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No. 2.

2nd Session, 3rd Parliament, 12 Victoria, 1849.

BILL.

An Act to authorize the formation of
Joint Stock Companies in Upper
Canada, for the construction of Plank,
Gravelled, or Macadamized Roads
therein.

Received and Read a first time, Friday, 19th
January, 1849.

Second Reading, Friday, 9th February, 1849.

HON. MR. BOULTON.

PRINTED BY LOVELL AND GIBSON.

BILL.

An Act to authorise the formation of Joint Stock Companies in Upper Canada, for the construction of Plank, Gravelled or Macadamized Roads therein.

WHEREAS it is expedient to encourage Preamble. the construction of Plank, Macadamized and Gravelled Roads, by Companies who may be disposed to subscribe the necessary
 5 capital for completion thereof in their own neighbourhoods ; And whereas the delay and expense incident to the soliciting a special Act of Incorporation from the Legislature for each separate Company, operate as a
 10 great discouragement to persons desirous of embarking capital for the formation of such roads for short distances : Be it therefore enacted, &c.

That any number of persons not less than Companies may be formed for the construction of Plank and other roads.
 15 ten, respectively, may, in their discretion, form themselves into a Company or Companies, under the provisions of this Act, for the purpose of constructing any one or more Plank Road or Roads, or Macadamized or
 20 Gravelled Road or Roads, not less than miles in length in Upper Canada ; Provided Proviso. always, that no such Company shall construct any such road through, over or along any private property, without having first obtained
 25 the permission of the owner or owners, occupier or occupiers, thereof, so to do, except as hereinafter provided ; nor of a higher grade than one foot elevation to twenty-two feet along the road, without the sanction of the Chief
 30 Engineer superintending Public Works in the neighbourhood thereof ; And provided Proviso. also, that no such Company shall be formed

under the provisions of this Act to construct any Line of Road for which a Charter shall have heretofore been granted ; provided such Chartered Company shall have its stock subscribed and be in a course of completing the work for which such Charter shall have been granted, within one year from the passing of this Act. 5

Companies to become incorporated on certain conditions.

II. And be it enacted, That when any number of persons, not less than ten, shall have subscribed a sufficient quantity of stock to amount to a sum adequate, in their judgment, to the construction of any such road, by them intended to be planked, macadamized or gravelled as aforesaid, and shall have executed an instrument according to the form in the Schedule to this Act contained, and shall have paid to the Treasurer of such intended Company, ten per cent upon the capital stock intended by such Company to be raised for the construction of the road contemplated by such Company to be formed as aforesaid, and shall have registered such instrument with the Register of any County through which such road shall be intended to pass, such Company shall thenceforth become and be a Chartered and Incorporated Company, by such name as shall be designated in the instrument so registered as aforesaid, and by such name they and their successors shall and may have succession, and shall be capable both at Law and in Equity of suing and being sued, of impleading and being impleaded, answering and being answered unto, defending and being defended in all Courts of Law and Equity and places whatsoever, in all manner of actions, suits, complaints, matters and causes whatsoever; and they and their successors may have a Common Seal, and the same may make, alter and change at their will and pleasure, and that they and their successors by their corporate name shall be capable of buying, having, holding and conveying, selling and departing with, any lands, tenements and hereditaments whatsoever; 45

Their powers.

which may be or have been thought to be useful and necessary for the purposes of such Corporation.

III. And be it enacted, That any such
 5 Company shall have full power and authority to explore the country lying between the termini of any road intended to be constructed by any such Company, and to designate and establish, and it shall be lawful for the said
 10 Company to take, appropriate, have and hold to and for the use of them and their successors, the requisite lands upon the line and within the limits of any such road according to the provisions hereinafter contained for
 15 acquiring the same; and to dig, take, and carry away stone, gravel, sand, earth and other like materials from any adjoining or neighbouring lands, and also to cut, make and keep in repair upon such adjoining or neigh-
 20 bouring lands, such ditches, drains and water-courses as may be necessary for effectually draining and carrying off the water from any such road, making compensation therefor as hereinafter provided; and for the purpose
 25 aforesaid, the said Company and their agents, servants and workmen, are hereby authorized and empowered to enter into and upon the lands and grounds of any person or persons, body or bodies corporate or politic.

Powers of Company to explore the country and to take lands and materials.

30 IV. And be it enacted, That the affairs, stock, property and concerns of every such Company which shall or may be formed under the provisions of this Act, shall, for the first
 year, be managed and conducted by five Di-
 35 rectors, to be named in the said instrument so to be registered as aforesaid, and thereafter to be annually elected according to the provisions of any By-law which the first named Directors or their successors shall from time
 40 to time pass for that purpose; and that upon every such election of Directors, each Stockholder shall be entitled to one vote for every share he may hold or be possessed of in the said Company.

Affairs of Companies to be managed by five Directors.

How appointed.

Directors may authorise an increase in the number of shares when necessary or may borrow money on mortgage.

V. And be it enacted, That if at any time after the formation of any such Company in manner aforesaid, the Directors shall be of opinion that the original capital subscribed will not be sufficient to complete the work contemplated by such Company to be executed, it shall and may be lawful for the said Directors, by a Resolution to be passed by them for that purpose, either to borrow upon the security of the said Company, by bond or mortgage, a sufficient sum of money to complete the same, or to authorize the subscription upon the said original instrument so to be registered as aforesaid, of such number of additional shares as shall be named in the said Resolution, a copy whereof, under the hand and seal of the President of the Company, shall, by the said Register, be annexed to the said original instrument, upon the same being delivered to him by the said President, at the office of the said Register, who shall thereafter permit such additional subscriptions upon a receipt from the Treasurer of ten per cent upon the amount of such subscriptions respectively. 5
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Shares to be of £5 each, and how transferable.

VI. And be it enacted, That each share in every such Company shall be five pounds, and shall be regarded as personal property, and shall be transferable upon the books of every such Company, in like manner as stock is usually transferred upon the books of other public Companies, and in accordance with the provisions of any By-law made by the Directors in that behalf. 30

Companies may sue for amount of calls unpaid.

VII. And be it enacted, That any such Company so to be incorporated as aforesaid, may, in the Division Court or other Court of competent jurisdiction, sue, for recover, and receive of or from all and every Stockholder or Stockholders in any such Company, the amount of any call or calls of stock which any Stockholder may neglect to pay after public notice thereof in any newspaper published in the District where the Directors 35
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shall usually meet for conducting the business of such Company.

VIII. And be it enacted, That if the owner or owners, occupier or occupiers, of any
 5 land over or through which any such Company as aforesaid may be desirous of constructing any such road, or from which materials are to be taken, or upon which any
 10 power given by this Act to the Company is intended to be exercised, shall upon demand made by the Directors of any such Company neglect or refuse to agree upon the price or amount of damage to be paid for, or for passing
 15 through or over such land, and appropriating the same to and for the uses of any such Company, or for the exercise of any such power as aforesaid, it shall and may be lawful for the said Company to name one Arbitrator, and for the
 20 owner or occupier of such land so required as aforesaid to name another Arbitrator, and for the said two Arbitrators to name a third, to arbitrate upon, adjudge, and determine the amount which the said Company shall pay before taking possession of such land as aforesaid;
 25 and upon such sum being ascertained, due attention being had to the benefits to accrue to the party requiring compensation by the construction of the said road, it shall be lawful for the said Company to tender
 30 such sum to the said party claiming compensation, who shall thereupon execute a conveyance thereof to the said Company, or such other document as may be requisite, and the said Company shall, after such tender,
 35 whether such conveyance be executed or not, be fully authorized to enter upon and take possession of such land to and for the uses of the said Company, and to hold the same, or to exercise such power as aforesaid,
 40 in such and the like manner as if such conveyance thereof or other document had been executed as aforesaid: Provided always, that if any
 45 such owner or occupier shall neglect to name an Arbitrator for the space of twenty days after having been notified so to do by the Presi-

Arbitrators to be appointed in case of owners of property through which the road may pass, disagreeing with Companies,

Proviso.

dent of the Company, or if the said two Arbitrators cannot agree upon such third Arbitrator, the Judge of the District Court holden within the District shall nominate one of the Township Councillors of one of the Townships next adjacent to that in which the land shall be situate, and which it is proposed to take as aforesaid, to be either the second or the third Arbitrator, or both, in lieu of the one so to be appointed and named, but not appointed or agreed upon by the party or by the two first-named Arbitrators as aforesaid: **5**
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Proviso.

IX. And be it enacted, That whenever any lands or grounds required by any such Company, for the purposes of any road, are held or owned by any person or persons, bodies politic, corporate or collegiate, whose residence may not be within this Province, or unknown to the said Company, or where the titles to any such lands or grounds may be in dispute, or where such lands may be mortgaged, or when the owner or owners of such lands or grounds are unable to treat with the said Company for the sale thereof, or the exercise of any such power as aforesaid by the Company, or to appoint Arbitrators as aforesaid, it shall and may be lawful for the said Company to nominate one indifferent person; and for the Judge of the District Court for the District in which the lands are situate, on the application of the said Company, to nominate and appoint one other indifferent person, who, together with one other person to be chosen by the persons so named before proceeding to business, or, in the event of their disagreeing as to the choice of such other person, to be appointed by the said Judge, before the others proceed to business, shall be Arbitrators, to award, determine, adjudge and order the respective sums of money, which the said Company shall pay

How Arbitration shall be appointed when the owners of the lands are absent, or unable to sell, or the lands are mortgaged, &c.

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to the respective parties entitled to receive the same, for the said lands or grounds, or damages, as aforesaid, and the decision of the majority of such Arbitrators shall be
 5 final: which said amount so awarded the said Company are to pay or cause to be paid to the several parties entitled to the same when demanded; and also, that a record of such award or arbitration shall be made up and
 10 signed by the said Arbitrators, or a majority of them, specifying the amount awarded and the costs of such arbitration, which may be settled by the said Arbitrators, or a majority of them, which record shall be deposited in
 15 the Registry Office of the County in which such lands or grounds are situate: And also, that the expenses of the said arbitration shall be paid by the said Company, and by them
 20 payment thereof to the parties entitled to receive the same, or by such parties, in the discretion of the Arbitrators, to be specified in their award.

Amount of award to be paid forthwith.

Award to be registered.

By whom the costs shall be paid.

X. And be it enacted, That if any such
 25 road shall pass through any tract of land or property belonging to or in possession of any tribe of Indians in this Province, or if any act occasioning damage to their properties or their possessions shall be done under the
 30 authority of this Act, compensation shall be made to them therefor, in the same manner as is provided with respect to the property, possession or rights of other individuals; and that whenever it shall be necessary that Ar-
 35 bitrators be chosen by the parties for settling the amount of such compensation, the Chief Officer of the Indian Department, within this Province, is hereby authorized and required to name an Arbitrator on behalf of the said
 40 Indians, and the amount which shall be awarded in any case, shall be paid where the said lands belong to any Tribe or body of Indians, to the said Chief Officer, for the use of such Tribe or body.

Case of lands belonging to Indians provided for.

Meetings and proceedings of the Arbitrators.

XI. And be it enacted, That the Arbitrators so appointed shall fix a convenient day for hearing the respective parties, and shall give eight days' notice at least of the day and place, and having heard the parties or otherwise examined into the merits of the matters so brought before them, the said Arbitrators, or a majority of them, shall make their award or arbitration thereupon in writing, which award or arbitrament shall be final as to the amount so in dispute as aforesaid.

Election of President and appointment of officers.

XII. And be it enacted, That it shall be lawful for the Directors of any such Company to elect one of their number to be the President, and to nominate and appoint such and so many officers and servants as they shall deem necessary for performing the duties required of them by the said Company, and in their discretion to take security from them or any of them for the due performance of his or their duty, and account for all moneys coming into his or their hands to the use of any such Company.

Tolls, how paid and levied.

XIII. And be it enacted, That it shall and may be lawful for the President and Directors of any such Company, from time to time, to fix, regulate, and receive the tolls and charges to be received from all persons passing and re-passing with horses, carts, carriages and other vehicles, and for cattle driven in, over and along any road authorized by them to be constructed, made and used under and by virtue of the provisions of this Act.

Not to exceed 12 per cent per annum on the first cost of constructing road.

XIV. And be it enacted, That the tolls hereby authorized to be levied by any such Company to be formed and incorporated under the provisions of this Act, shall not exceed twelve per cent per annum on the first cost of constructing any such road, with the necessary houses and gates, and the payments for land and damages so to be awarded as aforesaid, after deducting the ex-

pense of keeping the same in repair, and all other incidental expenses; Provided always, Proviso. that the surplus or deficit of any one year shall be taken into account in regulating the rate
5 of tolls to be levied for the next ensuing year.

XV. And be it enacted, That it shall and Directors may demand sums subscribed, under penalty of forfeiture of shares subscribed for. may be lawful for the Directors of any such Company to call in and demand from the
10 Stockholders of the said Company respectively, all such sum or sums of money by them subscribed, at such times and in such payments or instalments as the said Directors shall deem proper, under the penalty of for-
15 feiting the shares of stock subscribed for, and all previous payments made thereon, if payment shall not be made by the Stockholders within ninety days after a personal demand, or after notice requiring such payment, shall
20 have been published for six successive weeks in the newspaper nearest the place where the Directors of the said Company shall usually meet for conducting the business of the said Company.

25 XVI. And be it enacted, That every such road, and all the materials which shall, from time to time, be got or provided for constructing, building, maintaining, or repairing the same, and all toll-houses, gates, and other
30 buildings constructed or acquired by and at the expense of any such Company so acting under the provisions of this Act, and used for their benefit and convenience, shall be vested in every such Company respectively,
35 and their successors. Roads and materials vested in Companies, and their successors.

XVII. And be it enacted, That every such Toll-gates may be erected. Company shall have full power and authority to erect such number of toll-gates or side-bars in, along, or across the said roads re-
40 spectively, and fix such tolls to be collected at each gate or bar, as they may deem fit and expedient (which tolls may be altered from time to time as circumstances may require),

Proviso.

and to erect and maintain such toll-houses, toll-gates, and other buildings and erections which may seem necessary and convenient for the due management of the business of every such Company respectively: Provided always, that no toll shall be exacted for merely crossing the road. 5

Roads to be completed by Companies within years after becoming incorporated.

XVIII. And be it enacted, That every such Company, so to be incorporated as aforesaid, shall be bound and is hereby required to complete each and every road and work undertaken by them, and for the completion whereof they shall have become incorporated as aforesaid, within years from the day of their becoming incorporated under this Act, in default whereof they shall forfeit all the corporate and other powers and authority which they shall in the meantime have acquired, and all their corporate powers shall thenceforth cease and determine. 10 15 20

Penalty on persons injuring roads, &c.

XIX. And be it enacted, That if any person or persons shall in any way injure, cut, break down, or destroy any part of any such road, bridge, or any toll-gate or toll-house, building, or other erection in, upon, or near any such road and belonging to or used for the convenience of any such Company under the provisions of this Act, every such person so offending, and being lawfully convicted thereof, shall be deemed guilty of a misdemeanor, and shall be punished by fine and imprisonment; and if any person or persons shall remove any earth, stone, plank, timber, or other materials used or intended to be used in or upon the said road, for the construction, maintenance, or repair thereof, or shall forcibly pass or attempt by force to pass any of the toll-gates set up by any such Company, without having first paid the toll fixed by the Directors of such Company to be received at any such gate, such person shall, upon conviction thereof in a summary way before any Justice of the Peace in or near the town ship where the injury shall have been done, 25 30 35 40

be sentenced to pay all damages sustained by such Company, to be ascertained by the said Justice upon the hearing of the said complaint, and also to pay a fine of not more than

5. nor less than Fine to be payable either in money or labor.

and fine to be paid either in money, or in the discretion of the said Justice, in labor to be performed upon the said road under the direction of the said Company, and within the time to be limited by the said Justice, and in default thereof the offender to be committed to the Common Gaol of the District where such offence shall have been committed, for 15 any time not exceeding

XX. And be it enacted, That the fines Fines, how levied. and forfeitures authorized to be summarily imposed by this Act, shall and may be levied and collected by distress and sale of the 20 offender's goods and chattels, under the authority of any Warrant or Warrants of Distress for that purpose to be issued by the Justice before whom the conviction shall have been had; and in case there shall be 25 no goods or chattels to satisfy such Warrant or Warrants, such offender or offenders shall and may be committed to the Common Gaol of the District for any period not exceeding month .

30 XXI. And be it enacted, That if any person or persons shall, after proceeding on any such road with any waggon, carriage Penalty on persons turning out of road to evade toll. or other vehicle, or animals liable to pay toll, turn out of the said road into any other road, 35 and shall enter the said road beyond any of the said gate or gates without paying toll, whereby such payment shall be evaded, such person or persons shall, for every such offence, forfeit and pay the sum of 40 shillings, which said sum shall be expended on the said road or towards the discharge of any debts due by any such Company; and any one Justice of the Peace for the District in which such part of the said road is situate,

shall, on conviction of such offender, fine such offender in the said penalty, and shall cause the same to be levied as aforesaid.

Penalty on persons assisting others to evade tolls.

XXII. And be it enacted, That if any person or persons occupying or possessing any enclosed lands near any toll-houses or toll-gates which shall be erected in pursuance of this Act, shall knowingly permit or suffer any person or persons to pass through such lands, or through any gate, passage or way thereon, with any carriage, horse, mare, gelding or other animal liable to the payment of toll, whereby such payment shall be avoided, every person or persons so offending, and also the person riding or driving the animal or animals or carriage whereon such payment is avoided, being thereof convicted, shall, for every such offence, severally forfeit and pay any sum not exceeding 5 shillings, which shall be laid out in improving such 10 road. 15 20

Municipalities may acquire stock in Companies formed under this Act.

XXIII. And be it enacted, That it shall be lawful for any municipal body corporate, having jurisdiction within the locality through which any such road shall pass, to subscribe 25 for, acquire, accept and hold, and to depart with and transfer stock in any Company to be formed under the authority of this Act, and from time to time to direct the Warden or other chief officer thereof, on behalf of 30 such Municipality, to subscribe for such stock in the name of such Municipality, and to act for and on behalf of such Municipality in all matters relative to such stock and the exercise of the rights of such Municipality as a Stockholder, and the Warden or 35 other chief officer, shall, whether otherwise qualified or not, be deemed a Stockholder in the Company, and may vote and act as such, subject always to such rules and orders 40 in relation to his authority as shall be made in that behalf by such Municipality by their By-laws or otherwise, but acting according to his discretion in cases not provided

Who shall vote, &c., on such stock.

for by such Municipality, and it shall be lawful for such Municipality to pay for, or to pay all instalments upon the stock they shall subscribe for and acquire, out of any 5 moneys belonging to such Municipality, and not specially appropriated to any other purpose, and to apply the moneys arising from the dividends or profits on the said stock or from the sale thereof, to any purpose 10 to which unappropriated moneys belonging to such Municipality may lawfully be applied.

Payment of such subscription, &c.

XXIV. And be it enacted, That it shall also be lawful for the Municipality of any locality through which any such road shall 15 pass, to loan money to the Company authorized to make such road, and out of any moneys belonging to the Municipality and not appropriated to any other purpose, and to effect such loan upon such terms and conditions 20 as may be agreed upon between such Company and the Municipality making such loan, and to recover the money so loaned, and to appropriate the money so recovered to the purposes of such Municipality.

Municipal bodies may lend money to such Companies.

XXV. And be it enacted, That after 25 twenty one years from the time of completing any such road, it shall and may be lawful for any municipal authority representing the interests of the locality through which any such 30 road shall pass, to purchase the stock of any such Company at the current value thereof at the time of purchase, and to hold the same for the use and benefit of the said locality, and such municipal authority shall thenceforth stand in the place and 35 stead of the Directors of the said Company, and shall possess all such powers and authority as the said Directors shall have theretofore possessed and exercised.

Twenty-one years after the roads are completed, stock of Companies may be purchased by the Municipal Authority of the locality.

XXVI. And be it enacted, That in any action or suit to be brought by any such Company against any Stockholder, to recover any money due for any call, it shall not be 40

What it shall be necessary to aver in actions for sums subscribed for.

necessary to set forth the special matter, but it shall be sufficient for the Company to aver that the Defendant is the holder of one share or more (stating the number of shares) in the stock of the Company, and that he is indebted to the Company in the sum of money to which the calls in arrear shall amount in respect of one call or more upon one share or more (stating the number and amount of each of such calls) whereby an action hath accrued to the Company by virtue of this Act. 5 10

What it shall be necessary to prove in such actions.

XXVII. And be it enacted, That on the trial or hearing of any such action, it shall be sufficient for the Company to prove that the Defendant at the time of making such call was a holder of one share or more in the undertaking (and when there has been no transfer of the shares, then the proof of subscription to the original agreement to take stock shall be sufficient evidence of holding stock to the amount subscribed,) and that such call was in fact made, and such notice thereof given as is required, and it shall not be necessary for the Company to prove the appointment of the Directors who made such call or any other matter whatever, and thereupon the Company shall be entitled to recover what shall be due upon such, call with interest thereon, unless it shall appear either that any such call exceed the prescribed amount, or that due notice of such call was not given, or that a meeting of the Stockholders was not expressly convened for the purpose of deciding on the time of payment, and the amount of such call in cases where such meeting is required. 15 20 25 30 35

Stockholders may be witnesses.

XXVIII. And be it enacted, That in any action or suit brought by or against any such Company upon any contract or for any matter or thing whatsoever, any Stockholder shall be competent as a witness, and his testimony shall not be deemed inadmissible on the ground of interest. 40

XXIX. And be it enacted, That if any
 action or suit shall be brought against any
 person or persons for any matter or thing
 done in pursuance of this Act, such action
 5 or suit shall be brought within six calendar
 months next after the fact committed, and not
 afterwards, and the defendant or defendants
 in such action or suit may plead the general
 issue only, and give this Act and the special
 10 matter in evidence on the trial.

Limitation of
 suits for things
 done under
 this Act.

XXX. And be it enacted, That all per-
 sons, horses or carriages going to or attend-
 ing or returning from any funeral, or any per-
 son with horse or carriage going to or return-
 15 ing from Divine Service on the Lord's Day,
 shall pass the gates free of toll.

Exemptions
 from toll.

XXXI. And be it enacted, That after any
 road constructed by any Company under the
 authority of this Act shall have been com-
 20 pleted, and tolls been taken thereon, it shall
 be the duty of the said Company to keep
 the same in good and sufficient repair, and
 in case any such road shall, by any such
 Company, be allowed to fall into decay and
 25 get out of repair, such Company may be
 indicted at any Court of Sessions of the
 Peace or other Court of superior juris-
 diction within the District where such road
 shall be so out of repair, as aforesaid, and
 30 upon being convicted, the Court before
 whom such prosecution shall be had, shall
 direct such Company to make the neces-
 sary repairs, and for the want whereof such
 prosecution shall have been commenced,
 35 within such time as to such Court shall seem
 reasonable, and that in default thereof such
 Company shall be declared to be dissolved,
 and such road shall thenceforth be vested in
 Her Majesty, Her Heirs and Successors, to
 40 and for the use of the Public in like manner
 as any other Public and Common Highway,
 and shall thenceforth be subject to all the
 laws affecting Public Highways.

Companies to
 keep roads in
 sufficient re-
 pair.

ted Act, and of the Rules, Regulations, Resolutions and By-laws of the said Company to be made or passed in that behalf.

| NAME. | NO. OF SHARES. | AMOUNT. |
|-------|----------------|---------|
| | | |