



CHAPTER 70.

An Act to Incorporate the Toad Mountain and Nelson
Tramway Company.

[20th April, 1891.]

WHEREAS the construction of a line of tramway, as hereinafter set forth, is desirable, and a petition has been presented praying for the incorporation of a Company to construct and work the same, and it is expedient to grant the prayer of the said petition : Preamble.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows :—

1. Charles Hall, Oscar Hall, Thomas Hall, Winslow Hall, John Hall, William H. Oakes, Henry Oakes, Osner Oakes, William J. Oakes, Olive B. Oakes, William Miller, J. C. Cobaugh, William White, Robert Day, Jr., Ebenezer Ramsay, and Henry Edward Croasdaile, together with such other persons as shall in pursuance of this Act become shareholders in the Company hereby incorporated, are hereby constituted a body corporate and politic, by the name of "The Toad Mountain and Nelson Tramway Company," hereinafter called "the Company." Incorporation.

2. The several persons named in the first section of this Act shall be the Provisional Directors of the Company, and they shall hold office until the first election of Directors under this Act, and shall have power forthwith to open stock books, and procure subscribers to stock for the undertaking, and to receive payments on account of stock subscribed, and to cause plans and surveys to be made, and to proceed with all necessary preliminary undertakings. Provisional Directors.

3. All moneys expended by the Provisional Directors in furtherance of this undertaking, either before or after the passing of this Act, shall be considered as cash instalments on stock, and at the first meeting of Moneys paid by Provisional Directors to be deemed cash instalments on stock.

Directors a resolution shall be passed giving credit to each Provisional Director in the books of the Company for such amount as he may have so expended.

Head office. 4. The head office of the Company shall be at Nelson, West Kootenay, British Columbia, or in such other place as the by-laws of the Company direct.

Capital stock. 5. The capital stock of the Company shall be fifty thousand dollars, divided into five thousand shares of ten dollars each, with power to increase the same in like manner as is hereinafter provided.

Allotment of stock. 6. The Directors, or a majority of them, may, in their discretion, apportion the stock subscribed among the subscribers as they deem most advantageous and conducive to the furtherance of the undertaking.

Election of Directors 7. So soon as shares to the amount of ten thousand dollars in the capital stock of the Company have been subscribed, and ten per centum paid thereon, *bonâ fide*, the Provisional Directors shall call a general meeting of the subscribers to the said capital stock for the purpose of electing Directors of the Company, giving the notice prescribed by section 10 of this Act.

Qualification of Directors. 8. No person shall be a Director of the Company otherwise than constituted by this Act, unless he is the holder and owner of at least ten shares in the stock of the Company, and has paid up all calls thereon.

Quorum. 9. At such general meeting the subscribers for the capital stock assembled, who have paid up ten per centum thereof, and who are present in person, or represented by proxy, shall choose five persons to be Directors, of whom three shall be a quorum.

Annual general meeting. 10. Thereafter the annual general meeting and other general meetings of the shareholders of the Company for the election of Directors and other general purposes, shall be held at such time and place in British Columbia as may be appointed by by-law of the Company, and two weeks' previous notice of such meeting shall be given by notice in writing addressed to each shareholder of the time, place, and purpose of such meeting.

Power to build tramway. 11. The Company may make, construct, equip, maintain and operate a tramway, to be worked by any motive power, with double or single tracks, from some point at or near Silver King Mine, Toad Mountain, Kootenay District, to some point on the bank of the Kootenay River at or near Nelson in the said district, and may construct, work, and operate a line or lines of telegraph and telephone along the line of their

tramway and branches; and may receive from any Government, person or body corporate, either by purchase or otherwise, and hold, and sell, and convey, and otherwise alienate, land or any other property; and may make, carry, or place the tramway across or upon the lands of any person or corporation; and may make, maintain, and operate all buildings, stations, depôts, wharves, fixtures and other things necessary or convenient for the undertaking, and from time to time alter and enlarge the same, and may make, equip, and maintain branch tramways within an area included in a circle which may be described with a radius of six miles in length from the Silver King Mine, and for that purpose exercise all the powers, privileges, and authorities necessary or convenient therefor, in as full and ample a manner as for the tramway; and may construct, maintain and operate, and do all other matters and things necessary or convenient for the making, extending, and using the tramway; and may take, transport, carry and convey persons and goods on the tramway and its branches, and charge and receive reasonable tolls and compensation therefor, and may borrow money in such manner and upon such security as in the opinion of a majority of the Directors is expedient; and may fell and remove any trees where the tramway passes to a distance of six rods from either side thereof; and may at any time change the location of its line of tramway, and all the provisions of this Act shall refer as fully to the part of such line of tramway so at any time changed, or proposed to be changed, as to the original line.

12. It shall be lawful for the Company, their servants, agents, and workmen, from time to time, and at all times hereafter, as they shall see fit, and they are hereby authorized and empowered, to enter into and upon the land of any person or persons, bodies politic or corporate, lying in or near the proposed line of the tramway, and to survey and ascertain such parts thereof as they may require for the said works, and to contract with the owners and occupiers of the land, and those having any interest in the same, for the purchase of the same, or of any part thereof, or of any privilege that may be required for the purpose of this Act, and for the right to take timber, stone, gravel, sand, and other materials from the aforesaid land, or any lands adjacent thereto, for the use and construction of the said works; and in case of disagreement between the Company and the owners and occupiers of the said lands respecting the amount of the purchase money or value thereof, or as to damages or compensation any appropriation shall cause to them through the construction of the said tramway, the same shall be decided by three arbitrators, to be appointed as hereinafter mentioned, namely, the Company shall appoint one, the owner or owners shall appoint another, and the two arbitrators so appointed shall, within ten days after their appointment, appoint a third arbi-

Power to enter on land.

Compensation by arbitration.

Infants. trator; but in the event of the two arbitrators not appointing a third arbitrator within the time aforesaid, one of the Judges of the Supreme Court of British Columbia shall, on application of either party, appoint such third arbitrator. In case any owner or occupant shall be an infant, or insane, or absent from the Province, or shall refuse to appoint an arbitrator on his behalf, then the said Company may apply to one of the Judges of the Supreme Court of British Columbia, who shall nominate and appoint three disinterested persons as arbitrators.

Arbitrators' award. 13. The arbitrators to be appointed as hereinbefore mentioned shall award, determine, adjudge, and order the respective sums of money which the Company shall pay to the respective persons entitled to receive the same, and the award of the majority of the said arbitrators shall be final.

Meeting of arbitrators. 14. And the said arbitrators shall be and they are hereby required to attend at some convenient place at or near the vicinity of Nelson aforesaid, to be appointed by the Company after eight days' notice given for that purpose by the Company, then and there to arbitrate and award, adjudge and determine such matters and things as shall be submitted to their consideration by the parties interested, and each arbitrator shall be sworn before one of Her Majesty's Justices of the Peace: Provided, always, that any award under this Act shall be subject to be set aside on application to the Supreme Court of British Columbia, in the same manner and on the same grounds as in ordinary cases of arbitration, in which case reference may be made again to arbitration, as hereinbefore provided, and that any sums so awarded, and costs, shall be paid within one month from the date of the award or determination of any motion to annul the same, and in default of such payment the proprietor may resume occupation of his property, and all his rights shall thereupon revive, and the award of a majority of the said arbitrators shall be binding on all parties concerned, subject as aforesaid.

Lands to be vested in Company. 15. The lands which shall be ascertained, set out, or appropriated by the Company for the purposes thereof as aforesaid, shall thereupon, and so long as the said Company comply with the provisions of this Act, be vested in the Company; and it shall be lawful for the Company to construct, erect, and maintain in and upon said lands such works as may be requisite for the undertaking and operations of the Company.

Application of "Land Clauses Consolidation Act, 1845." 16. The "Land Clauses Consolidation Act, 1845," as modified by the "Vancouver Island Land Clauses Consolidation Act, 1863," shall not apply, but the following sections of the "Land Clauses Consolidation Act, 1845," shall be read with and as part of this Act, so far as the same may be applicable, and except in so far as such sections, or

any of them, may be varied or modified by the provisions of this Act or repugnant thereto: sections 26, 29, 30, 31, 32, 33, 34, 36, 37, 69, 70, 71, 72, 73, 74, 76, 78, and 79, but in section 69 in lieu of the word "Bank" and next following words, there shall be read the "Treasury of British Columbia, to the account of the District Registrar of the Supreme Court of British Columbia;" and in section 70 and said subsequent sections, in lieu of the words "Court of Chancery in England," there shall be read the "Supreme Court of British Columbia;" and in sections 71, 73, and 76, in lieu of the word "Bank," there shall be read the "Treasury of British Columbia, to the account of the District Registrar of the Supreme Court of British Columbia;" in section 18 by striking out the words "except such as relate to the filing of plans and publications of notice," in the sixth and seventh lines of the said section.

17. The works upon the main line of the said tramway shall be commenced within two years and completed within four years from the passing of this Act. Commencement and completion.

18. Whenever any gravel, stone, earth, sand or water is taken as aforesaid at a distance from the line of the tramway, the Company may lay down the necessary sidings, water pipes or conduits, and tracks, over or through any lands intervening between the tramway and the lands on which such material or water is found, whatever is the distance, and all the provisions of this Act, except such as relate to the filing of plans and publication of notice, shall apply, and the powers thereby granted may be used and exercised to obtain the right of way from the tramway to the land on which such materials are situated; and such right may be acquired for a term of years, or permanently, as the Company thinks proper; and the powers in this and the next preceding section contained, may at all times be exercised and used in all respects after the tramway is constructed, for the purpose of repairing and maintaining the tramway. Power to lay sidings to gravel lands.

President and Directors.

19. The Directors shall make by-laws for the management and disposition of the stock, property, business and affairs of the Company, not inconsistent with the laws of British Columbia, and for the appointment of all officers, servants, and artificers, and prescribing their respective duties. By-laws for the management of stock.

Calls.

20. The Directors may from time to time make such calls of money not exceeding twenty per cent. of the amount of the share upon the respective shareholders in respect of the amount of capital respectively subscribed or owing by them as they deem necessary, and at least thirty days' notice shall be given of each call. Calls.

(1.) Every shareholder shall be liable to pay the amount of the call so made in respect of the shares held by him to the persons and at the times and places from time to time appointed by the Company or by the Directors.

(2.) If on or before the day appointed for payment of any call any shareholder does not pay the amount of such call he shall be liable to pay interest for the same at the rate of twelve per centum per annum from the day appointed for the payment thereof to the time of the actual payment.

Dividends and Interest.

Dividends.

21. At the annual general meeting of the shareholders of the Company from time to time holden, a dividend shall be declared out of the clear profits of the undertaking, unless such meeting decide otherwise.

(1.) No dividends shall be declared whereby the capital of the Company is in any degree reduced or impaired or be paid out of such capital, nor shall any dividend be paid in respect of any share after a day appointed for payment of any call for money in respect thereof, until such call has been paid.

Increase of Stock.

Power to increase stock.

22. The original capital stock of the Company may be increased from time to time to any amount if such increase is sanctioned by a vote of a majority of the shareholders who hold at least two-thirds in amount of the subscribed stock of the Company, at a meeting expressly called by the Directors for that purpose, by giving the notice prescribed by section 10 of this Act, and the proceedings of such meeting shall be entered in the minutes of the proceedings of the Company, and thereupon the capital stock may be increased to the amount sanctioned by such vote.

Limited liability.

23. The liability of the members of the Company shall be limited to the amount, if any, unpaid on the shares respectively held by them.

Stock to be deemed personal estate.

24. The stock of the Company shall be deemed personal estate, and shall be deemed transferable in such manner as the Directors shall by by-laws direct.

Carriage of dangerous goods prohibited

25. No passenger shall carry, or require the Company to carry upon its tramway, aquafortis, oil or vitriol, gunpowder, nitro-glycerine or any other goods which, in the judgment of the Company, are of a dangerous nature; and every person who sends by the tramway any such goods without, at the time of so sending the same, distinctly marking their nature on the outside of the package containing the same, and otherwise giving notice in writing to the station-master or

other servant of the Company with whom the same are left, shall forfeit to the Company the sum of five hundred dollars for every such offence.

(1.) The Company may refuse to take any package or parcel which it suspects to contain goods of a dangerous nature; or may require the same to be opened to ascertain the fact; and the Company shall not carry any such goods of a dangerous nature, except in cars specially designated for that purpose, on each side of each of which shall be plainly painted, in large letters, the words "dangerous explosives."

Actions for Indemnity; Fines and Penalties, and Procedure therefor.

26. All actions or suits for indemnity for any damage or injury Limitation of actions sustained by reason of the tramway shall be commenced within one year next after the time when such supposed damage is sustained, or if there is continuance of damage, within one year next after the doing or committing of such damage ceases, and not afterwards; and the defendants may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon, and may prove that the same was done in pursuance of and by the authority of this Act.

27. This Act may be cited as the "Toad Mountain and Nelson Short title. Tramway Company's Act."

VICTORIA, B. C. :

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