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No. 304.

3rd Session, 5th Parliament, 20 Victoria, 1857

(PRIVATE BILL.)

BILL.

An Act to incorporate the Fort Erie Ship
Canal Company.

Received and read, first time, Friday, 1st
May, 1857.

Second reading, Monday, 4th May, 1857.

MR. DALY.

TORONTO :
PRINTED BY JOHN LOVELL,
YONGE STREET.

An Act to incorporate the Fort Erie Ship Canal Company.

WHEREAS the construction of a Ship Canal around the rapids of the Niagara River, at or near the village of Waterloo or Fort Erie, in the Township of Bertie, would be of great advantage to the public, and the persons hereinafter named, (amongst others,) have petitioned for an Act of Incorporation for facilitating that object ; Therefore Her Majesty, &c., enacts as follows :

I. William Wallace, John Douglas, James Stanton, Philip Dorsheimer, George Hardison, William A. Thomson, John Frazer, David Christie, Thomas Mayne Daley, James S. Wadsworth, James Wadsworth, Otis F. Presbrey, Cyrus P. Lee, Theodore D. Barton, John R. Lee, and all such other person or persons as shall under the provisions of this Act become subscribers to or proprietors in the Company hereby intended to be incorporated, shall be and are hereby united into a Company, for constructing, maintaining, working, and managing a Ship Canal around the rapids of Niagara River, at or near the village of Waterloo, commonly called The Fort Erie Rapids, in the said Township of Bertie, according to the rules, orders, and directions of this Act, and shall for that purpose be a body corporate and politic, by the name of the "Fort Erie Ship Canal Company." And the said Company shall be and they are hereby authorized and empowered, from and after the passing of this Act, by themselves, their agents, officers, workmen, and servants, to make and complete the Canal aforesaid, and to purchase, acquire, and hold such real estate as is hereinafter mentioned, and from time to time to sell, alienate, and dispose thereof, and to acquire others in lieu thereof, as may be requisite for the object aforesaid.

II. The Capital of the said Company shall be one hundred and twenty-five thousand dollars, divided into one thousand two hundred and fifty shares of one hundred dollars each, with power, from time to time, to increase the said Capital Stock to one hundred and seventy-five thousand dollars ; such shares as aforesaid shall be, and the same are hereby vested in the shareholders, and their respective heirs, executors, administrators, and assigns, to their proper use and behoof, proportionately to the sums subscribed and paid by each of the said shareholders respectively ; According to the same proportion each of the said shareholders respectively shall be entitled to have, receive and take their proportions respectively, in the net profits and income that may arise or accrue therefrom ; And the said shareholders respectively may sell, transfer, give, or alienate the shares held by them respectively, whensoever they respectively consider fit, subject, however, to the By-laws of the said Company, to be made by the Directors hereinafter mentioned, and as hereinafter provided ; and the said shares shall be deemed personal estate, notwithstanding the conversion of any portion of the said Capital Stock into land ; and no shareholder shall

Preamble.

Certain persons incorporated.

Corporate name and powers.

Capital stock of Company to be \$125,000. Power to increase stock to \$175,000.

Shareholders may sell and transfer shares.

Shareholders not liable for

more stock than held by him.

be liable for the payment of any debt or obligation due by the said Corporation beyond the unpaid amount of the shares held by him in the same.

Vote by proxy.

III. At all meetings of the said Corporation, each shareholder may vote by proxy, duly appointed in writing or in person, and shall be entitled to one vote for each share held by him in his own name, or in the names or name of the person or persons of whom he may be the heir at law, or the proper legal executor, administrator, or legatee, for at least one calendar month previous to the day of election; and all questions proposed or submitted for the consideration of the said meetings shall be finally determined by the majority of such votes.

Books of subscription to be opened in Fort Erie, Brantford, and Toronto.

IV. The persons hereinbefore named, or the majority of them, shall cause books of subscription to be opened in the village of Fort Erie aforesaid, in the Town of Brantford, and in the City of Toronto, for thirty days and afterwards, in such other places as they may from time to time appoint, until the meeting of the shareholders hereinafter provided for, for receiving the subscriptions of persons willing to become subscribers to the said undertaking, and for this purpose it shall be their duty, and they are hereby required to give public notice in one or more newspapers, published in the County of Welland, in the Town of Brantford, and in the said City of Toronto respectively, as they or a majority of them may think proper, at the time and places at which such books will be opened, and ready for receiving subscriptions as aforesaid, the persons authorized by them to receive subscriptions, and a chartered Bank or Banks into which the ten per cent. thereon is to be paid at the time hereafter limited for such payment; and every person whose name shall be written in such books as a subscriber to the said undertaking, and shall have paid within ten days after the closing of the said books into the Bank or Banks aforesaid, or any of the branches or agencies thereon, ten per centum on the amount of Stock so subscribed for, to the credit of the said Company, shall thereby become a shareholder of the said Company, and shall have the same rights and privileges as such as are hereby conferred on the several persons who are herein mentioned by name as members of the said Corporation; and such ten per centum shall not be withdrawn from the said Bank or Banks, or otherwise applied, except for the purposes of the said Company, or upon the dissolution thereof, for any cause whatsoever; Provided further, that if the total amount of subscriptions within the thirty days limited as aforesaid, shall exceed the said sum of one hundred and twenty-five thousand dollars, then in such case the shares of each subscriber or subscribers shall be as near as may be proportionably reduced by the persons hereinbefore named, or a majority of them, until the total number of shares shall be brought down to one thousand two hundred and fifty shares.

Public notice thereof to be given in one or more Newspapers.

Who shall be considered a Shareholder.

Proviso.

General meeting of Shareholders.

Ten days' notice thereof to be given.

Nine Directors to be appointed.

V. So soon as the said one hundred and twenty-five thousand dollars, the said Capital Stock of the said Company, shall have been subscribed, and the ten per centum paid as aforesaid, it shall be the duty of the said persons hereinbefore named, or a majority of them, to call a general meeting of the shareholders, for the purpose of putting this Act into effect; which said meeting shall be held at the village of Fort Erie aforesaid, and at least ten days previous notice thereof shall be given, which said notice shall be considered duly given by one or more publications thereof, in one or more newspapers published in the County of Welland, the Town of Brantford, and the City of Toronto respectively, at which said general meeting the shareholders shall choose nine Directors, in the manner, and qualified as hereinafter mentioned, who shall hold office until the first annual general

meeting for the election of Directors, and until others are appointed in their stead.

VI. In each year after the said meeting hereinbefore provided for the first election of Directors, the annual general meeting of the said shareholders shall be held on the first Tuesday in July in each year, at the said village of Fort Erie, at such hour and place as the said Directors may appoint; and public notice shall be given thereof, according to the time and manner provided in the next foregoing section of this Act.

Annual general meeting to be held in July in each year.

VII. At such first and at every subsequent annual general meeting of the said Shareholders hereinbefore directed, the said Shareholders or a majority of them there present, either by proxy or in person, by vote according to the said number of shares, shall choose nine persons then being Shareholders in the said Corporation, which persons so chosen shall be the Board of Directors to manage, direct and carry on the affairs and business of the said Corporation for one year next following such annual meeting, or until another Board of Directors shall be appointed, and particularly such matters and things as are by this Act hereinafter directed and authorized to be done by such Directors and as shall from time to time be ordered by such annual or other general meetings of the said Shareholders, and shall have power to name and appoint from the members of the said Committee a President, Vice-President, Treasurer and Secretary; And at any meetings of the said Board duly held, any five members of such Board shall be a quorum and may exercise the powers of the said Board: Provided always, that such President or Vice-President in the absence of the President, to be chosen as aforesaid, in addition to his own vote shall have a casting vote in case of an equal division of votes at the meetings of the aforesaid Directors: Provided always, that such Board shall from time to time make reports of their proceedings to and be subject to examination and control of the said general meetings of the Shareholders, and shall pay obedience to all such orders and directions in and about the premises as shall from time to time be ordered and directed by the said Shareholders at any such general meetings, such orders and directions not being contrary to the provisions of this Act or to the laws of this Province; Provided also, that the Directors who are to be chosen at the first meeting of the said Shareholders shall be a Board for the purposes aforesaid until the said first annual general meeting and shall have the like powers and exercise all or any of the powers vested by this Act in the said Board to be chosen at such first or other general annual meeting: Provided also, further, that the members of any such Board at any time going out of office may be re-elected: Provided also, further, that security may be taken from any of the office bearers of the said Company for the due fulfilment of their duties; And provided also, further, that any Stockholder in the said Company, whether a British subject or an alien or a resident in Canada or elsewhere, shall have an equal right to hold Stock in the said Company and to vote on the same and to be eligible to office in the said Company.

Board of Directors to be appointed.

Directors to hold office for one year.

President, Vice president &c.

Quorum. Proviso. President to have casting vote.

Proviso. Board of Directors to make reports at annual meetings of Shareholders.

Proviso. Directors appointed at first meeting of Shareholders to have same powers as other Directors.

Proviso. Security from persons holding office.

Proviso. Any stockholder, whether British Subject or alien to have equal right to hold stock in said Company.

Failure of first annual meeting not to dissolve Corporation.

Special meeting to be held in such case.

VIII. The failure to hold the first annual general meeting or any other meeting, or to elect such Board of Directors shall not dissolve the said Corporation, but such failure or omission shall and may be supplied by and at any special meeting to be called as the said Directors may appoint for that purpose, and until such election of a new Board, those who may be in office for the time being shall be and continue in office and exercise

all the rights and powers thereof until such new election be made as hereinbefore provided.

Board to have full power to conduct business of Corporation.

IX. The said Board shall have and be invested with full power and authority to conduct, manage oversee, and transact all and singular the concerns, affairs and business of the said Corporation, and all matters and things whatever in anywise relating to or concerning the same, and amongst other things :

Appointment of engineers, agents, and servants.

Firstly. To appoint and employ and remove all such engineers, agent or agents, servant or servants of the said Corporation, as they may find from time to time expedient or necessary, and to regulate the duties and fix the salaries and wages of such agents and servants and all the necessary expenditure for the management and working of the said Corporation.

Form of certificates of shares.

Secondly. To regulate the form of certificates of shares and all matters relating to their transfer.

Choose site for construction of said canal.

Thirdly. To choose and acquire for and in the name of the said Corporation the requisite site for the construction of the said canal and its dependencies, and to enter into the necessary arrangements and agreements for the construction of the same, and, during, upon and after its construction to have the entire management and disposition thereof.

To order payment of money

Fourthly. To order the payment of any sum of money they may deem necessary for the purposes of this Act.

To contract loans of money not exceeding \$5,000.

Fifthly. To contract a loan or loans for or in the name of the said Corporation not exceeding in the whole at any one time the sum of fifty thousand dollars, upon such terms or at such rate of interest less than, equal to, or greater than the legal rate as may be agreed upon, and to pledge and mortgage the real and personal property of the said Corporation for the payment of any such loan or interest.

To give mortgages, &c.

To make calls from Shareholders, and sue for the same if not paid.

Sixthly. To make such calls of money from the several Shareholders for the time being upon the shares subscribed for by them respectively as the said Board shall find necessary, and in the name of the said Corporation to sue for, recover and get in all such calls, and to cause and declare such shares to be forfeited to the said Corporation in case of non-payment of any such call, and in such way as they shall see fit to prescribe by any By-law, and an action of debt may be brought to recover any money due on any such call, and 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 share or more, as the case may be, in the Capital Stock of the said Corporation, and is indebted to the said Corporation in the sum to which the call or calls amount (as the case may be, stating the number and amount of such calls,) whereby an action hath accrued to the said Corporation to recover the same from such defendant by virtue of this Act, and it shall be sufficient to maintain such action to prove by any one witness that the defendant at the time of making any such call was a Shareholder in the number of shares alleged, and that any call sued for was made and notice thereof given in conformity with any such By-law prescribing such call, and it shall not be necessary to prove the appointment of the said Board or any other matter whatsoever.

One witness sufficient to prove that defendant was a shareholder.

Seventhly. To make the necessary By-laws in reference to the powers and duties imposed and conferred upon the said Board by this Act, and generally, for the government and management of the said Corporation, subject always to the provisions of this Act and the laws of this Province, with power to the said Board to vary, alter, repeal or revise any of the said By-laws; Provided always, nevertheless, that all such By-laws, rules or orders, and any such variation, alteration or repeal thereof may be reviewed or disallowed at any general meeting of the said Shareholders.

To make By-laws.

Proviso.

X. The said Board shall and may call and convene special and general meetings of the Shareholders whenever it shall be necessary, and so often as shall be required, upon the requisition of at least five Shareholders, and shall give the public notice hereinbefore mentioned of the holding of any such special general meeting, and shall at each annual general meeting or at any special meeting to be called for the purpose, submit to the Shareholders a clear and detailed statement of the affairs and accounts of the said Corporation, whereupon at such meeting the same shall be examined and audited, and if any dividend upon the Capital Stock is thereupon to be made, the same shall at such meeting thereby be declared.

Board may call special meetings of shareholders.

Statement of affairs of Corporation to be submitted to shareholders at annual or special meeting.

XI. In the absence of President and Vice-President at any meeting thereof, it shall be in the power of the members present to elect from among themselves a Chairman for the time being, who, in addition to his own vote, shall also in case of an equal division of votes, have a casting vote at such meeting, and in the event of the death, resignation, continued absence, incapacity or disqualification of any member of the said Board the Shareholders shall, at a meeting to be called for that purpose as hereinbefore provided, choose a Shareholder instead and in place of such member, and such Shareholder so chosen shall form part of the said Board until the then next annual election.

Chairman to be appointed in absence of President or Vice-president
Chairman *pro tem* to have casting vote.

XII. The said Corporation is hereby empowered to purchase, receive and hold such real estate and hereditaments as may be necessary and convenient in accomplishing the object for which this charter is granted and in creating and establishing mill sites and water power in connection therewith, and may by their surveyors and engineers, ascertain, set and enter upon such sites and locations as may be requisite for the purposes aforesaid, and take possession of the same; And after any lands or hereditaments shall be set out and ascertained to be requisite for making and completing the said canal and for other purposes herein 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 covertes*, and for all 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 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 notwithstanding, and in case of disagreement the amount of the purchase monies to be paid for such lands or hereditaments respectively shall be ascertained by arbitration in manner hereinafter mentioned, and the Directors of the said Company shall be

Company may purchase real estate for purposes of charter.

and they are hereby empowered to contract, compound, compromise, settle and agree with such bodies, guardians, trustees, owners or occupiers respectively of any land through or upon which they may determine to cut or construct the said intended canal and the appurtenances thereof, or any 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, with its appurtenances or other constructions or erections being cut or constructed in, upon or adjacent to his, her or their respective lands, and in case of any disagreement between the said Directors and any such bodies, guardians, trustees or occupiers respectively as 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.

In case of disagreement arbitrators may be appointed.

Three arbitrators to be named.

By whom arbitrators to be appointed.

Award of Arbitrators to be final.

Arbitrators to be sworn before a Justice of the Peace.

XIII. 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 herein is mentioned, that is to say: one of such persons by any such bodies, guardians, trustees, owners or occupiers respectively 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 County of Welland, 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 County, 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; and any award made under this Act shall be subject to be set aside on application to the Court of Queen's Bench or Common Pleas, 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.

XIV. When and so often as it shall be necessary to cut into any highway in order to conduct the said canal through the same, the said Company shall, within four months after such cut, cause to be constructed a secure, sufficient and commodious bridge for the passing of carriages, in order to establish the communication between the several parts of such highways, under the penalty of five pounds currency for each and every day after the expiration of the said time which the said Company shall neglect to construct such bridge as aforesaid.

Bridges, &c. to be constructed by Company.

Penalty for neglecting so to do.

XV. The said canal which the said Company is hereby authorized and empowered to construct shall be a Ship Canal, to overcome the said rapids in the Niagara River near Fort Erie aforesaid, and shall be of sufficient size for the passage of vessels of the largest class navigating the Lakes for freighting purposes, and shall be so constructed with one or more Locks, and shall have safe and easy entrances at each end thereof, with proper piers, light-houses, and all other the appurtenances that may be reasonably required for a canal sufficient for the purposes aforesaid; And the said canal shall commence at some safe and convenient point above the said rapids, and shall re-enter the Niagara River at a similar safe and convenient point below the said rapids.

Canal to be a Ship Canal.

Canal to commence at point above rapids.

XVI. The Board of Directors of the said Company is hereby empowered from time to time, by By-laws to be passed for that purpose, to regulate the time, mode and manner in which the said canal and the appurtenances thereof may be used, subject to such stipulations and restrictions and to the payment of such tolls as may from time to time be deemed expedient, and any person or persons whomsoever offending against any such By-law, may, at the option of the said Board of Directors, be summarily proceeded against before any Justice of the Peace in and for the County of Welland, who is hereby empowered, upon proof of any such offence, to impose such fine or penalty not exceeding for each offence the sum of ten pounds as to such Justice shall seem meet, which said fines or penalties may be recovered with costs in the same manner as is by law provided generally in case of summary convictions in Upper Canada; And provided also, further, that an examined copy of any such By-law, certified to be a true copy thereof, under the seal of the said Corporation, by any Director and the Secretary thereof, shall be sufficient legal evidence without further proof of such By-law to warrant any such conviction; And provided also further, that in case of denial or neglect in the payment of any tolls or rates or any part thereof on demand to the person or persons appointed by the said Board to receive the same, the said Company may sue for and recover the same in any Court of competent jurisdiction, or the person or persons to whom the said tolls or rates ought to be paid, may and he or they is and are hereby empowered to seize such boat, vessel, barge or other craft, or any merchandize, commodities or effects whatsoever for or in respect whereof such rates or tolls ought to be paid, and to detain the same until payment thereof; And provided also, that subject to such stipulations and restrictions as aforesaid and to the payment of such tolls or rates, all persons or corporations whomsoever shall have free liberty to use, with horses, cattle and carriages, the private ways, piers and roads (excepting any towing-paths) for the purpose of conveying any goods, wares, merchandize, lumber or commodities to and from the said canal, and also to navigate the said canal with any schooners, boats, barges, vessels rafts or crafts of any description, and in connection therewith to use the wharves, piers and other the erections of the said Company, and

Tolls on Canal.

Persons offending against any By-law of Company to be subject to fine.

Fine, how to be recovered.

Certified By-law to be sufficient proof.

Company may sue to recover payment of tolls.

May seize boats, &c. for non-payment.

Proviso.

also for the loading and unloading any goods, wares, merchandize, lumber or other commodities whatsoever, provided, nevertheless, that the International Bridge Company shall have for ever a free right of way across the said canal.

Board of Directors to enter into contracts for lease or purchase of water powers, or mill sights.
Proviso.

XVII. The Board of Directors of the said Company is hereby empowered from time to time to enter into all such contracts or agreements with any person or persons whomsoever for the lease, use, hire or purchase of any water power or mill site to be created or acquired by the said Company in the course of the construction of the said canal as to such Board may seem expedient; Provided, however, that nothing in this Act contained shall be construed to extend to authorize the said Company to injure any mills within the limits or upon the line of the said intended canal by diverting the water therefrom or lessening the fall or supply thereof without the consent of the owner or owners thereof. 5 10

Land to be commenced within five and completed within ten.

XVIII. If the said canal shall not be commenced within five years and completed within ten years from the passing of this Act the said Corporation shall thenceforth cease. 15

Her Majesty to assume possession of walks of Company at any time upon paying full value of said canal, and per centum thereon.

XIX. At any time after the making and completing the said canal it shall be lawful for her Majesty, her heirs and successors to 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, their heirs, executors, administrators and assigns the full amount of their respective shares, or of the sums furnished and advanced by each subscriber towards the making and completing the said canal, together with such other sums as will amount to per centum upon the moneys so advanced and paid, as a full indemnification to such Company, and the said canal shall, from the time of such assumption in manner aforesaid, appertain and belong to Her Majesty, her heirs and successors, who shall thenceforth be substituted in the place and stead of the said Company, their heirs and assigns, for all the purposes of this Act in so far as regards the said canal. 20 25 30

Interpretation Act.

XX. The Interpretation Act shall apply to this Act and it shall be deemed a public Act.