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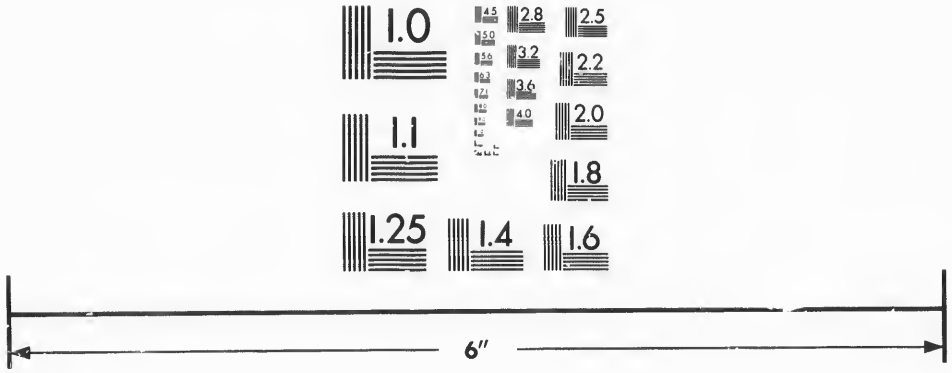

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PROVINCE HOUSE

In the Supreme Court of Canada.

1881.

ON APPEAL

From the Supreme Court of Nova Scotia.

Cause:

WILLIAM H. CREIGHTON, Assignee of Lewis P. Fairbanks,

Plaintiff and Appellant.

vs.

PETER J. KUHN,

Defendant and Respondent.

APPELLANT'S FACTUM.

WALLACE GRAHAM, Appellant's Attorney.

B. G. GRAY, Respondent's Attorney.

HALIFAX, N. S.
WM. MACNAB, LAW PRINTER, PRINCE STREET.
1881.

Supreme Court of Canada.

Cause—WILLIAM H. CREIGHTON, Assignee of LEWIS P. FAIRBANKS (intervening after the insolvency of said LEWIS P. FAIRBANKS,) *Plaintiff.*

vs.

PETER J. KUHN, *Defendant.*

APPELLANT'S FACTUM.

This was an action of trespass q. c. f. to land and land covered with water being the bed, banks and waters of the stream running from the First Dartmouth Lake to Halifax Harbor. The pleas are 1st. Denial of the trespasses. 2nd. That the land was not the plaintiff's. 3rd. That the land was in possession of defendant, and plaintiff wrongfully erected posts, &c., the removal of which are the alleged trespasses. 10

On 4th of April, 1791, James Creighton conveyed to Lawrence Hartshorne and Jonathan Tremaine the right to enter, &c , on his lands contiguous, through and upon which this brook ran, from the source to Richard Woodin's land, so as to lower the bank at its place of discharge and to clear out the bed and erect dams, flood-gates, &c., and to overflow the lands of said Creighton for the purposes of their mill.

On 5th April, 1791, Richard Woodin conveyed to the same parties by metes and bounds a tract which comprised the bed, banks and margin of the stream below the boundaries of the last mentioned conveyance and extending to the harbor. 20

On 6th April, 1791, said Richard Woodin entered into Articles of Agreement with said Lawrence Hartshorne and Jonathan Tremaine which, after reciting the last conveyance, gave them the right to enter on his lands contiguous to the stream to clean out the bed of the brook, and to build dams and flood-gates, and also the right to overflow for mill purposes. The lands affected by the easement, were the bed banks and margin of the stream between the lands comprised within Creighton's conveyance, and the lands included in the last conveyance. In May 1806, Richard Woodin conveyed these lands absolutely to Hartshorne and Tremaine.

Lawrence Hartshorne conveyed his moiety of interest in this property, and also of the mill stream and adjacent property which he owned with Jonathan Tremaine to Richard Tremaine, and Jonathan Tremaine conveyed his moiety thereof to James Tremaine. The conveyances by which the titles thus became vested in Richard Tremaine and James Tremaine do not appear in the evidence, but the facts above stated appear from the mortgage Richard Tremaine and wife to Lawrence Hartshorne of 11th Oct., 1815, and the release of mortgage Phœbe Tremaine and others to James Tremaine of 17th March, 1831. 30

Richard Tremaine and James Tremaine conveyed all this property—including the Mill stream and adjacent lands to the Shubenacadie Canal Company by Deed of 12th April, 1831. (See third description it contains—see also deed Richard Tremaine to the same company, dated 19th May, 1831.) 40

This Company was formed in Nova Scotia in the year 1826, for the construction of a Canal between the waters of Halifax harbor and the waters of the Bay of Fundy in that Province. A statute passed in 1824, authorized the Governor of the Province to issue Letters Patent under the Great Seal of the Province to such Company when formed, and conferred great powers and facilities. The Letters Patent were issued in 1826, and the company commenced operations. The Line of Canal was to be "through the Dartmouth Lakes, the lakes and channels or course of the River Shubenacadie, or by or along the sides or banks of such lakes and river to such part of the River Shubenacadie, between its place of discharge into the Basin of Minas and the Great Lake." (sec. 5—act of 1824.) The company had power under this act to do all things necessary for making a Canal through these waters, including the right of diverting and damming the same. Also to make towing paths along the line of water communication. By sec. 8 "The course and channel of such Canal or water communication" and the works to be erected thereon, "and the waters and streams of the said river and lakes so far as the same were or should be required or necessary to be used," &c., for such Canal, "and all lands or real estate purchased or obtained for such Canal, and through which it should be made, and the towing or tracking paths or roads" were made "the sole and exclusive property of the company" for ninety-nine years, and the title was made perpetual by the act—chap. 17 of 1827. 50

The Letters Patent also provided that their provisions should be "taken, construed and adjudged in the most favorable and beneficial sense for the best advantage of the company" The most valuable part of the water communication was that comprised within the first and second sections of the projected Canal—being the parts near Dartmouth and including the first and second Dartmouth Lakes and the stream running therefrom into Halifax harbor, being the stream to which the set of conveyances hereinbefore recapitulated referred. 60

31st May, 1831, the Company executed a Mortgage to the Hon S. S. Blowers and Sir Rupert D. George, Trustees for the British Government (Commissioners of the

Treasury) who made a loan of £20,000 stg. to the company under the Imperial Act of 1st Wm. IV., entitled "An Act to authorize the advance of a certain sum out of the Consolidated Funds for the completion of the Shubenacadie Navigation in Nova Scotia." This mortgage included the two Dartmouth Lakes as well as the other portions of Canal line, and also lands which had been acquired under Sheriff's Inquisition. 70

In 1837 an act was passed in aid of the company, which it is not considered necessary here to refer to particularly.

The Mortgage to Blowers and George was foreclosed and the property sold by James W. Nutting a Master in Chancery, 11th June, 1851, to the Hon. James McNab.

On the 1st May, 1852, the Sheriff of the County of Halifax, sold under execution against the company, and conveyed certain lands which were not expressly included in the mortgage to Blowers and George. At this sale also Hon. James McNab was the purchaser. This Deed expressly conveys the locus. 80

On 21st Sept., 1852, the same Sheriff—under another judgment sold and conveyed certain other lands of the company to Hon. James McNab.

On 1st of Jan'y, 1853, Hon. James McNab made Declarations of Trust by which he declared that under the three conveyances last recited he held the properties there conveyed for the benefit of the Province, and that he would convey the same to such persons as he might be directed to convey them to by the Lieut. Governor in Council.

On the 4th April, 1853, an Act was passed by the Legislature of Nova Scotia which is hereby attached:

On 10th June, 1854, Hon. James McNab, with the consent of the Provincial Government, conveyed to the Inland Navigation Company, all the lands which had been conveyed to him by the Deed from Nutting, and the Deeds from the Sheriff. 90

On 30th April, 1860, the Inland Navigation Company mortgaged all their lands to George H. Starr, John Stairs and Martin Pinkney Black for £10,000.

On 1st Sept., 1860, the Inland Navigation Company mortgaged the same properties to the same parties for £15,000.

These mortgages were made in pursuance of powers given by Statute and after reciting the same.

On the 19th of February, 1862, a certificate was given by the Provincial Government that the Inland Navigation Company had complied with the terms imposed under the deed which transferred the property to them by completing a water communication between the Harbor of Halifax and the Basin of Minas, and declaring that the above property was free from any claim on the part of the Government. 100

In point of fact, the Canal had been then completed.

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The mortgages, by the Inland Navigation Company to Starr, Stairs and Black, were foreclosed and sold, and the property conveyed by the Sheriff of Halifax County to Samuel Gray and John Stairs, 18th June, 1862, and these persons on 9th December, 1862, declared that they held the property in trust for The Lake and River Navigation Company, to which Company they conveyed on 1st May, 1867. This Company was formed under a Statutute of the Province called "An Act for the Incorporation and Winding up of Joint Stock Companies," the declaration of the shareholders, and other documents, preliminary to the organization forming part of the case. 110

The Lake and River Navigation Company conveyed all the property to Lewis P. Fairbanks, by Deed of April 1st, 1870.

On the 31st May, 1876, Lewis P. Fairbanks assigned under the Insolvent Act of 1875 to the Plaintiff and Appellant, who afterwards became creditors assignee of his estate and effects. 20

The Deed from Richard Tremaine to the Shubenacadie Canal Company of 13th April, 1831, page 82, conveys the land on either side of the stream, and recognizes the fact that the stream and its bed were conveyed by the Deed of R. and J. Tremaine already referred to. 120

The Deed from the Executor of Hartshorne to Hobin, dated 23rd May, 1842, page 83, shews that on the Hobin lot, referred to in the evidence, and also the locus occupied under lease by Stanford under whom Defendant claims, a reservation of the stream was made. The same circumstance appears from the Deed, Mitchell to Stanford, of 1st June, 1847, in relation to the Hobin lot being the adjoining lot to the one in dispute, Mitchell having acquired it from Hobin subject to the same reservation (see page 85), and Stanford afterwards acquired it and occupied it (line 87.) The conveyances to Falconer, and the agreement between Falconer and the Inland Navigation Company (pages 86-88) conveyed the rights to the locus which he had derived from Hartshorne, and secured the right to that Company to build and continue the dam referred to in the evidence, &c. 130

Reasons in Support of the Appeal.

1st. The Plaintiff proved a documentary title to the locus; the Defendant failed to prove any such title.

2nd The Plaintiff also proved prior possession, which, coupled with his documentary title, threw upon Defendant the onus of establishing a title to the locus, either by documents—which he failed to prove—or by possession. In respect of the latter claim his defence failed for the following reasons: 140

(*a*). He did not shew that the Plaintiff and his grantors had been out of possession for twenty years before action (8th Oct., 1873), or, in fact, that the possession under which he claimed was in any way exclusive.

(*b*). The possession of Stanford was that of a tenant, and he paid rent for such possession.

(*c*). Stanford had relinquished his possession after the expiration of his lease, and there was no possession by him or his agent after he moved away in 1856.- Defendant was away for three years thereafter, and neither he nor anyone else had possession for Stanford then.

(*d*). The possession of Stanford, while he did occupy the lot, on either side of 150
the locus, was quite consistent with the rights of the Plaintiff's grantors to the bed, banks and waters of the stream, and the fencing on the road and at either end of the lot, even if made as alleged by Defendant's witnesses, is consistent with the title of the Plaintiff's grantors in the bed, banks and waters—the Deed put in evidence conveyed such lots as he appears to have so enclosed, but with a reservation of all that is claimed in relation to this lot (see line 82 as an illustration).

3rd. There was in Plaintiff's grantors such possession as the locus was capable of.

4th. The Defendant did not controvert the evidence of admissions by Stanford, and the Court below erred in disregarding such admissions.

5th. The Court below misapprehended the title of the Plaintiff—the judgment 160
of the Court is framed to shew that Plaintiff did not derive documentary title from the "Inland and River Navigation Company." There never was any such Company, and the Plaintiff, therefore, did not claim through any such. The judgment below confuses the Inland Navigation Company and the Lake and River Navigation Company.

6th. The Plaintiff's rights to the possession and his possession of the locus were each sufficient to enable him to maintain the action, and were not denied in the pleadings—

Grotto vs Farish, Thompson's Report (*N. Scotia*), 292.
Churchwardens vs. Vaughan, 2 *Russ. & Ches.*, 443.
Chap. 94, *sec.* 145, *Rev. Stat. of N. S*, 4*th series.* 170

7th. The preponderance of evidence as to possession and right of possession in Plaintiff's grantors was so much in favor of Plaintiff that judgment should have been in his favor.

8th. The evidence of Defendant's witnesses was contradictory as to the dates of the acts of possession which they testified to, and vague and inconclusive as to that possession covering the whole locus.

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9th. There was clear evidence of the Plaintiff's grantors having possession in 1856—lines 74, 77, 79, 83, 135, 146, 167, 182, 187, 198, 263, 276, 324, 327. This testimony was uncontradicted.

10th. The statements of Stanford were more than the mere admissions, which the Judge below seemed to regard them, they were disavowals of his having any right or seeking to establish such, and would bind him. 180

11th. The statements of Stanford to Plaintiff amounted to an estoppel.

12th The evidence of the Defendant that he kept up the fences until Stanford's death was fully contradicted both by the Plaintiff's witnesses and his own.—(Lines 137, 192, 383, 434, 451, 462, 505, 530, 589, 594.

13th. There was no evidence of possession in Stanford for three years after 1856. Defendant was out of the Province during that time and cannot pretend that he then held for Stanford, and the evidence of the Company's possession, referred to in the 9th reason is in no other way met (line 363, 382). 190

14th. Defendant bought, with knowledge of Plaintiffs, adverse possession and claim of title.

15th. The evidence of Hendry, which the Judge below considered decisive, was only evidence of a survey, as between Falconer and the Company; and even if it did affect the locus there was no authority shewn in Charles Fairbanks to bind the Company. The line which he ran was the north-west line of the Canal property, as represented in Hall's plan. The whole of the disputed land lies outside of that line and may still have belonged to the Company. The admission, at most, was only an admission that the locus was not within the line on the Hall plan, which did not profess to include all the property which the Company owned, but only their main or "Canal" property, as 200 mortgaged to Blowers and George.

16th. The Executors of Stanford seem to have been at least doubtful of their testators' title to the locus. By Mr. Grey's evidence it appears that Defendant's Deed includes all Stanford's Real Estate, and covers the locus—their advertisement of the Real Estate omitted the locus, and that only, of all the properties mentioned in the Deed, and it professed to be an advertisement of "the Estate of the late James Stanford." Mr. Gray's evidence seems to be that the property of Stanford was the Tannery lot and the Hobin lot merely.

17th. The Judge below was mistaken in supposing that the line referred to by Hendry as having been run by him was the dividing line between the lot number one and the lot to the north of it. The line which Hendry ran was the line of the property 210 mortgaged by the Shubenacadie Canal Company, and which ran nearly parallel to the locus, and could not be the dividing line.

ABSTRACT.

An Act for increasing the Capital Stock of the Shubenacadie Canal Company, and the number of Shares therein, for conferring further powers on that Corporation, and for other purposes.

(Passed 21st day of April, 1837.)

Whereas, by an Act of the General Assembly of Nova Scotia, passed in the year of our Lord one thousand eight hundred and twenty-four, and entitled "An Act to authorize the Incorporation of a Company for making a Canal by the River and Lakes of the Shubenacadie," it was enacted, that whenever a sufficient number of persons should have associated themselves together for opening and making a navigable cut canal or water communication, between the harbor of Halifax and the Basin of Mines, by, along or near to the course of the river Shubenacadie, and the lakes thereof, and shall have agreed to raise sufficient moneys to effect the same, it should and might be lawful for the Governor, Lieutenant-Governor or Commander-in-Chief for the time being, at any time within five years from the passing of that Act, by letters patent, under the great seal of this Province, to make, erect and incorporate, all and singular, the persons who from time to time should be adventurers in or parties to the said undertaking, and their assigns, into one body, politic and corporate, in deed and in name, under the title of "The Shubenacadie Canal Company," and by that name to have succession, to sue and be sued, to have a common seal, and to possess and enjoy such powers, with respect to the choice of a president and other officers, making by-laws, and regulating the affairs of the said company, as should be expressed in the same letters patent:

And whereas, pursuant to the said statute, letters patent, under the great seal of this province, and dated the first day of June, one thousand eight hundred and twenty-six, were duly and in conformity to the said Act made and granted, whereby certain persons, inhabitants of Halifax, particularly named in the said letters patent, and their associates, successors and assigns, were incorporated by the name and title, and for the purposes aforesaid, with a capital or joint stock ordained in the first instance to consist of the sum of sixty thousand pounds of lawful money of Nova Scotia, divided into two thousand and four hundred shares, each share being of the sum of twenty-five pounds; but with power to the said corporation to increase such capital stock to such greater sum as the object of the company might require; and the said

corporation, under the authority of the said letters patent and of the statute aforesaid, therein recited, and under the additional powers and regulations contained in another Act of the General Assembly, passed in the year one thousand eight hundred and twenty-seven, entitled "An Act in addition to the Act entitled An Act to authorize the Incorporation of a Company for making a Canal by the River and Lakes of the Shubenacadie," and also, under the by-laws and ordinances of the said company, established by a general meeting of the proprietors of the said company, held in Halifax on the twenty-first day of February, one thousand eight hundred and twenty-eight, and subsequently duly approved of and established by the then Lieutenant-Governor and His Majesty's Council, commenced their said undertaking, and constructed many large and expensive works for the purposes of the said inland navigation, and proceeded therewith until the end of the year one thousand eight hundred and thirty-one, at an expense for the said canal works of seventy-two thou and pounds and upwards, exclusive of other large sums paid for the purchase of lands for the purposes of their undertaking and for the salary of the engineer employed thereon, and for other charges thereof; when the funds of the said corporation, derived from the grant of fifteen thousand pounds made by the General Assembly of the province in aid of the said undertaking, from part of the capital stock subscribed for in this province, to the extent of seven hundred and twelve shares, from another portion of the said stock subscribed for in England to the extent of twelve hundred and fifty shares, and from the loan of twenty thousand pounds sterling, made in aid of the said work by His Majesty's Government, on the security of the canal, and the tolls and profits thereof, pursuant to an Act of the Imperial Parliament, having become wholly exhausted, the said corporation was compelled to suspend all further proceedings in their said enterprise; and since the said year one thousand eight hundred and thirty-one the works and constructions then in progress have remained and yet are unfinished, for want of the necessary funds required for their completion, and for opening the navigation from the harbor of Halifax to the Basin of Mines.

And whereas, upon a particular survey and examination recently made of the whole line of the said intended water communication, various alterations have been recommended to be adopted in the line and direction thereof, in its depth and width, and in the position, nature and dimensions of the works, as originally designed, whereby the said canal would be rendered more suitable to the purposes for which a great inland water communication through the province, with its capital, is required, and be made more conveniently navigable by steamboats and sea-going vessels; and plans and estimates have been made for the further prosecution of the said enterprise in an improved mode, and by works of a more durable character, and of greater extent and magnitude than were first intended, for the expense of which large additional funds will be required by the said corporation; and forasmuch as the completing of the said enterprise is deemed an object of great public utility and importance, it has therefore become expedient to authorize the said company to extend its present capital stock and number of shares, and also to grant unto the corporation certain other and further powers and authorities, and make other regulations as hereinafter contained, for facilitating the enterprise and works of the company, and for the more convenient management and conduct of its affairs.

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1. *Be it therefore enacted by the Lieutenant-Governor, the Council and Assembly.*—(Marginal notes.) Joint stock may be increased to £250,000; proviso; preamble. 80

2. *Be it further enacted.*—(Marginal notes.) Board of directors; preamble.

3. *Be it therefore further enacted.*—(Marginal notes.) Lieutenant-Governor may appoint four additional directors; vacancies occurring in the Board of Directors.

4. *And be it further enacted.*—(Marginal note.) Directors may be re-elected.

5. *And be it further enacted.*—(Marginal note.) Omitting to choose directors at annual meeting.

6. *And be it further enacted.*—(Marginal notes.) Omitting to hold annual general meeting; new Board of Directors to be brought into operation.

7. *And be it further enacted.*—(Marginal notes.) Restriction on corporation respecting holding real estate repealed; preamble. 90

8. *Be it therefore enacted.*—(Marginal note.) Additional powers, authority and privileges conferred on corporation.

9. *And be it further enacted,* That all water powers and privileges, and all quantities of water, to be procured by means of any weirs, dams, embankments, aboiteaux, or other works, now or hereafter to be by the said company built, constructed, raised or formed, in, upon, across or near to the said navigation, or the said rivers, creeks, streams or brooks thereof, and all deposits of soil, accretions and alluviums in the present channels, caused by or necessarily consequent upon any of such their works, shall be vested in the said corporation, and shall or may be sold, leased, or otherwise disposed, appropriated and applied, for such payments, and under such conditions as to them shall seem fit. 100

10. *And be it further enacted.*—(Marginal note.) Corporation making bridge over Shubenacadie entitled to toll.

11. *And be it further enacted.*—(Marginal notes.) Complaints of damages by canal to adjoining lands; proviso.

12. *And be it further enacted,* That all such parts of the said river Stewiacke, the Nine Mile River, or other rivers, creeks, brooks and streams flowing into the river Shubenacadie on either side, as shall be rendered navigable by the works of the said company, shall be and be deemed part and parcel of the canal or navigation authorized to be constructed by the said corporation. 110

And whereas, the method now by law provided for enabling the said company to obtain the title and possession of any land or real estate required for the purposes of the said navigation has been found very expensive and inconvenient.—For remedy whereof:

13. *Be it further enacted.*—(Marginal note.) Lands in vicinity of canal required by corporation.

14. *And be it further enacted.*—(Marginal note.) Fee simple in lands secured.

15. *And be it further enacted.*—(Marginal note.) Land may be taken by appraisement.

16. *And be it further enacted,* That all and singular the provisions of the thirteenth section of the additional Act aforesaid, with respect to the proceedings touching the appraisement of damages occasioned by the acts of the company, shall be applicable to, and be observed and in force, with regard to all the proceedings hereby 120

authorized to be taken for vesting lands in the said corporation, and as fully as if the said thirteenth section were herein repeated for that purpose.

17. *And be it further enacted.*—(Marginal notes.) Vested right in land commences when award is paid; preamble.

18. *Be it further enacted.*—(Marginal note.) Appropriation, &c., of award.

And whereas, by reason of the suspension of the operations of the company as aforesaid, after the choice of the new members for the Board of Directors made at the general meeting of the company, held in February, one thousand eight hundred and thirty-two, to supply the vacancies then existing; and by reason of there having since been no annual meeting held for supplying vacancies in the said board, the affairs and business of the company have been since managed by the board, constituted of the then continuing and of the newly chosen directors, or by such of the latter as attended the meetings of the said board. 130

19. *Be it therefore enacted*, That the Board of Directors of the said corporation as composed of the directors who continued in office on the first day of March, one thousand eight hundred and thirty-two, and of such of the new directors as then came into office, and have since attended the meetings of the board, shall be and be deemed and continue to be the Board of Directors of the said company, by the statutes, charter, and by-laws aforesaid. *Provided*, until the new Board of Directors designed by this Act shall be established, and all resolutions, orders, acts, affairs and business, made, transacted or done, or to be hereafter made, transacted or done, by the said board, when seven members attended or shall attend thereat, shall be deemed and be resolutions, orders, acts, affairs and business made, transacted and done by the board of the Shubenacadie Canal Company, until the new board aforesaid be established. *Provided always*, that nothing herein contained shall prevent any member of the existing board from resigning his office at his pleasure. 140

AN ACT TO INCORPORATE THE INLAND NAVIGATION COMPANY.

(Passed the 4th day of April, A.D. 1853.)

Be it enacted by the Governor, Council and Assembly as follows :—

1. James F. Avery, Andrew McKinlay, William Stairs, William B. Fairbanks, William Lawson, David Allison, Lawrence Hartshorne, Thomas Bolton, James Thompson, Charles W. Fairbanks, George A. S. Crichton, and all other persons who shall become proprietors in the company, hereby established, their successors and assigns, shall be a body corporate, by the name of "The Inland Navigation Company."

2. The company may purchase and hold real estate, and sell or let the same; the real estate to be held at any one time not to exceed in value the sum of ten thousand pounds. 10

3. The capital stock of the company shall be thirty thousand pounds, to be divided into one thousand and five hundred shares of twenty pounds each.

4. Any of the persons named herein, may immediately after the passing hereof, open a subscription book for shares, and give public notice of the opening thereof for at least thirty days, in two or more of the newspapers published in Halifax; and no person shall be allowed to take more than twentry-five shares, until the expiration of such thirty days, when, if any of the shares shall then remain unsubscribed for, any person may subscribe therefor, notwithstanding such person may have before taken twenty-five shares. 20

5. As soon as the sum of ten thousand pounds of the stock shall be subscribed for, and one thousand pounds paid in on account thereof, the shareholders may hold their first meeting, and thereat appoint their officers, namely: a president, two directors, an engineer-in-chief, and such subordinate officers as they may deem necessary.

6. When the company shall be invested by the Provincial Government, in consideration of such sum of money as may be mutually agreed upon, not to exceed five thousand pounds, with the land, and land covered with water, locks, and other works and appurtenances, formerly belonging to the Shubenacadie Canal Company, or any part that may be required by the company and agreed to by the Government, it shall be lawful for the company to open and cut a sufficient canal or water communication from the 30 waters of the harbor of Halifax through the Dartmouth lakes, so called, the lakes and channels or course of the river Shubenacadie, or along the sides and banks of such lakes and river to such part of the river between its place of discharge in the basin of Minas and the Great lake, and in so doing, to use, deepen, contract or widen, or otherwise alter

the channel formerly cut and opened by the Shubenacadie Canal Company, as shall be proper for making a continuous navigable channel or canal for the passage of boats or vessels to and from the basin of Minas and the harbor of Halifax, respectively, and for such purpose to dig, excavate and clear such locks, pits, chambers or basins, and make, build or renew such locks, sluices, weirs, dams or embankments, in, over across or upon, the course of such river, or along the sides thereof, or at or near the several lakes or 40 streams connected therewith, as may be necessary for effecting such inland water communication, at all such parts of such river, lakes or streams, and in such courses and directions, from one part to another of the same as may be deemed proper, and to build any slips or lines of railway which may be necessary in the course of such inland water communication, and to use the channels and waters of such rivers, lakes and streams, in every way necessary for constructing such inland water communication, and for rendering and keeping the same at all times navigable and in operation

7. The company shall have power to make all necessary towing paths or roads along the shore, banks, or sides of the inland water communication, for the tracking or towing boats or vessels along the line thereof. 50

8. The inland water communication and towing paths shall, at all convenient times after the construction hereof, be kept open for the use of the public, their boats, vessels, goods, horses and cattle, upon the payment of a certain rate of toll money, to be regulated by the company, and approved of by the Governor in Council, and revised every five years.

9. Whenever the line of such inland water communication shall be crossed by any public highway now existing, or hereafter to be by law established, the company, at its own cost, shall be obliged to erect a convenient and substantial bridge for the use of such highway, to be open to the public at all times.

10. Whenever it shall be necessary in the construction of such inland water com- 60 munication that the company shall be invested with any lands in the line thereof, or contiguous thereto, and no agreement can be made for the purchase thereof, it shall be lawful for the president and directors to apply, by petition, either in term time or vacation, to any two of the Judges of the Supreme Court, setting forth the nature and situation of the lands required, the names of the owners thereof, and praying the conveyance thereof to the company,—whereupon such Judges shall appoint a time and place for considering such petition, and shall direct a proper notice in writing, to be served on the owners of the lands, if in the Province, and if absent, to be published for the period of one month, in at least two of the Halifax newspapers, requiring them to attend, either in person or by their agent or attorney, at such time and place; and in 70 case such owners shall attend, the Judges shall require the president and directors to nominate one appraiser, and such owner two appraisers; and the Judges shall nominate two appraisers; but in case such owners do not attend, the judges shall, on proof of such service, or publication of such notice, nominate four appraisers, and shall by an order, in writing, direct the said five appraisers to value the lands so required; and the appraisers, having first subscribed an affidavit, in writing, to be sworn to before a Justice

of the Peace, to be annexed to such order, to the effect that they will faithfully make such appraisement, shall, with all convenient speed, proceed to and appraise such lands, and shall make such appraisement in writing, and return it with such order and affidavit to the two Judges, who, if they approve thereof, shall confirm the same; and the company, upon paying or tendering the amount of such appraised value, and the expenses of the owners in such appraisement, and registering such order, affidavit, appraisement and confirmation, in the office of the Registrar of Deeds, in the county where such lands lie, who is hereby required to register the same, shall be considered the owners of such lands. 80

11. The company may, from time to time, enter upon any lands not under cultivation, and there cut down any trees, prepare any timber, and quarry and dig any rock or other materials there found, and work, prepare, and carry away the same for the use of such inland water communication; and if the parties having the property in such lands, or materials, shall refuse to agree with the Company therefor, and for any damages occasioned thereby, or shall refuse such reasonable compensation as may be tendered therefor, the same shall be settled by arbitration, under chapter eighty seven of the Revised Statutes, but the company shall not take or use any such materials as may have been previously wrought or prepared, without the consent of the parties entitled thereto 90

12 In case any wear or embankment shall be made across the present course of the river Shubenacadie below the Great lake, the company shall make and maintain a sufficient fish ladder or waste gate, with proper grates and valves, for allowing at all proper seasons the passage of fish up and down such river, the company in respect of making and maintaining such fish ladder or waste gate, to be subject to the rules, fines and forfeitures contained and imposed in and by chapter 95 of the revised statutes, "Of river fisheries," and all acts in amendment thereof 100

13. The company shall not divide over twelve per cent. on the paid up capital thereof, after the payment of the current expenses, but may put the surplus receipts over the above twelve per cent. into a casualty fund until such fund amounts to a sum equal to one forth of the capital stock of the Company, and which may be invested in such stock or securities as the company may think fit, and then the surplus earnings of the company, over and above twelve per cent. may be used in the repairing, improving, or extension of the works of such inland water communication

14. No shareholder shall be liable on account of the debts of the company for a greater amount than double the amount of the stock held by him, deducting therefrom the amount paid to the company on account of such stock, unless he shall have rendered himself liable therefor by becoming security for the debts of the company. 110

15. The legislature may, at its option, at any time after twenty years from the passing of this act, take such inland water communication, with all the works and appurtenances thereof, and keep the same in operation for the benefit and under the control of the government, on paying to the company a sum equal to twenty years' purchase of the annual profits divisible upon the subscribed and paid up capital stock of the company, provided such average rate of profits shall not be less than eight per cent.

16. Full and true accounts shall at all times be kept by the directors of the com-

pany of all sums of money received and paid on account of such inland water communication; and the company shall once in every half year cause a half yearly account in 120
abstract to be prepared, shewing the total receipt and expenditure on account of the said inland water communication for the half year ending the thirtieth day of June, and the thirty first d y of December respectively, under distinct heads of receipt and expenditure, with a statement of the balance of such account, duly audited and certified under the hands of two or more of the directors of the Company, and shall send a copy of such account to the Provincial Secretary, on or before the last days of August and February respectively; and it shall be lawful for the governor, in council, if they shall think fit, at all times, to appoint any proper person or persons to inspect the accounts and books of the company; and it shall be lawful for any person so authorised, at all reasonable times, upon producing his authority, to examine the books, accounts, vouchers, and other docu- 130
ments of the company, at its principal office or place of business, and to take copies or extracts therefrom.

17. No tolls shall be charged for the conveyance of Her Majesty's mails or of troops, or of troops and munitions of war, over the inland water communication established by this act.

CHAPTER 89.

An Act for the relief of, and in further amendment of the Act to Incorporate the Inland Navigation Company.

(Passed the 15th day of April, A. D. 1859.)

Be it enacted by the Governor, Council and Assembly, as follows:—

1. The period of five years limited in and by the deed, dated the tenth day of June, in the year of our Lord one thousand eight hundred and fifty-four, from the Honorable James McNab, the then Receiver General for the Province of Nova Scotia, to the above named company, of the lands, lands covered with water, locks, and other appurtenances, formerly belonging to the Shubenacadie Canal Company, for the completion of the canal or inland water communication, for the passage of boats or vessels to and from the basin of Minas and the harbor of Halifax, respectively, is extended to the further period of three years, to be computed from the tenth day of June, which will be in this present year of our Lord one thousand eight hundred and fifty-nine. 10

2. The sum of five thousand pounds, hertofore loaned by the Honorable Provincial Government to the above company, and all interest since accrued thereupon, is remitted to such company, and the directors thereof, and all the property and works of such company, are released from all charge or liability for, or in respect of, such sum and every part thereof, and all interest, as aforesaid.

3. The board of directors of the Inland Navigation Company is authorized to borrow all and every such sum or sums of money as they may deem necessary, for finishing such canal or inland water communication into the harbor of Halifax, or which they, at any time or times hereafter, may require for finishing and completing the same, and all works and improvements, as aforesaid, which they may think necessary therefor, and also for the purpose of paying and discharging all legal and just outstanding claims against the company, either by way of mortgage or preferential stock secured upon the company's property and works, and at and upon such rate of interest as they may be enabled to obtain the same, and that all and every deed, conveyance, or mortgage made and executed by the directors of such company of the property and works of the company, for securing the payment of all and every such sum or sums of money to be borrowed in the terms of this act, shall be a good, legal, and valid charge and lien upon such property and works, binding the same, and every part thereof, from the time such deed, conveyance or mortgage is given, any clause, matter or thing in the said deed from the honorable James McNab to such company, or in the act incorporating such company, or in the several acts thereafter passed altering, amending, or in relation thereto, to the 20 30

contrary notwithstanding. Provided, however, that no stockholder of such company, or subscriber to such preferential stock, shall be liable for or in respect of such sum or sums of money so borrowed under the terms of this act, or interest to accrue thereupon, for any further or other or greater sum than the actual amount or sum so taken or subscribed in and to such stock by such stockholder or subscriber, respectively, notwithstanding any act, clause, matter or thing contrary thereto contained in the act incorporating such Inland Navigation Company or the several acts thereafter passed altering, amending, or in relation to such act. 40

4. The directors of such company shall, at any time, and at all times hereafter, be at liberty to sell and dispose of all or any part of the lands and property contained in the before-mentioned deed, which they may deem not actually required for the due and convenient working of such canal or inland water communication, anything contained in the before-mentioned deed, in such act of incorporation, and the several acts heretofore mentioned altering, amending, or in relation thereto, to the contrary notwithstanding.

5. The president and any one or more of the Directors shall make and execute a bond to the Receiver General of the Province, or to such person or persons as Her Majesty's Provincial Government shall appoint, binding themselves in a sum equal to that raised by them by any of the means aforesaid, to expend all and every such sum in the first instance towards the finishing and completion of the works as aforesaid to the waters of Halifax harbor, and then to the payment of the outstanding debts of the company now or hereafter to be incurred. 50