aforesaid, may sell and dispose of the said goods, wares, merchandize, vessels, boats, logs, timbers, spars or masts, or such part thereof as may be necessary to pay the said tolls, by public auction, giving ten days' notice thereof, and return the overplus, if any, to the owner or owners thereof.

VI. The property, affairs and concerns of the said Company shall be managed and conducted by seven directors, one of whom shall be chosen President, and three of whom shall be a quorum, who shall hold their office for one year; which said directors shall be stockholders to the amount of at least eight shares, as well as inhabitants of this Province, and be elected on the third Tuesday in March in every year at Vienna in the said County of Elgin, at such time of the day as a majority of Directors for the time being shall appoint, and public notice thereof shall be given in the *Canada Gazette*, or in any newspaper or newspapers that may be published in the said County of Elgin, at least thirty days previous to the time of holding such Election; and the said Election shall be held and made by such of the Stockholders of the said Company as shall attend for that purpose in their own proper person or by proxy, and all elections for such Directors shall be by ballot, and the seven persons who shall have the greatest number of votes at any Elections shall be Directors; and if it shall happen at any such election that two or more have an equal number of votes, in such manner that a greater number of persons than seven by a plurality of votes appear to be chosen Directors, then the said Stockholders hereinbefore authorized to hold such Election shall proceed to elect by ballot, until it is ascertained which of the said persons so having an equal number of votes, shall be Director or Directors so as to complete the whole number of seven, and the said Directors so chosen, so soon as may be after the said Election, shall proceed in like manner to elect by ballot one of their number to be President: and if any vacancy or vacancies shall at any time happen among the Directors, by death, resignation or removal from the Province, such vacancy or vacancies shall be filled for the remainder of the year in which they may happen, by a person or persons to be nominated by a majority of the Directors belonging to the said Company.

VII. Each Stockholder shall be entitled to a number of votes proportioned to the number of shares which lie or she have held in his or her own name at least one month prior to the time of voting.

VIII. In case it shall at any time happen that an Election of Directors shall not be made on any day on which pursuant to this Act it ought to have been made, the said corporation shall not for that cause be deemed to be dissolved, but it shall and may be lawful on any day to make and hold an Election of Directors in such manner as shall have been regulated by the By-laws and Ordinances of the said Corporation.

IX. The Directors for the time being, or a major part of them, shall have power to make and subscribe such rules and regulations as to them shall appear needful and proper, touching the management and disposition of the stock, property, estate and effects of the said Corporation, and touching the duties of its Officers, Clerks and Servants, and all such other matters as appertain to the business of the said Company, and shall also have power to appoint as many Officers, Clerks and Servants for carrying on the said business, with such salaries and allowances as to them shall seem fit.

X. On the third Monday in July after the passing of this Act a meeting of the Stockholders shall be held at Vienna, who in the same manner as hereinbefore provided, shall proceed to elect seven persons to be Directors, who shall continue in such office until the first Monday in April next after their Election, and who during such continuance shall discharge the duties of Directors in the same manner as if they had been elected at the Annual Election; Provided always that if shares to the amount of ten thousand pounds of the Capital Stock of the said Company shall not be taken, then the said Meeting shall not be held until that amount of Stock shall have been taken up, and at least thirty days' notice thereof given in the *Canada Gazette*, or any newspaper or newspapers that may be published in the said County, and any five or more of the persons named in the first section of this Act, may at any time after the passing of this Act cause books to be opened for the purpose of receiving the subscriptions of persons willing to take Stock in the said Company, but no share shall be held to have been taken unless ten per cent, on the amount thereof shall have been paid up at the time of subscribing, nor shall the company exercise any of the powers granted by this Act except that of opening books of subscription, until ten thousand pounds at least of the Capital of the Company shall have been *bonâ fide* subscribed for, by responsible persons, and ten per cent, of the amount so subscribed shall have been paid up as aforesaid, which said ten per cent, shall be deposited in some one of the chartered Banks of this Province or of its branches and agencies, and not withdrawn therefrom except for the purposes of the Company or in *bonâ fide* case of its dissolution.

XI. The whole Capital or Stock of the said Company, inclusive of any real estate which the said Company may have or hold by virtue of this Act, shall not exceed in value twenty-five thousand pounds, to be held in five thousand shares of five pounds each; and the shares of the said Capital Stock may, after the first instalment thereon shall have been paid, be transferred by the respective persons subscribing or holding the same to any other person or persons, and such transfer shall be entered or registered in a book or books to be kept for that purpose by the said Company.

XII. It shall be lawful for the said Corporation from time to time to borrow either in this Province or elsewhere, all such sum or sums of money as they may find expedient, and to make the bonds,

debentures, or other securities they shall grant for the sum so borrowed, payable in lawful money of this Province, with interest, and at such place or places within or without this Province as they may deem advisable, and such bonds, debentures or other securities may be made payable to bearer or transferable by simple endorsement or otherwise, and may be in such form as the Directors for the time being may see fit, and the said Directors may mortgage or pledge the lands, revenues and other property of the said Corporation, for the due payment of the said sums and the interest thereon: Provided always, that no such bond, debenture or other security shall be made or granted for a less sum than twenty- five pounds currency.

XIII. As soon as Directors shall have been appointed as aforesaid, it shall and may be lawful for them to call upon the Stockholders of the said Company, by giving thirty days' notice thereof in the *Canada Gazette*, or in any newspaper published in the said County, for an instalment of ten per cent. upon each share which they or any of them respectively may subscribe, and the residue of the share or shares of the Stockholders shall be payable by instalments at such times and in such proportion as a majority of the Directors present at a meeting to be expressly convened for that purpose shall direct, provided that no such instalment shall exceed ten per cent., nor become payable in less than thirty days after public notice in the said Gazette or in any newspaper published in the said County; And provided further that the said Directors shall not commence the improvement of the said Creek until the first instalment shall be paid in.

XIV. If any Stockholder or Stockholders as aforesaid shall refuse or neglect to pay, at the time required, any such instalment or instalments as shall be lawfully required by the Directors upon any share or shares, such Stockholder or Stockholders so refusing or neglecting shall forfeit such share or shares with any amount which shall have been previously paid thereon, and the said share or shares may be sold by the said Directors, and the sum arising therefrom, together with the amount previously paid in, shall be accounted for and applied in like manner as other moneys of the said Company: Provided always that the purchaser or purchasers shall pay to the said Company the amount of the instalments required, over and above the purchase money of the share or shares so purchased by him, her or them as aforesaid, immediately after the sale and before they shall be entitled to the certificate of transfer of such shares so purchased as aforesaid; Provided always, nevertheless, that thirty days' notice of the sale of such forfeited shares shall be given in the *Canada Gazette* or in any newspaper or newspapers that may be published in the said County, and that the instalment due may be received in redemption of any such forfeited shares, at any time before the day appointed for the sale thereof.

XV. It shall be the duty of the Directors to make annual Dividends of so much of the profits of the said Company as to them or the majority of them, shall seem advisable; and once in each year an exact and particular statement shall be rendered of the state of their affairs, debts, credits, profits and losses; such statement to appear on the Books and to be open to the perusal of any Stockholder at his or her reasonable request.

XVI. At any time after ten years after the making and completing the said Harbour, Her Majesty, Her Heirs and Successors, may assume the possession and property of the same, and of all and every the works and dependencies thereto belonging, upon paying to the said Company for the

use of the Stockholders thereof, the full amount of their respective shares of the sums furnished and advanced by each subscriber for making and completing the works and improvements upon the said Otter Creek; together with such further sum as will amount to twenty-five per cent, upon the money so advanced and paid, as a full indemnification to the said Company; and the said works and improvements upon the said Otter Creek shall from the time of such assumption in manner aforesaid, appertain and belong to Her Majesty, Her Heirs and Successors, who shall from thenceforth be substituted in the place and stead of the said Company, upon the conditions and subject to the provisions of any Act of the Legislature of this Province that may be passed respecting the same.

XVII. Provided always, that the works of the said Otter Creek Navigation Company shall be commenced within two years, and completed within five years after the passing of this Act, otherwise this Act and every matter and thing herein contained shall cease and be utterly null and void.

XVIII. This Act shall be deemed a Public Act.