



CHAPTER 52.

An Act to Incorporate the Downie Creek Railway Company.

[*May 20th, 1898.*]

WHEREAS a petition has been presented praying for the incorporation of a Company to build, equip, maintain and operate a line or lines of railway from a point at or near Albert Canyon ; thence up the Valley of the North Fork of the Illecillewaet River to the headwaters of the Downie Creek ; thence down the valley of the Downie Creek to the junction of that stream with the Columbia River ; thence down the Columbia River to Revelstoke ; with the power to equip, construct and maintain branch lines to any mine or mines within twenty miles of the main line, and all necessary bridges, roads, ways and ferries, and to build, own and maintain wharves and docks in connection therewith ; and to build, own, equip and maintain steam and other vessels and boats, and operate the same on any navigable waters within the Province ; and to build, equip, operate and maintain telegraph and telephone lines in connection with the said railway and branches, and to generate electricity for the supply of light, heat and power ; and to acquire lands, bonuses, privileges or other aids from any Government, municipal corporation, or other persons or bodies, and to levy and collect tolls from all parties using telegraph or telephone lines, and on all freight passing over any of such railways, tramways, ferries, wharves and vessels built by the Company ; and with power to make traffic or other arrangements with railway, steamboat or other companies, and for all other necessary or incidental rights, powers and privileges in that behalf :

Preamble.

And whereas it is expedient to grant the prayer of the said petitioners :

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

Incorporation.

1. John Harold Senkler, Edgar Bloomfield and Joseph Dee Graham, together with such other persons and corporations as shall in pursuance of this Act become shareholders of the Company hereby incorporated, are hereby constituted and declared to be a body corporate and politic under the name of the Downie Creek Railway Company, hereinafter called "the Company."

Head office.

2. The head office of the Company shall be at the Town of Revelstoke, in the Province of British Columbia.

Route of line, etc.

3. The Company, their agents and servants, shall have full power and authority to survey, lay out, construct, complete, equip and operate a single or double line of railway of either standard or narrow gauge from a convenient point at or near Albert Canyon; thence up the valley of the North Fork of the Illecillewaet River to the headwaters of Downie Creek; thence down the valley of Downie Creek to the junction of that stream with the Columbia River; thence down the Columbia River to Revelstoke:

(a.) The Company may from time to time build branch lines from any point or points on either of the lines of railway in the preceding section referred to, to any point or points not more than twenty miles in a direct line from either of such lines of railway.

Lands at terminable points.

4. The Company shall have full power to purchase, lease or acquire at any point where their railway or any branch thereof touches or approaches within two miles of any navigable waters sufficient lands for the use of the Company, their railways or vessels, run or navigated in connection with the said railway; and the Company may erect warehouses, elevators, docks, wharves, stations, workshops and such other buildings as may be necessary for the purposes of the Company; and may sell and convey such lands as may be found superfluous for any such purposes, and shall also have full power to connect any of the works herein mentioned with any point on the railway or its branches by means of any line or lines of railway for such purposes.

Ferries, etc.

5. It shall and may be lawful for the Company to purchase, build, complete, fit out and charter, sell and dispose of, work and control, and keep in repair, steam or other ferries from time to time to ply on the waters of this Province in connection with the said railway, and to make arrangements with steamboat and vessel proprietors, by chartering or otherwise, to ply in connection with the said railway.

Amalgamation.

6. The Company is authorised and empowered to make necessary arrangements, to contract and agree with any other railway company, if lawfully authorised to enter into such arrangements, for amalgamation, provided that the terms of such amalgamation are approved of

by a majority of all the issued stock of the Company, at a special meeting to be held for that purpose in accordance with this Act. Such stock may be represented either in person or by proxy.

7. The Company shall have power to enter into and conclude any agreement with any other railway company, if lawfully authorised to enter into such agreement, for leasing to them the railway herein authorised, or other the undertaking of the Company or any part thereof, or for the working of the said railway, or for running powers over the same, or for leasing and acquiring running powers over lines of other railway companies, or for leasing or for hiring any rolling stock or other property for any services to be rendered by one Company to the other, provided that such agreement shall be approved of by a majority of all the issued stock of the Company at any special meeting called for that purpose.

Working agreements, etc., with other companies.

8. The Company shall have (in addition to the powers conferred by the "British Columbia Railway Act") the following powers, viz. :—

Additional powers.

- (a.) To construct and operate along its line of railway, telegraph and telephone lines for purposes other than its undertaking; and the Company may acquire, by purchase, lease or otherwise, any other line or lines of telegraph or telephone connecting with the lines so to be constructed along the line of the said railway; and may undertake to transmit any messages for the public by any such line or lines of telegraph or telephone, and collect tolls for so doing: Provided that no Act of this Legislature requiring the Company, in case efficient means are devised for carrying telegraph, telephone or electric wires under ground, to adopt such means, and abrogating the right given by this Act to continue carrying lines on poles, shall be deemed an infringement of the privilege granted by this Act:
- (b.) To construct wharves, docks, elevators, dockyards, slips and piers, warehouses and such other buildings as may be found requisite to carry on the business of the Company:
- (c.) To build, acquire, own, charter, equip and maintain steam or other vessels for the purpose of carrying cars, freight and passengers on the inland waters of British Columbia, in connection with the business of the Company:
- (d.) To purchase, hold, receive or take land or other property, and also to alienate, sell or otherwise dispose of the same.

Telegraph and telephone lines.

Wharves.

Vessels.

Acquisition, etc., of land.

9. The several clauses of the "British Columbia Railway Act" shall be incorporated with and be deemed to be part of this Act, and shall apply to the Company and to the railway to be constructed by them, except only so far as they may be inconsistent with the express enactments hereof; and the expression "this Act" when used herein shall

"B. C. Railway Act."

be understood to include the clauses of the said "Railway Act" so incorporated with this Act.

Capital stock.

10. The capital stock of the Company hereby incorporated shall be one million dollars, with power to increase the same in the manner provided by the "British Columbia Railway Act," to be divided into ten thousand shares of one hundred dollars each, and shall be raised by the persons and corporations who may become shareholders in the Company, and the money so raised shall be applied in the first place to the payment of all fees, expenses and disbursements of and incidental to the passing of this Act, and for making the surveys, plans and estimates connected with the works hereby authorised, and the remainder of said money shall be applied to the making, equipping, completing and maintaining of the said railway and to the other purposes of this Act.

Provisional directors.

11. The several persons named in the first section of this Act, with power to add to their number, shall be Provisional Directors, and shall hold office as such until other Directors are elected under the provisions of this Act by the shareholders, and shall have power to fill the place or places of any of their number which may become vacant, and to open stock books and procure subscriptions for the undertaking, to make calls upon the subscribers, to cause surveys and plans to be executed, and with all such other powers as under this Act are vested in ordinary Directors.

General meeting.

12. When and as soon as shares to the amount of one hundred thousand dollars of the capital stock of the Company shall have been subscribed, and ten per cent. thereof shall have been paid, the Provisional Directors shall call a general meeting of the subscribers for the purpose of electing Directors. At least thirty days' public notice of such meeting of the shareholders of the Company shall be given by advertisement published in the British Columbia Gazette, and by notice in writing to each shareholder delivered to him personally or properly directed to him at his last known place of abode, in which notice shall be specified the place and the day and the hour of meeting. All such notices shall be published at least weekly, and a copy of such Gazette containing such notice shall, on production thereof, be evidence of the sufficiency of such notice. The shareholders present, either in person or by proxy, and who shall at the opening of such meeting have paid ten per centum on the stock subscribed by them, shall elect not less than five nor more than nine persons to be Directors of the Company.

Exclusion of subscription.

13. The Provisional or elected Directors of the Company may, in their discretion, exclude any one from subscribing for stock in the Company, or rescind the subscription and return the deposit of any person, if they are of opinion that such person would hinder, delay or

prevent the Company from proceeding with and completing their undertaking under the provisions of this Act; and if at any time more than the whole stock shall have been subscribed, the said Board of Directors shall allocate and apportion it amongst the subscribers as they shall deem most advantageous and conducive to the furtherance of the undertaking, and in such allocation the said Directors may, in their discretion, exclude any one or more of the said subscribers if in their judgment this will best secure the building of the said railway.

Apportioning excessive subscription.

14. No failure to elect Directors or to hold the first or any annual meeting shall operate as a dissolution of the Company, but anything omitted to be done may be afterwards performed at a meeting called in conformity with the by-laws or at a meeting called specially for the purpose.

Failure to elect Directors.

15. It shall be lawful for the Directors, in procuring subscriptions for stock, to allot such stock in such amounts and subject to the payment of such calls, at such amount, and at such times and at such discount as they may think fit, or they may agree for the sale of such stock, or any part thereof, at such price as they may think fit, and may stipulate for the payment of the purchase money at the time of subscription, or by instalments; and the amount of every such instalment, as and when payable, shall be deemed to be money due in respect of a call duly made in accordance with the provisions contained in section 35 of the "British Columbia Railway Act," and non-payment of any such instalment shall carry with it all the rights, incidents and consequences as mentioned in said Act, as in the case of a call due by a shareholder on a share.

Allotment of stock.

16. The said Provisional Directors or elected Directors may pay or agree to pay, in paid-up stock or in the bonds of the said Company, such sums as they may deem expedient, to engineers or contractors, or for right of way or material, plant or rolling stock, and also, when sanctioned by a vote of the shareholders at any general meeting, for the services of the promoters or other persons who may be employed by the Directors for the purpose of assisting the Directors in the furtherance of the undertaking or purchase of the right of way, material, plant or rolling stock, whether such promoters or other persons be Provisional or elected Directors or not, and any agreement so made shall be binding on the Company.

Payment in stock, etc.

17. The general annual meeting of the shareholders of the Company shall be held at such place, and on such days, and at such hours as may be directed by the by-laws of the Company; and notice thereof shall be given as in section 12.

General annual meeting.

18. Special general meetings of the shareholders of the Company may be held at such place, and at such times, and in such manner, and

Special general meetings.

for such purposes as may be provided by the by-laws of the Company, upon such notice as is provided in section 12.

Voting on shares.

19. Every holder of one or more shares of the capital stock shall, at any general meeting of the shareholders, be entitled to one vote for every share held by him ; and no shareholder shall be entitled to vote on any matter whatever unless all calls due on the stock upon which such shareholder seeks to vote shall have been paid up at least one week before the day appointed for such meeting.

Directors' qualification.

20. In the election of Directors under this Act, no person shall be elected a Director unless he shall be the holder and owner of at least ten shares of the stock of the Company upon which all calls have been paid up.

Aliens, etc.

21. Aliens and companies incorporated abroad, as well as British subjects and corporations, whether resident in this Province or elsewhere, may be shareholders in the Company, and all such shareholders shall be entitled to vote on their shares equally with British subjects, and shall also be eligible to office as Directors of the Company.

Quorum, etc.

22. At all meetings of the Board of Directors, whether of Provisional Directors or of those elected by the shareholders, a majority shall form a quorum for the transaction of business ; and the said Board of Directors may employ and pay one of their number as Managing Director.

Gifts, etc., to the Company.

23. The Company shall have power to accept gifts of land from any Government or any person, or any body politic or corporate, and shall have power to sell or otherwise dispose of the same for the benefit of the Company.

Land for terminal purposes.

24. The Company shall have power to purchase and hold such land as may be required at each extremity of the said railway, for the purpose of building thereon storehouses, warehouses, engine-houses and other erections for the uses of the Company, and the same or portions thereof, in their discretion, to sell or convey, and also to make use, subject to the provisions of the "Water Clauses Consolidation Act, 1897," for the purpose of said railway, of any stream or water-course at or near which the said railway passes, doing, however, no unnecessary damage thereto, and not impairing the usefulness of such stream or water-course.

"Water Clauses Consolidation Act, 1897."

Aids to Company.

25. The Company may receive from any Government, or from any persons or bodies corporate, municipal or politic, who may have power to make or grant the same, aid towards the construction, equipment or maintenance of the said railway, by way of bonus, gift, or loan, in money or debentures, or other securities for money, or by way of guarantee, upon such terms or conditions as may be agreed upon.

26. Whenever it shall be necessary for the purpose of procuring sufficient lands for stations or gravel pits, or for constructing, maintaining and operating the said railway, and in case, by purchasing the whole of any lot or parcel of land over which the railway is to run, the Company can obtain the same at a more reasonable price or to greater advantage than by purchasing the railway line only, the Company may purchase, hold, use and enjoy such lands, and also the right of way thereto if the same be separated from their railway, and may sell or dispose of the same, or part thereof, from time to time, as they may deem expedient; but the compulsory clauses of the "British Columbia Railway Act" shall not apply to this section.

Power to acquire more than actual quantity required for right of way.

27. When stone, gravel, earth or sand is or are required for the construction or maintenance of said railway, or any part thereof, the Company may, in case they cannot agree with the owner of the lands on which the same is situate for the purchase thereof, cause a Provincial Land Surveyor to make a map and description of the property so required, and they shall serve a copy thereof with their notice of arbitration, as in case of acquiring the roadway; and the notice of the arbitration, the award and the tender of the compensation shall have the same effect as in the case of arbitration for the roadway, and all the provisions of the "British Columbia Railway Act" and of this Act, as to the service of the said notice, arbitration, compensation, deeds, payment of money into Court, the right to sell, the right to convey, and the parties from whom lands may be taken, or who may sell, shall apply to the subject-matter of this section as to the obtaining materials as aforesaid; and such proceedings may be had by the Company, either for the right to the fee simple in the land from which such material may be taken, or for the right to take material for any time they shall think necessary, the notice of arbitration, in case arbitration is resorted to, to state the interest required.

Expropriation of sand and gravel, etc.

28. When said gravel, stone or other material shall be taken under the preceding section of this Act, at a distance from the line of the railway, the Company may lay down the necessary sidings and tracks over any lands which may intervene between the railway and the lands on which the said material shall be found, whatever the distance may be, and all the provisions of the "British Columbia Railway Act" and of this Act shall apply and may be used and exercised to obtain the right of way from the railway to the land on which such materials are situated; and such right may be so acquired for a term of years or permanently, as the Company may think proper; and the powers in this and the preceding section may at all times be exercised and used in all respects after a railway is constructed, for the purpose of repairing and maintaining the said railway.

Side tracks, etc., to obtain such gravel, etc.

29. The Directors of the Company, after the sanction of the shareholders shall have been first obtained, at any annual general meeting,

Mortgage bonds.

or any special meeting called for that purpose, shall have power to issue bonds made and signed by the President or Vice-President of the Company, and countersigned by the Secretary, and under the seal of the Company, for the purpose of raising money for prosecuting the said undertaking. It shall not be necessary in order to preserve the priority lien, charge, mortgage or privilege purporting to appertain to or be created by any such bonds, that such bonds should be registered in any manner or in any place whatever, but a duplicate original of every such bond shall be filed in the office of the Registrar-General of Titles, and a copy of every such bond so filed certified to be a true copy by the Registrar-General of Titles shall be received as *prima facie* evidence of the original in all Courts of Justice without proofs of the signatures or seals upon such original, and such bonds shall be taken and be considered to be the first and preferential claim and charge upon the undertaking and real property of the Company, including its rolling stock and equipments then existing and at any time thereafter acquired; and each holder of the said bonds shall be deemed a mortgagee and encumbrancer, *pro rata*, with all other holders thereof, upon the undertaking and property of the Company as aforesaid; and the Company may by by-law, before issue, fix and define the amount or denomination of such bonds, the time or times and the place or places for the payment of the principal moneys thereof and the interest thereon, and other particulars in reference thereto: Provided, however, that the whole amount of such issue of bonds shall not exceed twenty-five thousand dollars per mile for each and every mile of railway by this Act authorised to be built; and provided that in the event at any time of the interest upon the said bonds remaining unpaid and owing, then at the next ensuing general meeting of the Company, and at all subsequent general meetings, so long as such interest, or any part thereof, shall remain unpaid and in arrears, all holders of bonds shall have and possess the same rights and privileges and qualifications for Directors and for voting, and for all purposes, as are attached to the shareholders: Provided, further, that the holder of any bond or bonds shall at least three days before any such meeting, produce the bonds held by him to the Secretary of the Company for registration in the holder's name, and it shall be the duty of the Secretary of the Company to register the same on being so required by any holder thereof.

Promissory notes,
etc.

30. The Company shall have power and authority to become parties to promissory notes and bills of exchange for sums not less than one hundred dollars; and any such promissory note or bill of exchange made, accepted or endorsed by the President of the Company, and countersigned by the Secretary of the Company, and under the authority of a quorum of the Directors, shall be binding on the Company; and every such promissory note or bill of exchange so made

shall be presumed to have been made with proper authority until the contrary be shown, and in no case shall it be necessary to have the seal of the Company affixed to such promissory note or bill of exchange, nor shall the persons signing the same be individually responsible for the same, unless the said promissory notes or bills of exchange have been issued without the sanction and authority of the Directors, as herein provided and enacted: Provided, however, that nothing in this section shall be construed to authorise the Company to issue any promissory note or bill of exchange payable to bearer, or intended to be circulated as money or as the notes or bills of a bank.

31. The Company may from time to time, for advances of money, pledge any stock, debentures or bonds, which, under the powers of this Act, can be issued for the construction of the railway or otherwise.

Pledging of stock,
etc.

32. The Company shall have the power to collect and receive all charges subject to which goods or commodities may come into their possession, and on payment of such back charges, and without any formal transfer, shall have the same lien for the amount thereof upon such goods and commodities as the persons to whom such charges were originally due had upon such goods or commodities while in their possession, and shall be subrogated by such payment in all the rights and remedies of such persons for such charges.

Collection of
charges.

33. The Company is hereby authorised and empowered to take and make the surveys and levels of the lands through which the railway of the Company is to pass, together with the map or plan thereof, and of its course and direction, and of the lands intended to be passed over and taken therefor, as far as then ascertained, and also the book of reference for the railway, and to deposit the same as required by the clauses of the "British Columbia Railway Act" and amendments thereto, with respect to "plans and surveys" by sections or portions less than the whole length of the said railway authorised, of such length as the Company may from time to time see fit, so that no one of such sections or portions shall be less than five miles in length; and upon such deposit as aforesaid of the map or plan and book of reference of any and each of such sections or portions of the said railway, all and every one of the clauses of the said "Railway Act" and the amendments thereof, applied to, included in or incorporated with this Act, shall apply and extend to any and each of such sections or portions of the said railway as fully and effectually as if the surveys and levels had been taken and made of the lands through which the whole of the said railway is to pass, together with the map or plan of the whole thereof, and of its whole course and direction, and of the lands intended to be passed over and taken, and the book of reference for the whole of the said railway had been taken, made, examined, certi-

Taking and survey
of route section by
section.

fied and deposited according to the said clauses of the said "Railway Act" and the amendments thereof, with respect to "plans and surveys."

Commencement and completion.

34. The railway shall be commenced within two years and completed within three years after the passing of this Act.

Chinese and Japanese.

35. No Chinese or Japanese person shall be employed in the construction of the undertaking hereby authorised, under a penalty of five dollars per day for each and every Chinese or Japanese person employed in contravention of this section, to be recovered on complaint of any person under the provisions of the "Summary Convictions Act."

Security.

36. The Company shall, within six months after the passing of this Act, deposit with the Provincial Government the sum of five thousand dollars, either in cash or approved bonds, as security that the Company will expend not less than ten thousand dollars in surveys or construction of the railway hereby authorised to be built, before the 30th June, 1899; and in default of such expenditure the aforesaid sum of five thousand dollars shall be forfeited to and become the property of the Government, as liquidated and ascertained damages, and not as a penalty; and should such security not be deposited with the Government within the aforesaid time, all the rights and privileges conferred by this Act shall be null and void.

Short title.

37. This Act may be cited as the "Downie Creek Railway Company Act, 1898."

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