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No. 276.

(PRIVATE BILL.)

1st Session, 4th Parliament, 16 Victoria, 1853.

BILL.

An Act to incorporate the *Erie and
Ontario Insurance Company.*

Received and read a first time, Tuesday, 8th
March, 1853.

Second reading, Monday, 14th March, 1853.

MR. MORRISON.

QUEBEC:

PRINTED BY JOHN LOVELL, MOUNTAIN STREET.

An Act to incorporate the *Erie and Ontario Insurance Company.*

WHEREAS William Hope, George Boomer, Joseph A. Woodruff, John Simpson, Alex. R. Christie, Peter Christie, Robert Connor, John Swinton and others, have petitioned the Legislature, praying that an Association, under the style and title of "*The Erie and Ontario Insurance Company*," may be incorporated, as well for the purpose of enabling parties, owners of or interested in property, mutually to insure each other, as also the better to enable such Institution to conduct and extend the business of Fire Insurance; And whereas it hath been considered that it would be highly advantageous if such Corporation was established; Be it therefore enacted, &c.,

Preamble.

That the said William Hope, George Boomer, Joseph A. Woodruff, John Simpson, Alex. R. Christie, Peter Christie, Robert Connor, John Swinton, and all such other persons as shall hereafter become Members of the said Company, are hereby constituted a Body Corporate, by the style and title of "*The Erie and Ontario Insurance Company*;" and by that name they and their successors shall have continued succession, and shall be capable in law of suing and being sued, pleading and being impleaded, answering and being answered unto, defending and being defended, in all manner of actions, suits, complaints, matters and causes whatsoever; and that they and their successors may have a Common Seal, and may change and alter the same at pleasure, may mutually insure their respective properties, under the restrictions, limitations and conditions hereinafter contained, and may also insure the houses and personal property of others, for such time and at such premiums as shall be agreed upon between the said Corporation and parties insuring; and also, that they and their successors, by and under the name of "*The Erie and Ontario Insurance Company*," shall be capable, in law, of purchasing, holding and conveying any estate, real or personal, for the use of the said Company, subject to the rules and conditions hereinafter mentioned.

Certain persons incorporated-
Corporate name and powers.

II. And be it enacted, That the Stock and property of the said Company shall be held liable for the payment of all losses that may from time to time occur to the said Company, and for that purpose shall be divided into, and consist of two separate and distinct descriptions of Stock, namely, Mutual and Proprietary; the Mutual Stock being composed of Premium Notes deposited for the purpose of Mutual Insurance, together with all payments and other property received or held thereon, or in consequence of such Mutual Insurance; and the Proprietary Stock being composed of Stock in shares, subscribed and paid for the purpose of Fire Insurance to others, which Proprietary Stock shall not exceed one hundred thousand pounds, divided into shares of ten pounds each; and also, that the Members of, or persons composing the said Company, shall in

Division of stock and Members into Mutual and Proprietary-

like manner consist of, and be divided into two classes, namely, those who deposit Premium Notes for the purpose of Mutual Insurance, denominated Mutual Members, and Proprietary Members, or those who hold shares in the Proprietary Stock of the said Company; Provided always, that nothing herein contained shall prevent the same person from holding at the same time both descriptions of Stock.

Proviso.
Similar Division of profits, losses and expenses.

III. And be it enacted, That persons being Members of the said Corporation by reason of deposit of Premium Notes for the purpose of Mutual Insurance, shall not be held liable for any claims for losses or payments beyond the amount of his, her, or their Premium Notes respectively; and neither shall Proprietary Members be held liable for any claims for losses or payments beyond the amount of such share or shares of the Proprietary Stock which each may respectively hold; and also, in all the transactions of the said Company, the profits and benefits arising from or on account of the Mutual Branch of the said Company, shall be secured to the Members thereof; and, in like manner, the profits and benefits arising from or on account of the Proprietary Branch of the said Company, shall be secured to the Proprietary Members; and further, all the expenses necessary and incurred for the conducting and management of the said Company, shall be fairly assessed upon and divided between each Branch or Department of the said Company.

As to Dividends and Bonus.

IV. Provided always, and be it enacted, That no Dividend or Bonus shall be declared or paid out of the Capital Stock of the said Company, whether Proprietary or Mutual.

Power to hold property real or personal.

V. And be it enacted, That the said Company, by its corporate name aforesaid, shall be capable of purchasing, having and holding, to them and their successors, such estate, real, personal or mixed, as may be requisite for its accommodation in relation to the convenient transaction of its business; and may take and hold any real estate, *bona fide* mortgaged to the said Company by way of security, for the payment of any debts which may be contracted with the said Company, and may proceed on the said mortgaged securities for the recovery of the monies thereby secured, either in law or equity, in the same manner as any other mortgagee is or shall be authorized to do; and also, to purchase on sales made by virtue of any proceedings at law or equity, or otherwise to receive and take any real estate in payment, or towards the satisfaction of any debt previously contracted and due to the said Corporation, and to hold the same until they can conveniently and advantageously sell and convert the same into money or other personal property; Provided always, that the lands, tenements and hereditaments which it shall be lawful for the said Company to hold, shall be only such as may be requisite for its accommodation in relation to the convenient transaction of its business, or such as shall have been *bona fide* mortgaged to it by way of security, or conveyed to it in satisfaction of debts previously contracted in the course of its dealings, or purchased at sales upon judgments which shall have been obtained for such debts.

And to purchase at sales of property mortgaged to it.

Business of the Company defined.

VI. And be it enacted, That it shall not be lawful for the said Company to deal in, use or employ any part of the funds or monies thereof, in buying or selling any goods, wares or merchandize in the way of traffic, or in banking operations; but it shall, nevertheless, be lawful for the said Company to purchase or hold any Stock, Government securities, or other

securities of Public Companies, or funded debt, for the purpose of investing therein any part of their funds or money; and also, to sell and transfer the same, and again to renew such investment when and as often as a due regard to the interests of the said Company shall require; and also, to make loans of the funds on bond and mortgage, and the same to call in and re-loan, as occasion may render expedient.

Investments.

VII. And be it enacted, That the property, affairs and concerns of the said Company shall be managed and conducted by a Board of nine Directors, one of whom shall be chosen President, and of which Board two Directors shall go out of office by rotation each year, but who shall, nevertheless, be immediately eligible for re-election as Directors; and the election of two Directors, in place of those so retiring from office, shall be held and made at the General Annual Meeting of the Company by such Members thereof as shall attend for that purpose, either in their own proper persons or by proxy, and all elections of such Directors shall be by ballot, and the two persons who shall have the greatest number of votes at any election, shall be Directors; and if it shall, at any such election, happen that two or more persons shall have an equal number of votes, in such manner that a greater number of persons than two shall, by a plurality of votes, appear to be chosen Directors, then the said members hereinbefore authorized to hold such election, shall proceed to elect by ballot, until it is determined who of the said persons, so having an equal number of votes, shall be Director or Directors, so as to complete the whole number of nine, and the said Directors so chosen, as soon as may be after the said election, shall proceed to elect one of their number to be President; and if any vacancy or vacancies shall at any time happen among the Directors, or in the office of President, by death, resignation, removal from the Province, or ceasing to hold the interest in the Corporation hereinafter required, such vacancy or vacancies shall be filled up 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; Provided always, that no person shall be elected to the office of a Director who is not a Member of the Company, holding an interest therein, either to the extent of Mutual Insurance to the amount of two hundred pounds, and if not Mutual Insured, to possess ten shares of Proprietary Stock.

Number and Election of Directors: of President.

Ties.

Vacancies.

Qualification of Directors.

VIII. And be it enacted, That the Board of Directors shall name and determine the day for the holding of the General Annual Meetings of the Company; and public notice of all General Meetings shall be given in at least two newspapers, which may be published in the Province of Canada, at least one month previous to the time of holding the said General Meeting or Meetings; and at the first General Annual Meeting of the Company, to be held as above directed, the Members then present shall decide and determine, by a By-law of the Company to be then passed, the mode and manner in which the two retiring Members shall be then and in future elected; and the notice of all subsequent General Annual Meetings for election of Directors shall contain the names of the two retiring Directors.

Day of annual General Meeting, &c.

Retiring Directors.

IX. And be it enacted, That each Member of the said Company shall be entitled to the number of votes proportioned to the amount of Stock by him, her or them insured or held at least one month prior to the time of voting, according to the following rates, that is to say, Mutual Members, for any sum insured in the said Company amounting to fifty pounds,

Proportion of votes to shares.

one vote, two hundred pounds, two votes, four hundred pounds, three votes, and five hundred pounds, four votes; Proprietary Members, one vote for each share not exceeding four, five votes for six shares, six votes for eight shares, seven votes for ten shares, and one vote for every five shares above ten.

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Powers of Directors.

By-laws.

Rates of insurance.

Dividend.

Officers.

Proviso: *Quorum*, for the purposes of this section.

X. And be it enacted, That any number of the Directors of the said Company, being a majority of the said Directors, shall have full power and authority to make, prescribe and alter such By-laws, Rules, Regulations and Ordinances as shall appear to them proper and needful, touching the well ordering of the Company, the rates and amount of Insurance and issuing of Policies, the management and disposition of its Stock, property, estate and effects, and also, to call in any instalment or instalments, or assessment or assessments, at such time and season and times and seasons as they shall think fit, giving due notice thereof as hereinafter provided; and also, to declare and cause to be paid or distributed to the respective Stockholders of the Company, any dividend or dividends of profits, at such times and seasons as they may deem expedient; and also, to appoint a Secretary and Treasurer, with such salary and allowance to each, as well as to other officers or agents of the Company, and take security from them for the due performance of their respective duties, as they shall think meet and advisable; Provided always, that for the purposes in this section mentioned, except as hereinafter specially provided, a majority of the Directors shall be present and assisting, and it shall not be competent for a Board consisting of a less number of Directors than were present at the time, to alter, repeal or amend any matter or thing so done.

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Failure of election, not to dissolve the Company.

XI. And be it enacted, That if it shall happen at any time, or for any cause, that an election of Directors shall not be made on any day when, pursuant to this Act or the By-laws of the Company, it ought to have been made, the said Corporation shall not for that cause be dissolved, but it shall be lawful, on any other day, to hold and make an election of Directors, in such manner as shall be regulated by the By-laws and Ordinances of the Company, and the Directors in office shall so continue until a new election shall be made.

Weekly Meetings.

Quorum.

Votes and casting vote.

Proviso.

XII. And be it enacted, That there shall be a Weekly Meeting of the Board of Directors of the said Company, and any three or more of the said Directors shall be a *quorum*, for the purpose of transacting and managing the details of the business and affairs of the said Company; and at all meetings of the Board of Directors, all questions before them shall be decided by a majority of voices or votes, and in case of an equality of votes, the President or presiding Director shall give the casting vote over and above his proper vote as a Director; Provided always, that nothing herein contained shall be construed to authorize the making, prescribing, altering or repealing any By-laws or Ordinances of the said Company, or calling in any instalments or assessments on Stock, or declaring any dividends of profits, or the appointment of Treasurer or Secretary, or the appointment of salaries to, or securities from, officers or agents of the said Company, by any less number of Directors or in any other manner than is mentioned heretofore.

Compensation to Directors.

XIII. And be it enacted, That the said Directors, and such others as may be chosen by the said Company, shall receive a reasonable com-

5 pensation for their attendance at the Board, to be ascertained and determined by a By-law or Rule of the Board, which compensation shall not exceed fifteen shillings to Members living within the United Counties of Lincoln and Welland, and seven shillings and sixpence to those residing
 10 in the Town of Niagara; and the said Directors shall be indemnified and saved harmless by the Members of the said Corporation, in proportion to
 15 their several interests in the same, in and for their giving out and signing Policies of Insurance, and all other lawful acts, deeds and transactions done and performed in pursuance of this Act; and neither shall the said
 20 Directors be answerable for or chargeable with the defaults, neglects or *misdeeds* of them.

Indemnification.

XIV. And be it enacted, That any person who, as Secretary, Deputy-Secretary, Treasurer, Clerk, or other officer of the Company, shall be
 5 guilty of any wilful fraud, in any matter or thing pertaining to his office or the duties thereof, shall be guilty of a misdemeanor; and any person
 10 offering to vote in person at any election of Directors in the said Company, who shall falsely personate another, or who shall falsely sign or affix the name of any other person or Member of this Company to any appointment of a proxy, shall be guilty of a misdemeanor.

Frauds of Officers to be misdemeanor.

Forging proxies or personating Members.

XV. And be it enacted, That the Corporation hereby created shall have power and authority to make and effect Contracts of Insurance with
 5 any person or persons, body politic or corporate, against loss or damage by fire on any houses, stores, or other buildings whatsoever, and in like
 10 manner, on any goods, chattels, or personal estate whatsoever, and for such premises or consideration, and under such restrictions as may be
 15 agreed upon by and between the Company and the persons agreeing with them for Insurance, and generally to do and perform all other necessary matters and things connected with and proper to promote those
 20 objects.

Power to insure.

XVI. Provided always, and be it enacted, That in all cases of Mutual
 5 Insurance, there shall not be insured more than two-thirds the value of any building, nor shall a sum be involved exceeding five hundred pounds on any one risk; and no Mutual Insurance shall be effected on any kinds
 10 of mills, carpenters' shops or others, which, by reason of the trade or
 15 business followed, are rendered extra hazardous.

Limitation as to mutual Insurance.

XVII. And be it enacted, That all Policies or Contracts of Insurance
 5 issued or entered into by the said Company, shall be signed by the President and countersigned by the Secretary, or as otherwise directed by the Rules and Regulations of the Company in case of their absence, and being
 10 so signed and countersigned, and under the Seal of the said Company, shall be deemed valid and binding upon them according to the tenor and meaning thereof.

Policies how executed.

XVIII. And be it enacted, That in all cases of Mutual Insurance, the
 5 assured shall, on the application for Insurance, state the true nature of his title to the land upon which the building or buildings to be insured are erected, and whether the same be encumbered, and if encumbered, to what extent, otherwise the Policy of Insurance granted thereon shall be
 10 void.

Duty of persons effecting Mutual Insurance.

Statement of affairs to be submitted yearly.

XIX. And be it enacted, That at the Annual General Meeting of the said Company, and before the Members then assembled, the Board of Directors shall exhibit a full and unreserved statement of the affairs of the Company; of the funds, property and securities, shewing the amount of real estate, in bonds and mortgages, in notes and the securities thereof, in public debt or other stock, and the amount of debt due to and from the said Company. 5

Notice of Loss.

XX. And be it enacted, That in case of any loss or damage by fire happening to any property insured with the said Company, immediate notice thereof shall be given by the assured to the Secretary of the Company, or to the Agent of the Company, if there should be one acting for it in the neighbourhood of the place where such fire occurred, and the assured shall, as soon after as may be, furnish to such agent, or otherwise to the Secretary, a full statement of all particulars of the said fire, as far as can be ascertained, together with a detailed account of all damage done, which statement and account shall be verified, upon oath, by the parties making the same, if required; and the Directors, upon view of the same, or in such other way as they may deem proper, shall ascertain and determine the amount of such loss or damage; and if the party suffering shall not be satisfied with the determination of the Directors, the question shall then be submitted to three disinterested persons as Referees, one of whom shall be named by the suffering party and one by the Board, and the two Referees so named shall choose a third, and the decision or award of a majority of them shall be binding; and if the award is not satisfactory, either party may sustain its case in an action at law; and if, upon the trial of such action, a greater sum shall be recovered than the amount determined upon by the Directors, the parties suffering shall have judgment therefor against the Company, with interest thereon from the time at which payment for such loss or damage should have been made by the terms of the Policy, had no such question or disagreement arisen, with costs of suit; but if no more shall be recovered than the amount so previously determined, or a less sum be awarded, then the plaintiff or plaintiffs in such suit shall not be entitled to costs against the defendants, but the defendants shall be entitled to costs, as in the case of a verdict for them. 10

Statement of loss.

Duty of Directors.

Arbitration in cases of difference. If the award dissatisfy either party.

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Obligation of members mutually assured.

Rights of Company.

XXI. And be it enacted, That every Mutual Member of the Company shall be and is hereby bound and obliged to pay his or her portion of all losses and expenses happening or accruing in or to the Mutual Branch of the Company, during the continuance of his or her Policy of Insurance; and all the right, title, interest and estate at the time of the Insurance of the assured, of, in or to the building insured by and with the said Company, and to the lands on which the same shall stand, and to all other lands thereto adjacent, which shall be mentioned and declared liable to the Policy of Insurance, shall stand pledged to the said Company, and the said Company shall have full power to sell, demise and mortgage the same, or any part thereof, to meet the liabilities of the insured for his, her or their proportion of any losses or expenses happening or accruing to the said Company, during the continuance of his, her or their Policy, which sale, demise or mortgage shall be made in such manner as shall be specified in the Policy of the assured. 35
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Payment by mutual members of their

XXII. And be it enacted, That the Directors shall, after receiving notice of any loss or damage by fire sustained by any Mutual Member, with account and proof thereof, and ascertaining the same, or after the 50

recovery of any judgment, as aforesaid, against the Company for such loss or damage, settle and determine the sums to be paid by the several Mutual Members thereof as their respective proportions of such loss, and publish the same in such manner and form as they shall see fit, or as by the By-laws shall have been prescribed, and the sum to be paid by each Mutual Member shall always be in proportion to the original amount of his or her Deposit Note or Notes, and shall be paid to the Treasurer within thirty days next after the publication of such notice; and if any Member shall for the space of thirty days after the publication of such notice, neglect or refuse to pay the sum assessed upon him, her or them, or his, her or their proportion of any loss or damage aforesaid, in such case the Directors may sue for and recover the whole amount of his, her or their Deposit Note or Notes, with costs of suit, and the money thus collected shall remain with the Treasurer of the Company, subject to the payment of such loss or expense as shall or may accrue during the continuance of his, her or their Policy, and the balance, if any, remaining, shall be returned to the party from whom it was collected on demand, after thirty days from the expiration of the term for which Insurance was made; Provided always, that no payment, assessment or instalment shall be called in on the Premium or Deposit Notes, until all savings, profits or funds arising from or on account of payments made or monies received on account of the Mutual Branch of Insurance of said Company shall have been first applied to and expended upon the payment of losses or damage previously accruing therein.

shares of any losses.

Proceedings in case of refusal, &c.

XXIII. And be it enacted, That if it shall ever happen that the whole amount of Deposit Notes shall be insufficient to pay the loss occasioned by any one fire or fires, in such case the sufferers insured by the said Company shall receive, toward making good their respective losses, a proportionate dividend of the whole amount of such Deposit Notes, according to the sums by them respectively insured; and any Member, upon payment of the whole of his or her Deposit Note, and surrendering his or her Policy, before any subsequent loss or expense has been incurred, shall be discharged from the said Company.

If the amount of all the deposit notes be insufficient to pay the losses.

XXIV. And be it enacted, That whenever any assessment is made on any Premium Note given to the said Company for any hazard taken by the said Company, or as consideration for any Policy of Insurance issued or to be issued by the said Company, and an action is brought to recover such assessment, the Certificate of the Secretary of the Company, specifying such assessment and the amount due to the Company on such Note by means thereof, shall be taken and received as *prima facie* evidence thereof in all courts and places whatsoever.

Evidence in actions for assessment on premium notes.

XXV. And be it enacted, That when any house or other building shall be alienated by sale or otherwise, the Policy of Mutual Insurance shall be void, and be surrendered to the Directors of the Company to be cancelled, and, upon such surrender, the assured shall be entitled to receive his, or her or their Deposit Note or Notes, upon payment of his, her or their proportion of all losses and expenses that have occurred prior to such surrender; Provided always, that the grantee or alienee having the Policy assigned to him, her or them, may have the same ratified and conferred to him, her or them, for his, her or their own proper use and benefit, upon application to the Directors, and with their consent, within thirty days after such alienation, on giving proper security, to the satisfac-

Policy cancelled by sale of property assured.

Proviso.

tion of the Directors, for such portion of the Deposit or Premium Note as shall remain unpaid, and by such satisfaction and confirmation, the party causing the same shall be entitled to all the rights and privileges, and be subject to all the liabilities, to which the original party insured was entitled and subjected under this Act.

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As to premium notes on leased property burned.

XXVI. And be it enacted, That in case any building or buildings, situated upon leased lands, and mutually insured by the Company, be destroyed by fire, in such cases the Company may retain the amount of the Premium Note given for the Insurance thereof until the time for which such Insurance was made shall have expired, and at the expiration thereof, the assured shall have the right to demand and receive such part of the said retained sum or sums as has not been expended in losses or assessments.

Five per cent to be paid down on proprietary stock.

Proviso: as to instalments. Forfeiture for non payment.

XXVII. And be it enacted, That five per cent., on each share of the Proprietary Stock, shall be ready as a deposit at the time of subscribing thereto, to be called for by the Directors in such manner and as soon as they may deem expedient, and the remainder shall be paid in such instalments as the Directors for the time being shall appoint; Provided, that no instalment shall exceed ten per cent. upon the Capital Stock, or be called for, or become payable in less than thirty days after public notice shall have been given in one or more of the several newspapers published in every County where Stock may be held, to that effect; and if any Shareholder or Shareholders refuse or neglect to pay to the said Directors the instalment due upon any share or shares held by him, her or them, at the time when required by law so to do, such Shareholder or Shareholders, as aforesaid, shall forfeit such shares, as aforesaid, together with the amount paid by them, and the said share or shares so forfeited, it shall and may be lawful for the said Directors to sell, and the sum arising from such sale, together with the amount previously paid thereon, shall be accounted for and divided in like manner as the other monies of the Proprietary Branch of this Corporation.

Actions for instalments.

XXVIII. And be it enacted, That in case the said Directors shall think it more expedient in any case to enforce the payment of any instalment or instalments of the Proprietary Stock in the said Company, held by any person or persons and called in and unpaid, than to forfeit the same, it shall and may be lawful for the said Company to sue for and recover of and from such person or persons such instalment or instalments, as aforesaid, which shall be called in and which shall be unpaid at the time or times when the same shall be due or payable, which said instalments shall be sued for and recovered, with interest thereon, in any action or actions of debt in any Court having jurisdiction in civil cases to the amount; and in any such action, it shall not be necessary to set forth the special matter in the declaration, but it shall be sufficient to allege that the defendant is the holder of one or more shares (stating the number) in the Stock, and is indebted to the Company in the sum to which the calls in arrear may amount; and in any such action, it shall be sufficient to maintain the same, that the signature of the defendant to some book or paper, by which it shall appear that such defendant subscribed for a share, or a certain number of shares, of the Stock of the said Company, be proved by one witness, whether in the employment of or interested in the Company, or not, and that the number of calls in arrear have been made.

Allegations and evidence in such actions.

XXIX. And be it enacted, That the Proprietary Stock of the said Company shall be assignable and transferrable, according to such Rules as the Board of Directors shall make and establish, and no Stockholder indebted to the Company shall be permitted to make or transfer, or receive a dividend until such debt be paid, or security for its being paid be given to the satisfaction of the Directors.

Assignment of proprietary stock.

XXX. And be it enacted, That no transferrable Share or Stock shall enable the transferee to vote until the expiration of thirty days from such transfer.

Votes on transferred stock.

XXXI. And be it enacted, That if any Insurance on any house or building shall be and subsist in the said Company and in any other office, or from and by any other person or persons, at the same time, the Insurance made in and by this Company shall be deemed and become void, unless such double Insurance subsist with the consent of the Directors, signified by indorsement on the Policy, signed by the President and countersigned by the Secretary, or otherwise, as directed by the By-laws and Regulations of the Company.

As to double Insurances.

XXXII. And be it enacted, That in all actions, suits and prosecutions in which the said Company may be engaged at any time, the Secretary, or other officer of the said Company, shall be a competent witness, notwithstanding any interest he may have therein.

Officers to be competent witnesses.

XXXIII. And be it enacted, That the said Company shall, when required by either of the three branches of the Legislature, make a full and unreserved statement of the affairs of the Company, of the funds, property and securities, shewing the amount in real estate, in bonds and mortgages, in notes and the securities thereof, in public debt or other stock, and the amount of debt due to and from the said Company, and also a list of the Stockholders and of the Directors of the Company.

Statements to the Legislature.

XXXIV. And be it enacted, That this Act shall be deemed a Public Act, and shall extend to all Courts of Law or Equity in this Province, and be judicially taken notice of as such by all Judges, Justices, and other persons whatsoever, without the same being specially shewn or pleaded.

Public.

XXXV. And be it enacted, That it shall at all times hereafter be lawful for the Legislature of this Province to repeal, alter or amend this Act.

Act may be repealed or amended.