

CHAPTER CII.

AN ACT

To improve the navigation of the river Lehigh.

SECT. 1. *BE* it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That it shall and may be lawful to and for Josiah White, George F. A. Hauto and Erskine Hazard, of the county of Philadelphia, their heirs and assigns, or in case any or either of them should die, for the survivor or survivors, his or their heirs and assigns, their surveyors, engineers, superintendents, artists and workmen, to enter upon the said river Lehigh, to open, enlarge or deepen the same in any part or place thereof, between the Great Falls and the mouth of the said river Lehigh, in the manner which shall appear to them most convenient for opening, enlarging, changing, making anew or improving the channel; and also to cut, break, remove and take away all trees, rocks, stones, earth, gravel, sand or other material, or any impediments whatsoever within the said river; and to use all such timber, rocks, stones, gravel earth or other material in the construction of their necessary works, and to form, make, erect, set up any dams, locks or any other device whatsoever, which they shall think most fit and convenient to make a good navigation downward at least once in every three days, except during winter, with a channel not less than twenty feet wide and eighteen inches deep, for arks and rafts, and of sufficient depth of water to float down boats of the burthen of one hundred barrels, or ten tons: *Provided*, That during the said three days there shall be no interruption to the said navigation for or by reason of any neglect or default of the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns: *Provided also*, That no toll shall be demanded for any boat, vessel or craft in going up said river, unless the same is converted into a complete slack water navigation, as provided by this act.

Persons authorised to improve the Lehigh.

Power to enter thereon, &c.

and to use timber, rocks, &c.

and make dams, locks, &c, of a certain description.

Proviso.

2d proviso.

SECT. 2. *And* be it further enacted by the authority aforesaid, That if any person or persons shall be injured by means of any dam or dams being erected, or the land of any person inundated by swelling the water by means of any dam or dams, or any mill or other water works injured by swelling the water into the tail-race of any mill or other water works which may have been erected in said river; and if the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns, cannot agree with the owner or owners thereof on the compensation to be paid for such injury, the same proceedings shall be had as is provided in the third section of this act, the persons valuing the damages, being first sworn or affirmed,

Remedy of persons injured by dams or swelling the water.

or the jury as the case may be, shall take into consideration the advantages which may be derived by such owner or owners by the navigation aforesaid.

Power to enter on land and dig, &c. **SECT. 3.** *And be it further enacted by the authority aforesaid,* That the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns, shall have authority and power by themselves or their superintendents, engineers, artists and workmen, to enter in and upon and occupy for the purpose, all land which shall be necessary and suitable for erecting of a lock, sluice, canal, tow-path or other device, doing as little damage as possible, and there to dig, construct, make and erect such lock, sluice, canal, tow-path or other device, satisfying the owner or owners thereof; but if the parties cannot agree upon the compensation to be made to such owner or owners, it shall and may be lawful for the parties to appoint six suitable and judicious persons, who shall be under oath or affirmation, and who shall reside within the proper county where the land lies; or if they cannot agree or such persons, then either of the parties may apply to the court of common pleas of the proper county where the land lies, and said court shall award a *venire* directed to the sheriff, to summon a jury of disinterested men, in order to ascertain and report to said court what damages, if any, have been sustained by the owner or owners of said ground, by reason of such lock, canal, sluice, tow-path or other device passing through his, her or their land, which report being confirmed by the court, judgment shall be entered and execution may issue, in case of non-payment, for the sum awarded, with reasonable cost to be assessed by the court. And it shall be the duty of the jury or the six appraisers as the case may be, in valuing any land, to take into consideration the advantage derived to the owner or owners of the premises from the said navigation:

Remedy for damage done thereby. *Provided,* That either party may appeal to the court, within thirty days after such report may have been filed in the prothonotary's office of the proper county, in the same manner as appeals allowed in other cases: *And provided also,* That if any person owning land or any other property which shall be affected by this act, be femme coverte, under age, non compos mentis, or out of the state, then and in either of those cases the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns, shall within one year thereafter, represent the same to a neighboring justice of the peace, or to the court of common pleas of the county as the case may be, who shall proceed thereon in the same manner and to the same effect as is directed by this act in similar cases.

Proviso.

2d proviso.

Power to enter on lands contiguous, & take stone, timber, &c. **SECT. 4.** *And be it further enacted by the authority aforesaid,* That the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns, by and with their superintendents, engineers, artists, workmen and laborers, with their tools, instruments, carts, waggons and other carriages and beasts of draft and burthen, may enter upon the

lands contiguous and near to the said river, giving notice to the owners or occupiers thereof, and from thence take and carry away any stone, timber, gravel, sand, earth or other material, doing as little damage thereto as possible, and repairing any breaches they make in the enclosures thereof, and making amends for any damages that may be done thereon, and paying for the materials to be taken away, the amount whereof, if the parties do not agree, shall be assessed and valued by any three disinterested freeholders residing in the neighborhood, under oath or affirmation, to be appointed by consent of the parties, or if they cannot agree, by any disinterested justice of the peace of the proper county, allowing an appeal to the court of common pleas as in the third section of this act.

Conditions thereof.

Remedy for damages.

SECT. 5. *And be it further enacted by the authority aforesaid.* That whenever any sluice or canal shall cross any public or private laid out road or highway, or shall divide the grounds of any person or persons into two parts, so as to require a ford or bridge to cross the same, the jury who shall enquire of the damages to be sustained, in manner directed by the third section of this act, shall find and ascertain whether a passage across the same shall be admitted or maintained by a ford or bridge, and on such finding, the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns, shall cause a ford to be rendered practicable, or a bridge fit for the passage of carts and waggons to be built, and forever thereafter maintained and kept in repair, at all and every places so ascertained by the said jury, at the costs and charges of the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns, but nothing herein contained shall prevent any person from erecting and keeping in repair any foot or other bridge across any sluice or canal at his own expense, when the same shall pass through his ground: *Provided,* That such foot or other bridges so to be erected by the owners of such land, shall not interfere with any sluice or lock or other works of said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns.

To erect fords or bridges when directed by a jury.

Proviso.

SECT. 6. *And be it further enacted by the authority aforesaid,* That as soon as the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns, shall have completed the improvements in the navigation of either of the grand sections hereinafter mentioned, in the manner prescribed in the first section of this act, they shall give notice thereof to the Governor, who shall, as soon as conveniently may be, appoint five persons of skill and practical knowledge of river navigation, three of whom shall not reside in the neighborhood of said river; and the said commissioners shall proceed to examine the said improvements, and make a detailed and specific report thereof to the Governor, accompanied with such observations as may serve to explain the same;

Commissioners to be appointed by the Governor to examine the improvements when completed, and report the same.

Report to be laid before the Legislature.

Privilege thereupon granted.

Proviso.

How the size of rafts or arks and tonnage of boats shall be ascertained.

Proceeding in case the owner, &c. declines choosing a person.

Penalty for impeding the navigation or injuring the dams, locks, &c.

and the said report shall be laid before the next succeeding legislature, and if the legislature shall approve of the said improvements in the navigation, then and in that case the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns, shall have the privilege and be entitled to use all the water from the said river, sluices, canals or other devices, to propel such machinery as they may think proper, to erect on the land which they may previously have purchased from the owner or owners, or to sell in fee simple, lease or rent for one or more years, the said water to any person or persons, to be used in such manner and on such terms as they may think proper: *Provided*, It be so done that it shall not at any time impede or interrupt the navigation.

SECT. 7. *And be it further enacted by the authority aforesaid*, That in order to ascertain the size of arks and rafts, and the tonnage of boats using and passing the said navigation, and to prevent disputes between the supercargoes and collectors of tolls concerning the same, upon the request of the owner, skipper or supercargo of such boat, raft or ark, or of the collector of said tolls, it shall and may be lawful for each of them to choose one skilful person to measure and ascertain the size of said raft or ark, and the tonnage the said boat is capable of carrying, and to mark the said tonnage so ascertained in figures upon the head and stern of said boat, in colours mixed with oil or other durable matter, and that the said boat or vessel so measured and marked, shall be permitted to pass on the said navigation for the price to which the number of tons so marked on her shall amount, agreeably to the rates per ton hereinafter established. And if the owner, skipper or supercargo of any raft, ark or boat, shall decline choosing a person resident within two miles of the place where the said toll is payable, to ascertain the tonnage thereof, then the amount of such tonnage shall be fixed and ascertained by the person appointed for that purpose by the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns, or chosen by the said collector of tolls, and the tolls shall be paid according to such measurement, before any such boat, raft or ark shall be permitted to pass the place where such toll is made payable.

SECT. 8. *And be it further enacted by the authority aforesaid*, That if any person or persons shall wilfully and knowingly do any act or thing whereby the navigation shall be impeded, or any dam, lock, gate, canal, engine, machine, property or device whatsoever thereunto belonging, shall be injured or damaged, he, she or they so offending shall forfeit and pay to the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns, four times the amount of the damages by them sustained, together with costs, to be recovered by action of debt before a justice of the peace, or in any court of competent jurisdiction.

SECT. 9. *And be it further enacted by the authority aforesaid,* That if the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns, shall neglect or refuse to keep in good order or repair, any dam, lock or sluice of their own construction, or shall neglect to remove any obstacle which may occur, so that boats, arks, rafts or other vessels may safely navigate the said river at the times and in the manner fixed in the first section of this act, on the complaint of any person or persons to the judges of the court of common pleas in the county where such default occurs, it shall and may be lawful for the said judges, (due notice thereof in writing being previously given by such complainant to the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns, or to any or either of them,) to appoint three commissioners to view the said breach or obstacle and report to them at their next sessions the state thereof, and whether it is conformable to the provisions of this act; which report on oath or affirmation, if it contain an offence against this act, shall be sufficient ground for the court to direct a bill of indictment to be sent to the grand jury against the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns; and upon conviction for every such offence they shall be liable to pay all damages resulting therefrom, to be recovered before a court of competent jurisdiction, and a fine not exceeding two hundred dollars at the discretion of the court, for the use of the poor of the said county or township; and the service of any civil process upon the toll gatherer in the proper county, and next to the place where the offence shall have been committed, shall be held as good and available in law as if served on the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns.

Proceeding in case of not keeping the locks, &c. in repair, or not removing obstructions, &c.

Commissioners to be appointed to view and report.

Effect thereof.

Penalty on conviction.

Service of process when good.

SECT. 10. *And be it further enacted by the authority aforesaid,* That the river Lehigh for the purpose of said improvements shall be divided into two grand sections, the first grand section to begin at the mouth of said river and to end at the mouth of Nescohonong creek, the second grand section to begin at the said Nescohonong creek and to end at the foot of the great falls; the second grand section to be subdivided into sections of ten miles each.

River divided into two grand sections.

SECT. 11. *And be it further enacted by the authority aforesaid,* That as soon as the said Josiah White, George F. A. Hauto and Erskine Hazard, and their heirs and assigns, shall have improved the said first grand section of said river ending at said Nescohonong creek, they shall give notice thereof to the Governor of the commonwealth, who shall thereupon forthwith appoint three skilful, judicious and disinterested persons to view and examine the said grand section, and report to him in writing whether that part of the navigation is completed in the manner aforementioned according to the true intent and meaning of this act; and if the

Proceeding on completion of the first grand section.

Governor to appoint three viewers.

Report to be made to the governor. report of them or a majority of them shall be in the affirmative, then the Governor shall by license under his hand and the lesser seal of the commonwealth, permit and suffer the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns, to fix upon and appoint so many places at or between the places before mentioned as will be necessary and sufficient to collect the tolls and duties hereinafter granted to the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns; and the same process shall be had upon the completion of each succeeding ten miles in the second grand section.

SECT. 12. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns, as soon as they have obtained the Governor's permission as aforesaid for fixing upon and appointing proper places for collecting tolls and duties as aforesaid, to appoint so many collectors of tolls as they shall think proper, and that it may and shall be lawful for such toll collectors and their deputies to demand and receive of and from the persons having the charge of all boats, vessels, crafts and rafts passing down the said river such tolls and rates for every ton weight of the ascertained burthen of the said boat or craft, and for every one thousand feet board measure of boards, timber, planks or scantling, and for every ton weight of shingles or other material in rafts as the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns, shall think proper at any place for receiving of toll as ascertained: *Provided,* That the amount of the said toll shall not in the whole exceed the rate of three cents per mile for every ton of the ascertained burthen of such boat, vessel or craft; and for every one thousand feet board measure of boards, timber, planks or scantling, and for every ton weight of shingles or other material in rafts from the great falls to the mouth of Nescohonong creek, and from thence to the mouth of the said river Lehigh, one cent per mile for every ton of the ascertained burthen of such boat, vessel or craft, and for every one thousand feet board measure of boards, timber, plank or scantling, and every ton weight of shingles or other materials in rafts: *Provided also,* That the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns, shall be obliged to commence the improvement of the aforesaid first grand section ending at the mouth of the said Nescohonong creek within the period of two years from the passage of this act, and finish the same in six years: *And provided also,* That the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns, shall commence the said second grand section ending at the great falls within the period of seven years from the passage of this act, and finish the same within twenty years; in failure whereof the said Josiah White, George F. A. Hauto and Erskine

Collectors of toll to be appointed.

Rates of tolls.

Proviso.

2d proviso.

3d proviso.

king Hazard, their heirs and assigns, shall forfeit all the rights, liberties and franchises hereby granted to the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns.

SECT. 13. *And be it further enacted by the authority aforesaid,* That if any owner, skipper or supercargo of any boat, ark, craft or raft shall pass by any place appointed for receiving tolls without making payment thereof, with intent to defraud the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns, out of such toll, he, she or they shall forfeit and pay for every time they shall so pass by each appointed place to the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns, the sum of twenty dollars to be sued for and recovered before any justice of the peace, in like manner and subject to the same rules and regulations as debts under one hundred dollars may be sued for and recovered, together with reasonable costs of prosecution.

Penalty for attempting to defraud out of toll

How recovered.

SECT. 14. *And be it further enacted by the authority aforesaid,* That the said navigation with the rights and privileges appertaining thereto, shall be held by the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns, as tenants in common and not as joint tenants, and in case of the decease of either or all of them before the same shall be completed, it shall and may be lawful for the survivor or survivors or the heirs or assigns of either or all of them to complete the same, and to exercise all the rights and privileges hereby granted for the use and benefit of the survivor or survivors and the heirs of the deceased, in the same proportion as if all had lived till the work had been completed.

Tenancy of the property.

Survivors may complete the work.

SECT. 15. *And be it further enacted by the authority aforesaid,* That at any time after the expiration of the periods herein fixed for the completion of each grand section in the manner aforesaid, should the legislature deem the navigation contemplated by the preceding sections of this act insufficient, the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns, due notice in writing being given them thereof, shall convert the said navigation into a complete slack water navigation, and shall erect and complete at least one lock or other device overcoming at least six feet falls in each and every year, in such part of said respective grand sections as they may think proper, and so on until the whole shall be completed; and in such case after each and every such lock or other device has been inspected, and the Governor's license for each of them has been obtained in the manner prescribed herein, it shall be lawful for the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns, to charge and receive for the passage up and down through each and every such lock or other device, as soon as it shall have been completed and the license for it obtained as aforesaid, for their own proper use and benefit, a

Duty in case the legislature deem the navigation insufficient.

Tolls in case of a complete slack water navigation.

toll not exceeding eight cents per ton per lock or other device of six feet fall or lift, and so in proportion for any greater or less fall or lift, and the same for every thousand feet board measure of boards, timber, plank or scantling in rafts: *Provided*, That the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns, shall not receive for the distance thus made slack water, the toll granted them by the eleventh section of this act.

Proviso.

SECT. 16. *And be it further enacted by the authority aforesaid*, That if the legislature after due notice given as aforesaid shall direct the said navigation to be converted into a slack water navigation, the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns, shall proceed to carry on the same under all the provisions, immunities, privileges, restrictions, penalties, rules and regulations contained in the first, second, third, fourth, seventh, eighth, ninth, eleventh, twelfth and fourteenth sections of this act.

Duty in case of the legislature directing a slack water navigation.

SECT. 17. *And be it further enacted by the authority aforesaid*, That as soon as the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns, shall have completed the said slack water navigation in either or both of the grand sections aforesaid, and the same shall have been approved by commissioners appointed as hereinbefore directed, the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns, shall for such grand section or sections so finished as aforesaid, have the privileges and be entitled to use all the water from the said river, sluices, canals or other devices to propel such machinery as they may think proper to erect on the land which they may previously have purchased from the owner or owners, or to sell in fee simple, lease or rent for one or more years the said water to any person or persons to be used in such manner and on such terms as they may think proper: *Provided*, It be so done that it shall not at any time impede or interrupt the navigation.

Privileges allowed in such case of using the water to propel machinery.

SECT. 18. *And be it further enacted by the authority aforesaid*, That the locks shall be in the clear at least eighteen feet wide and eighty feet long, and it shall be the duty of the master or commander of any boat, ark or other vessel navigating the said river when they shall arrive within one-fourth of a mile from any lock so erected, under the penalty of two dollars, to blow a trumpet or horn whereupon the keeper of such lock shall attend for the purpose of opening the gate or sluice to let the said boat, ark or other vessel pass without unnecessary delay and in safety; and if any boat, ark or other vessel shall be prevented from passing up or down any of said locks or sluices by reason of the lock not being raised for more than thirty minutes, the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns, shall on conviction thereof before any justice of the peace of the proper county, forfeit and pay to the person so hindered

Size of the locks.

Duty of master, &c, of a boat on arriving.

Duty of keeper.

Penalty.

the sum of one dollar for every thirty minutes beyond the said time that he shall be so prevented, and in the same proportion for any longer or shorter time; and the service of any civil process upon the toll gatherer in the proper county and next to the place where the offence shall have been committed, shall be held as good and available in law as if served upon the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns. Service of process.

SECT. 19. *And be it further enacted by the authority aforesaid,* That at any time after the expiration of thirty-six years from the date of this act, the legislature shall have the privilege of purchasing every right and title to the navigation; and the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns, shall after the expiration of thirty years keep a regular account of all monies received by them for toll, and shall annually before the first day of January, under oath or affirmation make report thereof to the legislature, in failure whereof it shall be lawful for the legislature to resume the privileges hereby granted; and in such case in order to ascertain the purchase money, the one sixth of the nett amount of toll received in the six years next preceding such purchase shall be considered as equal to the interest of said purchase money at six per cent. per annum; and in case of such purchase or resumption by reason of forfeiture, the legislature shall be bound to fulfil all and every obligation enjoined by this act on the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns. When the legislature may purchase the right of navigation.
When accounts shall be kept & laid before the legislature.
Duty of legislature.

SECT. 20. *And be it further enacted by the authority aforesaid,* That if the slack water navigation aforesaid shall not be begun by the said Josiah White, George F. A. Hauto and Erskine Hazard, their heirs and assigns, within one year after notice given as aforesaid, and shall not within twenty years thereafter be completed, or if they shall at any time hereafter misuse or abuse any of the privileges granted by this act, then or in either of these cases the legislature may resume all and singular the rights, liberties and privileges hereby granted. Right of resumption by the legislature on failure in certain cases.

SECT. 21. *And be it further enacted by the authority aforesaid,* That the twenty-eighth section of the act, entitled "An act making appropriations for certain internal improvements," passed the twenty-fourth day of March one thousand eight hundred and seventeen, be and the same is hereby repealed. Repeal.

WILLIAM DAVIDSON, *Speaker*
of the House of Representatives.

ISAAC WEAVER,
Speaker of the Senate.

APPROVED—the twentieth day of March, one thousand eight hundred and eighteen.

WILLIAM FINDLAY,