

CHAPTER XXVII.

AN ACT

Authorising the Governor to incorporate the Beaver Canal Company.

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 David Townsend, Evan Pugh, John Dickey, Frederick Haymaker, Robert Darragh, Thomas Henry, Milo Adams, Charles S. Reno, James Allison and Joseph M'Ferron, of Beaver county, Arthur Shenowith, Jacob Herrington and Bevan Pearson, of Mercer county, and Mathias Evans and Hugh Davis, of Allegheny county, or any two of them, be and they are hereby appointed commissioners to do and perform the several things hereinafter mentioned, that is to say: They shall on or before the first Monday in September next, procure a sufficient number of books, one or more of which shall be opened at some convenient place in the city of Pittsburg, also at Allegheny town, in Allegheny county, at Beaver, Hookstown, Sharon, and the Falls of Beaver, in the county of Beaver, in Mercer and Newcastle, in the county of Mercer, in Youngstown and Warren, in the state of Ohio, and in each of them enter as follows: "We whose names are hereunto subscribed, do promise to pay to the president and managers of the Beaver canal company, the sum of fifty dollars for every share of stock set opposite to our respective names, in such manner and proportions and at such times as shall be determined by the president and managers of the said company, in pursuance of an act of the General Assembly of this commonwealth, entitled "An act authorising the Governor to incorporate the Beaver canal company." Witness our hands this Commissioners named.

day of Books to be opened.

in the year of our Lord one thousand eight Engagement of subscribers.

hundred and and shall thereupon

give notice in one or more newspapers printed in the city of Pittsburg, one newspaper printed in the county of Beaver, and one newspaper printed in the borough of Mercer, in Mercer county, and one newspaper printed in Warren, in the state of Ohio, for one calender month at least, of the times and places when and where the said books shall be kept open to receive subscriptions for the stock of the said company; at which respective times and places one or more of the commissioners shall attend, and permit all persons of lawful age, who shall offer to subscribe in the said books, in their own name or the name of any other person who shall authorise the same for any number of shares in the said stock, and the said books shall be kept open respectively for the purpose aforesaid, at least six hours in every juridical day, for the Notice to be given of the time and place of opening books.

Subscriptions to be taken. How long the books shall be kept open.

space of ten days, or until there shall have been subscribed in the city of Pittsburg, two hundred shares; in the town of Allegheny, in the county of Allegheny, fifty shares; in Beaver, Sharon, Brighton and Hookstown, three hundred shares; in Mercer and Newcastle, one hundred and fifty shares; and at Youngstown and Warren, one hundred shares; and if at the expiration of ten days, the books aforesaid shall not have the number of shares aforesaid, or any of them therein subscribed, the said commissioners may adjourn from time to time and transfer the books elsewhere, until the whole number of eight hundred shares shall be subscribed; of which adjournment and transfer the commissioners aforesaid shall give such public notice as the occasion may require, and when the whole number of shares shall be subscribed, then the books shall be closed: *Provided always*, That every person offering to subscribe in the said books, in his own or any other name, shall previously pay to the attending commissioners the sum of five dollars for every share to be subscribed, out of which shall be defrayed the expenses attending the taking of such subscriptions and other incidental expenses, and the remainder shall be paid to the treasurer of the incorporation, as soon as the same shall be organised and the officers chosen as hereinafter mentioned.

Power to adjourn.

Proviso.

\$5 payable on subscribing.

SECT. 2. *And be it further enacted by the authority aforesaid*, That when two hundred and fifty shares or more of the said stock shall be subscribed, the commissioners or a majority of them may certify to the Governor, under their hands and seals, the names of the subscribers and the number of shares subscribed by each; whereupon the Governor shall by letters patent, under his hand and the seal of the commonwealth, create and erect the subscribers, and if the subscription be not full at the time, then also those who shall thereafter subscribe to the number of shares as aforesaid, into one body politic and corporate, in deed and in law, by the name, style and title of "The President and Managers of the Beaver Canal Company," and by the same name the subscribers shall have perpetual succession, and all the privileges and franchises incident to a corporation, and shall be capable of taking and holding their capital stock and the increase and profits thereof, and of enlarging the same from time to time by new subscriptions, in such manner and form as they shall think proper, if such enlargements shall be found necessary to fulfil the intentions of this act, and of purchasing, taking and holding to them and their successors and assigns in fee simple, or for any lesser estate, all such lands, tenements, hereditaments and estate, real and personal, as shall be necessary to them in the prosecution of their works, and of suing and being sued, and of doing all and every other matter and thing which a corporation or body politic may lawfully do.

When letters patent may issue.

Style and title of the corporation.

Power and privileges.

SECT. 3. *And be it further enacted by the authority aforesaid*

said, That the seven first named persons or a majority of them, shall as soon as conveniently may be, after the said letters patent shall be obtained, give at least twenty days notice in all the public newspapers herein before mentioned, of the time and place by them appointed for the subscribers to meet, in order to organise the said company and to choose, by a majority of votes of the said subscribers by ballot, to be given in person or by proxy duly authorised, one president and ten managers, a treasurer, secretary, and such other officers as shall be deemed necessary, which proxy shall have been obtained and bear date within three months previously to the election, at which such proxy shall be presented, that the president and managers aforesaid, shall conduct the business of said company until the fourth Monday in January then next, and until like officers shall be chosen, and may make such by-laws, rules, orders and regulations as do not contravene the constitution and laws of the United States or of this state, that may be necessary for the well governing the affairs of the company.

Proceeding to organise the company.

Officers to be chosen.

Voting by Proxy.

By-laws.

SECT. 4. *And be it further enacted by the authority aforesaid*, That the stockholders shall meet on the first Monday in January in every year, at such place as may be fixed upon by the by-laws, of which notice shall be given at least twenty days by the secretary, in the newspapers before mentioned, and choose by a majority of votes present, their officers for the ensuing year, as mentioned in the third section of this act: who shall continue in office for one year and until others are chosen, and at such other times as they may be summoned by the managers, in such manner and form as shall be prescribed by the by-laws, at which annual or special meeting they shall have full power and authority to make, alter or repeal, by a majority of votes in manner aforesaid, and to do and perform any other corporate act; and each person shall be entitled to one vote for each share by him or her held.

Meeting of the stockholders.

Their powers.

Right of voting.

SECT. 5. *And be it further enacted by the authority aforesaid*, That the said president and managers shall meet at such times and places as shall be found most convenient for the transacting of their business, and when met, five shall be a quorum, who in the absence of the president may choose a chairman, and shall keep minutes of their transactions fairly entered in a book, and a quorum being formed, they shall have full power and authority to appoint all such surveyors, engineers, superintendants and other artists and officers as they shall deem necessary to carry on the intended work, and to fix their salaries and wages, to ascertain the times, manner and proportions in which the said stockholders shall pay the monies due on their respective shares, to draw orders on the treasurer: *Provided*, That such drafts or orders be signed by the president, or in his absence by a majority of the managers present, and generally to do all such other acts, matters

Meetings of the company.

Quorum.

Powers and authority.

Provide.

and things as by this act and by their by-laws and regulations of the company they are authorised to do.

CERT. 6. *And be it further enacted by the authority aforesaid,* That the president and managers first chosen, shall procure certificates or evidence of stock for all the shares of the said company, and shall deliver one such certificate signed by the president, and countersigned by the treasurer, and sealed with the common seal of the said corporation, to each person for every share by him subscribed and held, which certificate or evidence of stock shall be transferable at his pleasure, in person or by attorney duly authorised, in the presence of the president or treasurer, each of whom shall keep a book for that purpose, subject however to all payments due or to become due thereon, and the assignee holding any certificate, having first caused the assignment to be entered in a book of the company, to be kept for the transfer of stock, shall be a member of the said corporation, and for every certificate assigned to him as aforesaid, shall be entitled to one share of the capital stock, and of all the estates and emoluments of the company incident to one share, and to vote as aforesaid at the meetings thereof, and subject to all penalties and forfeitures, and of being sued for all the balance and penalty due or to become due on each share, as the original subscribers would have been.

Certificates of stock to be delivered to subscribers.

Made transferable.

Right and duties of the assignee.

SECT. 7. *And be it further enacted by the authority aforesaid,* That if after thirty days notice in the public papers aforesaid, of the time and place appointed for the payment of any proportion or instalment of the said capital stock, in order to carry on the work, any stockholder shall neglect to pay such proportion or instalment at the place appointed, for the space of thirty days after the time so appointed, every such stockholder or his assignee, shall in addition to the instalment so called for, pay at the rate of two per centum per month, for the delay of such payment, and if the same and additional penalty shall remain unpaid, for such space of time as that the accumulated penalty shall become equal to the sums before paid in part, and on account of such shares, the same shall be forfeited to the said company and may be sold to any person or persons willing to purchase, for such price as can be obtained for the same, or in default of payment by any stockholder of any such instalment as aforesaid, the said president and managers may at their election, cause suit to be brought before an alderman or justice of the peace, or in any court having competent jurisdiction, for the recovery of the same, together with the penalty aforesaid: *Provided,* That no stockholder, whether original subscriber or assignee, shall be entitled to vote at any election or at any general or special meeting of the said company, on whose share or shares any instalment or arrearages may be due, and payable more than thirty days previously to the said election or meeting.

Penalty on neglecting to pay up subscriptions.

Forfeitures of shares.

Proviso.

SECT. 8. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the said president, managers and company, their superintendants, surveyors, engineers, artists and workmen, to enter upon the Big Beaver river at or near the falls thereof, in Beaver county, to open, enlarge or deepen the same in any part or place thereof, which shall appear to them most convenient for opening, changing, making a new, or improving the channel, and also to cut, break and remove, and take away all trees, rocks, stones, earth, gravel, sand or other materials, or any obstruction or impediment whatsoever within the said river, or to use all such timber, rocks, stones, gravel, earth, or other material, in the construction of their necessary works, and to form, make, erect and set up any dams, locks, or any other device whatsoever, which they shall think most fit and convenient to make a complete slack water navigation from one end thereof to the other, as far as the same may be practicable, so as to admit a safe and easy passage for loaded boats, arks and other vessels, up as well as down said river, or by means of such collateral sluices and locks as they may devise for the purpose.

Authority to enter upon Big Beaver river.

To erect dams, locks, &c.

SECT. 9. *And be it further enacted by the authority aforesaid,* That the said president, managers and company shall have power and authority by themselves, or their superintendants, engineers, artists and workmen, to enter in and upon, and occupy for the purpose any land which shall be necessary and suitable for erecting of a lock, sluice or canal contiguous to the falls aforesaid, and then to dig, construct, make and erect such lock, sluice or canal, satisfying the owner or owners therefor, 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 within the proper county where the land lies, or if they cannot agree on 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 or sluice passing through his, her or their land, which report being confirmed by the court, judgment shall be entered thereon, and execution may issue in case of non-payment for the sum awarded, with reasonable costs 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 advantages derived to the owner or owners of the premises from the said navigation passing through the same: *Provided,* That either party may appeal to the court within thirty days after such report may have been filed in the pro-

Power to erect locks, on land contiguous.

Mode of assessing damages done to the owners of the land.

Proviso.

thoritary's office of the proper county, in the same manner as appeals are allowed in other cases.

SECT. 10. *And be it further enacted by the authority aforesaid,* That the president and managers, by and with their superintendants, engineers, artists, workmen and laborers, with their tools, instruments, carts, waggons and other carriages, and beasts of draft or burthen, may enter upon the lands contiguous and near to the said river, giving notice to the owner or occupiers thereof; and from thence to take and carry away any stone, gravel, sand or earth, doing as little damage thereto as possible, and repairing any breaches they may make in the inclosures thereof, and making amends for any damages that may be done to the improvements thereon, and paying for the materials taken away, the amount whereof, if the parties do not agree, shall be assessed and valued by any three freeholders residing in the neighbourhood, 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.

Power to carry away stone, gravel, &c. from land contiguous.

Breaches to be repaired and amends made for damages.

Restriction as to extending the dams.

SECT. 11. *And be it further enacted by the authority aforesaid,* That the said president and managers shall cause the guard, walls, locks, gates and canal to be erected and made at each respective situation before any dam obstructing the ordinary navigation shall be extended to more than one-third across the river.

When viewers shall be appointed by the Governor.

SECT. 12. *And be it further enacted by the authority aforesaid,* That as soon as the said president, managers and company shall have perfected one lock on the said canal, and so from time to time as they shall perfect one additional lock on said canal, they shall give notice thereof to the Governor, who shall thereupon nominate and appoint three disinterested persons to view and examine that part said to be completed, and to report to him in writing whether the said navigation is so far executed in a masterly workmanlike manner, according to the true intent and meaning of this act; and if at any time their report shall be in the affirmative, then the Governor shall by license under his hand and the less seal of this commonwealth, permit the said president, managers and company, or such person or persons as they shall from time to time appoint as toll collectors, or their deputies, to demand and receive of, and from the persons having the charge of any boat, ark or other vessel passing through any lock erected on said canal, twelve and an half cents at each lock, upon each and every ton of the ascertained burthen of such vessel:

When license to take toll shall be issued.

Toll at each lock.

Proviso as to reducing the tolls.

Provided, That if at the expiration of two years after the said work shall be completed, the tolls together with the interest of the money arising from the sale of water power, or the rents and profits thereof, should enable the company after paying all repairs and other necessary expenses, to divide more than nine per centum per annum on the capital stock expended, then and in such case, the tolls shall be so reduced

that the dividends shall not exceed nine per cent, and shall so continue for five years, and if at the expiration of that time shall exceed fifteen per cent, they shall be so reduced as not to exceed fifteen per cent, and shall at that period be so regulated from time to time as not to exceed fifteen per cent per annum, and if at any time after the expiration of two years from the completion of the said work, the nett profits aforesaid shall not amount to nine per cent upon the money expended, it shall be lawful to raise the said tolls so as to divide nine per cent.

When the tolls may be raised.

SECT. 13. *And be it further enacted by the authority aforesaid,* That in order to ascertain the size of rafts and arks, and the tonnage of boats using and passing the said canal and lock navigation, and to prevent disputes between the supercargoes and collectors of tolls concerning the same, upon the request of the owner or supercargo of such boat or raft, or of the collector of the said tolls at any lock upon the said canal and navigation; it shall and may be lawful for each of them to choose one skilful person to measure and ascertain the size of said rafts and arks, 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 the said boat, in colours mixed with oil, and that the said boat or vessel so measured and marked, shall be permitted to pass through the said canal and locks, for the price per ton to which the number of tons so marked on her shall amount to, agreeably to the rates fixed in the manner aforesaid, and if the owner 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 president and managers, or chosen by the said collector of tolls for the said company, and the toll shall be paid according to such measurement, before any such boat or raft shall be permitted to pass the place where such toll is made payable, by the said president and managers.

Method of ascertaining and marking the size and tonnage of rafts, &c.

When toll shall be payable.

SECT. 14. *And be it further enacted by the authority aforesaid,* That it shall be the duty of the master or commander of any boat, ark or other vessel intending to pass through said canal, 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 president, managers and company, shall on conviction thereof before any justice of the peace of the proper county, forfeit and pay to the person

Duty of master of a vessel to blow a trumpet.

Penalty for delay at the lock.

so hindered, the sum of four dollars for every twenty minutes beyond the said time that he shall be so prevented, and in the same proportion for any longer or shorter time.

Penalty for not keeping the locks, &c. in repair, or not removing obstacles to the navigation.

SECT. 15. *And be it further enacted by the authority aforesaid,* That if the president, managers and company 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 at all times safely navigate the said river; the president, managers and company, shall for each and every such offence pay the sum of fifty dollars, to be recovered in the same manner as debts of equal amount are by law made recoverable, before a justice of the peace of the proper county where the offence shall be committed, one half to the use of the informer, and the other half to the use of the poor of the township or county where the neglect may occur.

Penalty for impeding the navigation or injuring any dam, &c.

SECT. 16. *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 or device thereunto belonging, or any machinery or property of the company shall be injured or damaged, he, she or they so offending, shall forfeit and pay to the said company fourfold 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.

Accounts to be kept of monies received, &c. and monies expended.

SECT. 17. *And be it further enacted by the authority aforesaid,* That the president and managers of the said company, shall keep fair and just accounts of all monies received by them from the said commissioners, and from the subscribers to the said undertaking, on account of the several subscriptions, of all penalties for delay in the payment thereof, and the amount of the profits on the shares which may be forfeited as aforesaid, and also of all monies by them expended in the prosecution of the said works; and shall in every year submit such accounts to the stockholders at their annual meeting, and the aggregate amount of such receipts and expenditures shall be ascertained, and if upon such liquidation, or when the capital stock shall be nearly expended, it shall be found that the said capital stock will be insufficient to complete the said navigation according to the true intent and meaning of this act, it shall and may be lawful for the said president, managers and company, at a stated or special meeting to be convened for the purpose, to increase the number of shares to such extent as shall be deemed sufficient to accomplish the work; and to receive and demand the monies for shares so subscribed, in like manner and under like penalties as are herein before provided for the original subscription, or as shall be provided by their by-laws.

Accounts to be submitted to the stockholders.

When shares may be increased.

SECT. 18. *And be it further enacted by the authority aforesaid,*

said, That the said president, managers and company, shall also keep a just and true account of all the monies received by their several and respective collectors of tolls in the several and respective locks, and all the monies received for the use, rent or hire of the water power, and all other emoluments, and shall make and declare a dividend of the clear profits and income thereof among all the stockholders, all contingent costs and charges being first deducted, and shall on the first Monday in January and the first Monday in July every year, publish the half yearly dividends made of the clear profit, and the time when and where the same will be paid to the stockholders, not exceeding twenty days thereafter, and shall cause the same to be paid accordingly, and shall on or before the fourth Monday in January in every period of three years from the passing of this act, lay an abstract of the accounts of their receipts and disbursements before the legislature, under oath or affirmation of the president of the company.

Accounts to be kept of tolls received.

Dividends.

Abstract to be laid before the legislature.

SECT. 19. *And be it further enacted by the authority aforesaid*, That if the president, managers and company shall not proceed to carry on the work within seven years from the passage of this act, and shall not complete the same in fifteen years according to the true intent and meaning of this act, then and in either of those cases, all and singular the rights, liberties, privileges and franchises hereby granted to said company, shall revert to the commonwealth: *Provided always*, That in case of forfeiture or resumption by the legislature of the rights, liberties, privileges and franchises here- by granted, nothing herein contained shall be construed to work a forfeiture of the rights of individuals to water power, under grants made by the president, managers and company, but the same shall be held by individuals in as full and ample a manner as they might do, if no such forfeiture or resumption had taken place, and in lieu of such resumption, the principal sum paid or secured to be paid when the conveyance has been in fee simple, and the accruing rents and profits when the said water power has been let for one or more years, shall be forfeited to the commonwealth: *And provided also*, That if the said company shall at any time hereafter misuse or abuse any of the chartered privileges hereby granted, the legislature may at any time thereafter resume all and singular the rights, privileges and franchises hereby granted to said company.

Time limited to proceed in and complete the work.

Proviso reserving individual rights.

2d proviso.

Power to resume their charter.

REES HILL, *Speaker of the House of Representatives.*

ISAAC WEAVER, *Speaker of the Senate.*

APPROVED—the twenty-seventh day of January, one thousand eight hundred and nineteen.

WILLIAM FINDLAY.