

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

18 Victoria – Chapter 200

An Act to incorporate the Ontario and Bay of Quinté Canal Company. Assented to 30th May, 1855.

Whereas the construction of a Canal across the peninsula separating the Bay of Quinte, from the Lake Ontario at Presqu'Isle, would greatly tend to the advantage of the Province, and it is expedient to incorporate a Joint Stock Company to construct such Canal: 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 Honorable Robert Charles Wilkins, Adam Henry Meyers, Francis McAnnany, George Benjamin, John O'Hare, William Hamilton Ponton, Benjamin F. Davy, Edmund Murney, James Cumming, James L. Biggar, John Lawson, Stephen Young, Robert Potts, Cyrus Weaver, Dennis MacAulay, William Lovett, Joseph S. Peterson, William H. Fox, James Taylor, James Rankins, Thaddeus H. Ketchum, Abraham C. Singleton, Josiah H. Proctor, Alexander Better, Henry Squier, Pitkin Gross, Samuel Powers, John J. Way, William H. Sanford, Henry Van Tassell, Drummond Smith, Robert Weller, Thomas Brown, James Lawson, Abraham Van Blaricom, William Butler, and James Ross, together with all such other persons or corporations as shall under the provisions of this Act, become Shareholders 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 "Ontario and Bay of Quinte Canal Company," and by that name they and their successors shall have continued succession, and be capable of contracting and being contracted with, suing and being sued, pleading and being impleaded, answering and being answered unto, in all Courts and places whatsoever, and they and their Successors 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 name aforesaid, shall be in law capable of purchasing, having and holding any estate, real, personal or mixed, to and for the use of the said Company, and of letting, conveying or departing with the same for the benefit and on account of the said Company from time to time, as they shall deem necessary and expedient.

II. The said Company, their Agents or Servants, shall have full powers under this Act to lay out, construct, make and finish a Canal at their own costs and charges, from any point at the head of the Bay of Quinte, to any point in Presqu'Isle Harbor, and for that purpose it shall and may be lawful for the said Company, their agents, or servants and workmen, and they are hereby authorized and empowered to enter into and upon the lands and grounds of and belonging to Her Majesty the Queen, Her Heirs and Successors, or to any other person or persons, bodies politic or

corporate, or collegiate, and to survey and take levels of the same or any part thereof, and to set out and ascertain such parts thereof as they shall think necessary for making the said Canal, and all or any such other works as they shall think proper and necessary for making, improving, preserving, completing or using the said Canal: and to take and appropriate, have and hold, to and for the use of the said Company and their Successors, land, sufficient and necessary for the construction, preserving, improving and completing the said Canal and all necessary locks, basins, tow-paths, stations, warehouses and other erections requisite and necessary for the purposes aforesaid, the said Company making satisfaction and payment to the owners or occupiers of any lands, in manner hereinafter mentioned, for all damages to be sustained by them or either of them, through the exercise of all or any of the powers granted to the said Company.

III. After any lands or grounds shall be set out and ascertained to be necessary for making and completing the said Canal, and for other purposes hereinafter mentioned, it shall and may be lawful for all bodies politic, corporate, or collegiate, and for all guardians and other trustees whomsoever, not only for and on behalf of themselves, their heirs, successors and assigns, but also for and on behalf of those whom they shall represent, whether infants, idiots, lunatics, *femes covert*s, or other persons who are or shall be possessed of or interested in the same, to contract for, sell and convey unto the said Company all or any part of such lands or grounds which shall from time to time be so set out and ascertained as aforesaid; and all such contracts, agreements, sales and conveyances shall be valid and effectual in law, to all intents and purposes whatsoever, any law, statute or usage to the contrary thereof in any wise notwithstanding, and the amount of the purchase moneys to be paid for such lands or grounds respectively, shall be ascertained by arbitration, in manner hereinafter mentioned.

IV. The Directors of the said Company shall be, and they are hereby empowered to contract, compound, compromise, settle and agree with the owners or occupiers respectively, of any land through or upon which they may determine to cut or construct the said intended Canal, or any Locks, Towing Paths, Railways, or other erections or constructions contemplated by this Act to be cut, erected, constructed or built, either for the absolute purchase of so much of the said land as they may require for the purposes of the said Company, or for the damages which he, she, or they shall or may be entitled to recover from the said Company, in consequence of the said intended Canal, Locks, Towing Paths, Railways or other constructions or erections being cut or constructed in and upon his, her, or their respective lands, and in case of any disagreement between the said Directors and the owner or owners, occupier or occupiers aforesaid, the amount of the purchase moneys for the lands and tenements proposed to be purchased, or the amount of damages to be paid to them as aforesaid, shall be ascertained by arbitration in manner hereinafter mentioned.

V. In each and every case, where any dispute shall arise between the said Directors and any other person or persons whomsoever, touching any purchase, sale or damages, or the money to be paid in respect thereof, and in each and every case where under the provisions of this Act, any purchase, sale or damages, or the money to be paid in respect thereof, are directed to be ascertained and determined by arbitration, the same shall be referred to and ascertained and determined by three indifferent persons, to be chosen as hereinafter mentioned, that is to say, one of such persons by the owner or owners, occupier or occupiers of the lands, or other the

person or persons interested, - who shall disagree with the said Directors in respect of the purchase money or compensation to be paid to him, her or them, respectively, pursuant to the provisions of this Act — one other of such persons by the said Directors — and the other of such persons shall be chosen by the said two persons to be so named as aforesaid; and in case the said two persons shall not agree within ten days after their appointment in the choice of such third person, then such third person as arbitrator shall be named by the Judge of the County Court of the United Counties of Northumberland and Durham, upon the application of either of the said two persons so named as aforesaid, and such three persons shall be the 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; and the award of such three persons, or any two of them shall be final, and the said arbitrators shall and they are hereby required to attend at some convenient place, in the vicinity of the route of the said intended Canal, to be appointed by the said Directors, within eight days after notice in writing shall be given them by the said Directors for that purpose, 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 each of the said arbitrators shall be sworn by some one of Her Majesty's Justices of the Peace, in and for the said United Counties, (any 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 no arbitrator shall be compellable to attend any such meeting of the arbitrators aforesaid, who shall usually reside more than fifty miles from the place of meeting.

VI. 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 submission by the parties, in which case a reference may be again made to arbitrators, as hereinbefore provided.

VII. The Capital Stock of the said Company shall not exceed in the whole the sum of One Hundred and Fifty Thousand Pounds, divided into twelve thousand shares of twelve pounds ten shillings each, which amount shall be raised by the persons above named, or some of them, together with such other persons and Corporations as may become shareholders in such Stock, and the said money so raised shall be applied, in the first place, towards the payment and discharge of all fees, expenses and disbursements for procuring the passing of this Act, and for malting the surveys, plans and estimates, connected with the Canal, and all the rest and remainder of such money shall be applied towards making, completing and maintaining the said Canal and the works connected therewith, and to no other purpose whatever; Provided always, that until the said preliminary expenses connected with the said Canal shall be paid out of the Capital Stock thereof, it shall be lawful for the Municipality of any County, Township, Town or Incorporated Village, to pay out of the General Funds of such Municipality, such sums of Money as to the said Municipality may seem meet, which sum shall be refunded to the said Municipality from the Stock of the said Company or be allowed to them in payment of Stock.

VIII. The Honorable Robert Charles Wilkins, James L. Biggar, Francis McAnanny, William Butler, Stephen Young, William Hamilton Ponton, John O'Hare, James Gumming, and James Ross, together with the heads of such Municipalities representing corporations which shall within six

months after the passing of this Act become Shareholders of Stock in the said Company to the amount of Five Thousand Pounds, shall be and are hereby constituted and appointed the first Directors of the said Company, and shall hold office until others shall, under the provisions of this Act be elected by the Shareholders, and shall until that time constitute the Board of Directors of the said Company: Provided always, that the powers of the said Directors shall be limited to the opening of books for the subscription of shares, and to the allotment of stock, receiving deposits on such stock, and to the procuring the necessary surveys, plans and estimates, but they shall have no power to enter into any contracts for the construction of the work.

IX. When and so soon as the said Capital Stock shall have been subscribed, and allotted by the Directors, and ten per cent. thereon shall have been paid into some one of the Chartered Banks of this Province or into some branch or agency of such Chartered Bank, it shall be lawful for the said Directors or a majority of them to call a meeting of the holders of such shares at such place and time as they shall think proper, giving at least fifteen days' public notice of the same, in one or more newspapers published in the Towns of Cobourg, Picton and Belleville, and in the Villages of Brighton and Trenton, at which said General Meeting, and at the Annual General Meeting in the following sections mentioned, the Shareholders present who shall have paid all calls upon their shares, either in person or by proxy, shall elect seven Directors in the manner and qualified as hereinafter mentioned, who shall hold office until the first Monday in February then following.

X. On the said first Monday in February and on the first Monday in February in each year thereafter, there shall be chosen seven Directors in manner hereinafter mentioned, and public notice of such annual elections shall be published fifteen days before the election, in one or more newspapers in the Towns and Villages in the preceding section mentioned, and all elections for Directors shall be by ballot, and the seven persons who shall have the greatest number of votes shall be Directors; And if it shall happen that two or more shall have an equal number of votes, the Shareholders shall determine the election by another or other votes, until a choice is made, and if a vacancy shall at any time happen among the Directors, by death, resignation or otherwise, such vacancy shall be filled for the remainder of the year by a majority of the Directors, and the said seven Directors, with the heads of Municipalities qualified as hereinafter mentioned, shall form the Board of Directors: Provided always, that after the first General Meeting the Directors may fix by By-law any other day for such Annual Meeting or for Special Meetings, giving the notice required by this section.

XI. A majority of Directors shall form a quorum for the transaction of business: Provided that the Directors may employ one or more of their number, as a paid Director or Directors.

XII. The persons qualified to be elected Directors of the said Company under this Act, shall be Shareholders, holding at least ten shares in the Stock of said Company, who shall have paid on all calls on the said shares.

XIII. Heads of Municipalities representing stock subscribed for by the said Municipalities to the amount of Five Thousand Pounds, shall be ex officio Directors of the said Company.

XIV. Each Shareholder shall be entitled to a vote for each share which he shall have had in his own name, at least two weeks prior to the time of voting; provided that no party or parties shall be entitled to vote at the meetings of Shareholders who shall not have paid up all calls due upon his, her or their stock, or the stock upon which such party claims to vote.

XV. It shall and may be lawful for the Directors at any time to call upon the Shareholders for such instalments upon such shares, as they or any of them may hold in the capital stock of the said company, in such proportions as they may see fit, so as no such instalment shall exceed ten per cent: giving at least one month's notice for such call, in such manner as they shall appoint; Provided always that if any Stockholder or Stockholders shall neglect or refuse to pay to the said Company a rateable share of the calls as aforesaid for the space of two calendar months after the time appointed for the payment thereof, he, she or they shall forfeit their respective shares in the stock of the said Company, with the money previously paid thereon, and all the profits and benefits thereof, all which forfeitures shall go to the Company for the benefit thereof; and the Directors of the said Company may sell either by public auction, or by private sale, and in such manner and on such terms as to them shall seem meet, any shares so forfeited, and apply the proceeds to the use of the Company.

XVI. Municipal Corporations in this Province may subscribe for any number of shares in the Capital Stock of the said Company, or lend to or guarantee the payment of any sum of money borrowed by the Company from any Corporation or person, or indorse or guarantee the payment of any Debenture to be issued by the Company for the money by them borrowed, and shall have power to assess and levy from time to time upon the whole rateable property of the Municipality a sufficient sum to enable them to discharge the debt or engagement so contracted, — and for the like purpose to issue Debentures payable at such times and for such sums respectively not less than one hundred pounds currency, and bearing interest at such rate not exceeding eight per cent, as such Municipal Corporation may think meet: Provided always, that no Municipal Corporation shall subscribe for Stock in the said Company, unless the Bylaw authorizing such subscription shall have been first approved by a majority of the Municipal Electors of such Municipality, in the manner provided by the Consolidated Municipal Loan Fund Act sixteenth Victoria, chapter twenty-two, with regard to the raising of Loans under the said Act.

XVII. The Stock of the Company shall be deemed personal estate, and be transferable by instruments in writing, to be made in duplicate, one part of which shall be delivered to the Directors, but no shares shall be transferable until all previous calls thereon shall have been fully paid in, or the said shares shall have been declared forfeited for non payment of calls thereon.

XVIII. Each Shareholder shall be individually liable to the creditors of the Company, to an amount equal to the amount unpaid of in the Stock held by him, for the debts and liabilities thereof, and until the whole amount of his Stock shall have been paid up, when such individual liability shall cease.

XIX. The Directors shall at the first or at some other meeting after the day appointed for the general meeting, elect one of their number to be the President of the said Company, who shall

always, when present, be the Chairman of, and preside at all meetings of the Directors, and shall hold his office until he shall cease to be a Director, or until another President shall be elected in his stead, and they may in like manner elect a Chairman to preside at any meeting in the absence of the President

XX. The Directors at any meeting at which not less than a quorum shall be present, shall be competent to use and exercise all or any of the powers vested in the said Company, but no one Director shall have more than one vote at any meeting, except the Chairman, who shall, in case of a division of equal numbers, have the casting vote; and the Directors shall be subject to the examination and control of the Shareholders at their annual meetings, and be subject to the orders and directions from time to time made at such annual meetings.

XXI. Copies of the minutes of proceedings and resolutions of the Shareholders at any meeting, and of minutes of proceedings and resolutions of the Directors at their meetings, extracted from the Minute Books kept by the Secretary of the Company, and by him certified to be true copies extracted from such Minute Books, shall be *primâ facie* evidence of such proceedings and resolutions, in all Courts of civil jurisdiction, and all notices given by the Secretary of the Company by order of the Directors, shall be deemed notices by the said Directors and Company.

XXII. The Directors of the said Company shall have power and authority to borrow from time to time, either in this Province or elsewhere, such sums of money as may be expedient for completing and maintaining the said Canal and other the works connected therewith, and at a rate of interest not exceeding eight per cent, per annum, and to make the Bonds, Debentures or other securities granted for the sums so borrowed payable either in Currency or in Sterling, and at such place or places within this Province or without, as may be deemed advisable, and to sell the same at such prices or discount as shall be expedient, and to mortgage or pledge the lands, tolls and other property of the Company for the due payment of the said sums and interest thereon; and the said Company may become parties to promissory notes and bills of exchange for sums not less than twenty-five pounds, and any such promissory note made and indorsed, and any such bill of exchange drawn, accepted, or indorsed by the President or Vice-President of the Company, and countersigned by the Secretary and Treasurer, and under the authority of a majority of a quorum of Directors, shall be binding upon the said Company, and every such promissory note or bill of exchange so made, drawn, accepted or indorsed, after the passing of this Act, shall be presumed to have been properly made, drawn, accepted, or indorsed as the case may be, until the contrary be shewn; and in no case shall it be necessary to have the seal of the Company affixed to any such bill of exchange or promissory note; nor shall the President or Vice-President, Secretary or Treasurer of the Company, so making, drawing, accepting or indorsing any such promissory note or bill of exchange be thereby subjected individually to any liability whatever; Provided always, first, that nothing in this section shall be construed to authorize the said Company to issue any note payable to bearer, or any promissory note intended to be circulated as money or as the notes of a Bank; Provided, secondly, that the amount of bonds issued by the said Company shall not exceed the amount of the Capital Stock of the said Company.

XXIII. If any person or persons shall wilfully or maliciously break, throw down, damage or destroy any bank, lock, gate, sluice or any work, machine or device to be erected or made by virtue of this Act, to the prejudice of the said Company, or do any other wilful act, hurt or mischief, to disturb, hinder or prevent the carrying into execution, or completing, supporting or maintaining the said Canal, or any bridge, tunnel, aqueduct, sluice, lock, wear, pen for water, bank, reservoir, drain, wharf, quay, or any other work belonging to the said Company, every such person or persons so offending, shall forfeit and pay to the said Company the value of the damage proved by the oath of two or more credible witnesses to have been done; such damages, together with costs of suit in that behalf incurred, to be recovered by action in any Court of law in this Province having jurisdiction competent to the same: or in case of default of payment, such offender or offenders shall and may be committed to the common jail for any time not exceeding three months, at the discretion of the Court before which such offender shall be convicted.

XXIV. If any person shall float any timber on the said Canal, or shall suffer the loading of any boat, vessel or raft navigating in or upon the said Canal, so as by such overloading to obstruct the passage of any other boat, vessel or raft, and shall not immediately, upon due notice given to the owner or person having the care of such vessel, boat or raft, so obstructing the passage aforesaid, remove the same, so as to make a free passage for the other boats, vessels or rafts, every such owner or person floating such timber, or having the care of such boat, vessel or raft so obstructing the passage as aforesaid, shall forfeit and pay for every such offence the sum of five pounds currency; And if any person shall throw any ballast, gravel, stones or rubbish into any part of the said Canal, every such person shall, for every such offence forfeit a sum not exceeding five pounds currency, to be recovered as aforesaid, which said respective forfeitures shall be paid to the Company, to be by them applied for the purposes of the said Canal.

XXV. If any boat, vessel or raft shall be placed in any part of the said Canal so as to obstruct the navigation thereof, and the person having the care of such boat, vessel or raft, shall not immediately, upon the request of any of the servants of the said Company, made for that purpose, remove the same, he shall for every such offence forfeit a penalty of ten shillings of lawful money of Canada for every hour such obstruction shall continue; And it shall be lawful for the agents or servants of the said Company to cause any such boat, vessel or raft, to lie unloaded, if necessary, and to be removed in such manner as shall be proper for preventing such obstruction in the navigation, and to seize and detain such boat, vessel or raft, and the cargo thereof, or any part of such cargo, until the charges occasioned by such unloading and removal shall be paid or satisfied; and if any boat or vessel shall be sunk in the said Canal, and the owner or owners, or the person or persons having the care of such boat or vessel, shall not, without loss of time, weigh or draw up the same, it shall be lawful for the agents or servants of the said Company, to cause such boat or vessel to be weighed or drawn up, and to detain and keep the same, until payment shall be made of all expenses necessarily occasioned thereby.

XXVI. It shall and may be lawful for the President and Directors of the said Company, with the sanction of the Governor in Council, to regulate from time to time, and establish the rates of toll to be payable in respect of all timber, boats, vessels and other, craft, and of the cargoes and freightage thereof, and of all rafts navigating upon the said Canal; and the said Company shall

annually exhibit an account to each branch of the Legislature!, of the tolls collected upon the said Canal, and of the sumsexpended in keeping the same in repair, and also of the goods, wares and merchandize transported in and along the same: Provided always, that if, at any time after the expiration of five years from the time of commencement of the navigation upon any part of the said Canal, the Legislature shall deem the tolls levied thereon excessive, it shall be lawful for them to reduce the same to such a standard as they may think just, so that the same shall not be reduced to a rate which will produce to the said Company less than twenty pounds per centum per annum on the capital actually expended in making the said Canal.

XXVII. The said Company to entitle themselves to the benefit and advantages to them granted by this Act, shall and they are hereby required to make and complete the said canal, railway, towing paths, and other erections required for the navigation thereof, within five years from the passing of this Act, so as to be navigable for ships, steamers, schooners, boats, barges and rafts, otherwise this Act, and every matter and thing herein contained, shall cease and be utterly null and void, to all intents and purposes whatsoever.

XXVIII. And for preventing disputes touching the tonnage of any boat, barge, or other vessel navigating upon the said canal: Be it enacted, that the owner or master of every such boat, barge or vessel shall permit and suffer every-such- boat, barge or vessel to be guaged or measured, and in case of refusal so to do, the owner thereof shall forfeit and pay the sum of forty shillings currency; audit shall be lawful for the said Company or their toll-gatherer, or such other person or persons as shall be appointed by them for that purpose, and such owner or master, each to choose one person to measure and ascertain such tonnage, and to mark the same on such boat, barge, or other vessel, which mark shall always be evidence of the tonnage in all questions respecting the payment of the said rates or, dues, and if such owner or master shall refuse or decline to choose a person in his behalf as aforesaid, then the person appointed by the said Company, or their toll-gatherer, shall alone have the power of ascertaining such tonnage.

XXIX. All persons whosoever shall have free liberty to use with horses, cattle and carriages, the private roads and ways to be made under the provisions of this Act (except the towing paths) for the purpose of conveying any goods, wares, merchandise, lumber or commodities, to and from the said canal,, and also to navigate the said canal with any schooners, boats; barges, vessels or rafts, and to use the said wharves and quays for loading and unloading any goods, wares, merchandise, lumber or commodities, and also to use the said towing paths with horses for drawing and hauling such boats and vessels, upon payment of such rates or dues as shall be established by the said Company, as aforesaid.

XXX. The said several dues shall be paid to such person or persons, at such place or places near to the said canal, in such manner and under such regulations as by the By-laws of the said Company shall be directed; and in case of denial or neglect in payment of any such rates or dues, or any part thereof, on demand, to the person or persons appointed to receive the same, the said Company may sue for and recover the same any Court having jurisdiction therein, or the person or persons to whom the said rates or dues ought to be paid, may, and he or they is and are hereby

empowered to seize such boat, vessel, barge or raft, for and in respect whereof such rates or dues ought to be paid, and detain the same until payment thereof.

XXXI. It shall and maybe lawful for the said Company, with the sanction of the Governor in Council, to take and appropriate for the use of the said Canal, but not to alienate, so much of the wild land of the Crown not heretofore granted or sold, lying on the route of the said Canal, as may be necessary for the completion thereof; as also so much of the lands covered with the waters of any stream, lake or bay, or of their respective beds, as may be found necessary for the making and completing, or more conveniently using the same, and thereon to erect wharves, inclined planes, docks, or other works, as to the Company shall seem meet.

XXXII. If any plaint shall be brought or commenced against the said Company or against any person or persons for' any thing done in pursuance of this Act, or in execution of the powers and authorities, or the orders and directions hereinbefore given or granted, every such suit shall be brought or commenced within six calendar months next after the act committed, and not afterwards, and the defendant or defendants shall and may plead the general issue and give: this Act and the special matter in evidence at any trial to be had thereon, and that the same was done in pursuance and by the authority of this Act; and if it shall appear to have been so done, or if any action or suit shall be brought after the time hereinbefore limited, then a verdict shall be given for the defendant.

XXXIII. It shall be lawful for the Governor in Council, at any time alter the expiration of three years from the completion of the said Canal, to purchase the same, with all its hereditaments, stock and appurtenances, in the name and on behalf of Her Majesty, upon giving to the said Company three months' notice in writing of his intention to purchase, and paying for the said Canal the amount of its original cost, and six per cent, per annum interest thereon, together with a profit to the said Company of ten pounds per cent, on the amount of their outlay and interest as aforesaid.

XXXIV. This Act shall be deemed a Public Act.