

No. 194.

AN ACT

Authorizing the Governor to incorporate the Fishing creek navigation company.

SECTION 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 Frederick Fridley, James Brown, William W. Houston, Noah F. Essig, Thomas McGhee, Samuel H. Wilson, Anthony Kleckner, Michael Ketner, Philip Walker and John Everheart, or any three of them, be and they are hereby appointed commissioners to do and perform the several things herein-after mentioned; that is to say, they shall on or before the first day of July next procure a book or books which shall be opened at some convenient place in the county of Centre and elsewhere, and therein enter as follows: "We whose names are hereunto subscribed, do promise to pay to the president, managers and company of the Fishing creek navigation company, the sum of twenty-five dollars for every share of stock set opposite to our respective names, in such manner and proportion 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 authorizing the Governor to incorporate the Fishing creek navigation company.' Witness our hands this day in the year of our Lord, one thousand eight hundred and ;" and shall thereupon give notice in at least one newspaper printed in the county of Centre, for three weeks at least, of the time and places when and where the said book or 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 or persons who shall authorize the same, for any number of shares in the said stock, until there shall be four hundred shares subscribed; and the said commissioners, or any three of them, shall have power to adjourn from time to time and to any place, until the whole number of four hundred 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 commissioner the sum of one dollar for every share to be subscribed, out of which shall be paid the expenses attending the taking of subscriptions and other incidental expenses, and the remainder shall be paid

Commiss'rs.

Form of subscription.

Notice of the opening of the books.

Whole number of shares, 400.

Proviso.

to the treasurer of the corporation as soon as the same shall be organized and the officers chosen as hereinafter mentioned.

When 200 shares are subscribed, com'rs shall certify to Governor.

SECTION 2. When two hundred 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, 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 aforesaid, into a body politic and corporate, in deed and in law, by the name, style and title of the "Fishing Creek Navigation 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 enlargement 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 less estate, all such lands, tenements and hereditaments and estate real, personal or mixed, as shall be necessary to them in the prosecution of their works, and of suing and being sued and of doing all and every matter or thing which a corporation or body politic may lawfully do.

Style of corporation.

Capacities & privileges.

SECTION 3. The first ten 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 previous notice in one or more newspapers published in the county of Centre, of the time and place by them appointed for the subscribers to meet, in order to organize 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 authorized, which proxy shall have been obtained, and been dated within three months previously to the election, at which such proxy shall be presented, one president and ten managers, a treasurer, and such other officers as shall be deemed necessary; the president and managers aforesaid, shall conduct the business of said company until the first Monday of July, then next, and until like officers shall be chosen, and the officers so chosen and elected, and their successors may make such by-laws, rules, orders, and regulations, as are not inconsistent with the constitution and laws of this State or of the United States, which may be deemed necessary for the well governing the affairs of the said company.

Organization of company.

Annual meeting of stockholders.

SECTION 4. The stockholders shall meet on the second Monday in August, in every year, at such place as may be fixed upon by the by-laws, of which notice shall be given in at least one newspaper published in the county of Centre, for more than twenty days, by the secretary, 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 duly chosen, the number of votes each person shall be entitled at any election of officers for the said company, shall be as follows, that is to say, for each share, not exceeding ten, one vote; for every five shares above ten, and not exceeding one hundred, one vote; and for every ten shares above one hundred, one vote: *Proviso.*

vided, That no share held by transfer, shall be entitled to vote, unless the same shall have been transferred at least thirty days before the election; nor shall any share transfer the right of voting, when any instalment has been due and unpaid longer than thirty days; and all votes by proxy shall be on such terms and conditions as are prescribed by the act passed on the twenty-eighth day of March, in the year one thousand eight hundred and twenty, entitled "An act to regulate proxies."

SECTION 5. The election of officers provided for in this act shall be conducted in the following manner, that is to say, *Manner of conducting elections.* the stockholders present, shall appoint two persons to be judges of the said election, who shall choose a clerk, who, after being sworn or affirmed by any competent authority, well and truly, and according to law to conduct the same, shall open the said election; the judges shall decide on the qualifications of the votes, and when the election is closed, shall count the votes and declare who has been elected; and if it shall any time happen, that an election of president, managers, treasurer, or other officers, shall not be made at the time directed by this act, the corporation shall not, for that cause, be deemed to be dissolved, but it shall be lawful to hold and make such election of president, managers, treasurer, and other officers, on any other day thereafter, by giving at least twenty days notice thereof, signed by the president or secretary, in at least one paper published in the county of Centre, of the time and place of holding such election, and the president, managers, and other officers, of the preceding year, shall, in that case, continue to act and be invested with the like powers belonging to their respective situations, until an election shall take place; in case of the death, resignation, or removal from the state, of the president, manager, or other officer so elected, his place shall be filled by the board of managers, until the next annual election. *Vacancies, how supplied*

SECTION 6. 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, six 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, superintendents, and other artists and officers, as they shall deem necessary to carry on the intended works, and to fix their salaries and wages; to ascertain the times, manner, *Duties of the president and managers.*

and proportions, in which the said stockholders shall pay the moneys due on their respective shares; to draw orders on the treasurer for the same, which shall be signed by the president, or in his absence, by a majority of the managers present, and certified by the secretary, and generally to do all such other acts, matters, and things, as by this act and by the by-laws and regulations of the company, they are authorized to do.

Certificates of stock.

SECTION 7. The president and managers first chosen or their successors shall produce 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 of stock by him subscribed and held, which certificate or evidence of stock shall be transferable at his pleasure, in person or by attorney duly authorized, in the presence of the president or treasurer, who 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 be subject to all penalties and forfeitures, and of being held for all the balance and penalty due or to become due on each share as the original subscriber would have been.

How transferable.

Penalty on non-payment.

SECTION 8. If after twenty days notice in at least one newspaper published in the borough of Bellefonte, 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 any such proportion or instalment at the place appointed, for the space of twenty days after the time so appointed, every such stockholder or his assignee, shall in addition to the instalment pay at the rate of three 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 any general or special meeting of the said company, on whose share or shares any instal-

May amount to forfeiture.

Proviso.

ment or arrearages may be due and payable more than thirty days previously to the said election or meeting.

SECTION 9. It shall and may be lawful for the said president managers and company to make a complete navigable descending water navigation, down said Fishing creek, from the great sinks in Sugar valley to the mouth of Cedar creek in Nitany valley, in the county of Centre, for craft capable of navigating the said creek, with such dams, locks, sluices and other works, as shall be necessary, and make use of the water of the said creek or any creeks or streams on or near the intended route of the said navigation for the purpose of supplying the same with water.

May make water navigation, use creeks, &c.

SECTION 10. It shall be and may be lawful for the said president, managers and company, their agents, superintendents, surveyors, engineers, artists and workmen, to enter upon the said creek at such places as they may think proper to open, enlarge, contract, deepen, and change the same in any part or place thereof, which shall appear to them most convenient and best adapted to complete the said navigation, and also to cut, break, remove and take away all trees, rocks, stones, earth, gravel and sand or other materials, or any obstructions or impediments whatsoever, within the said creek, and to use all such timber, rocks, stones, gravel, sand, and earth, or other materials, which may be found necessary in the prosecution of their work, to form, make, erect and set up all such dams, locks, sluices, and devices whatsoever which they shall deem most fit and convenient to make a complete descending navigation between the points in this act mentioned, as far as the same may be practicable, so as to admit a safe and easy descent for craft loaded and unloaded down the said creek.

General powers.

SECTION 11. The said president, managers and company, shall have power and authority, by themselves or their superintendents, surveyors, engineers, artists and workmen, to enter in and upon and occupy for that purpose, any lands which shall be necessary and suitable for the said navigation: to place locks in any dam or device now on the said creek, and to raise the same: to widen, deepen and enlarge any of the said races: to dig, construct, make, erect all such dams, sluices, locks and other necessary devices, which may be deemed necessary for the said navigation, satisfying the 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 three suitable and judicious persons, within the proper county where the land lies, or if they cannot agree on such person, then either of the parties may apply to the court of Common Pleas of the proper county, where the land lies, and the said court shall appoint three disinterested men, who shall, under oath or affirmation, 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 dams, locks, sluices or other

Capacities & privileges.

In case the parties cannot agree, how to proceed.

devices erected on a passage through his, her or their land; or by reason of using the water from any of the works on the said creeks, 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 said appraisers, in valuing any land, or the use of any water, to take into consideration the advantages derived to the owner or owners of the premises, from the said navigation: *Provided*, That either party may appeal to the court, from such award, within twenty days after such report may have been filed in the prothonotary's office of the proper county, in the same manner, subject to the same rules, regulations and restrictions, as appeals are allowed under the compulsory arbitration laws of this Commonwealth.

Proviso.

SECTION 12. The president, managers and company, by and with their superintendents, engineers, artists, workmen and laborers, with their tools, instruments, carts, wagons and other carriages and beasts of draft or burden, may enter upon the lands contiguous and near to the said creek, giving notice to the owner or occupiers thereof, and from thence to take and carry away any stone, gravel, sand, earth or timber, doing as little damage thereto as possible, and repairing any breaches they may make in the inclosures thereof, and making amends in the same manner as in the eleventh section of this act, for any damage that may be done thereon.

Right to enter on lands, &c.

SECTION 13. 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, or any rolling mill, or forge, or mill, or other works injured by the swelling the water in the tail race, which have been erected on the said creek, the same proceedings shall be had, as is provided for in the eleventh section of this act.

Injuries provided for in 11th section.

When tolls shall be collected.

SECTION 14. It shall and may be lawful, to and for the said president, managers and company, or such person or persons as they shall from time to time appoint toll collectors, or their deputies, so soon as not less than ten miles of the said navigation shall be perfected, to collect and receive toll upon the same, at the rates, with the addition of fifty per centum, which are allowed and taken on the Pennsylvania canal, and as soon as the whole navigation shall be perfected, to collect and receive, by toll, upon the said navigation, ten per centum upon the amount of moneys which shall have been expended in the construction of the said navigation, and in the support, improvement and continuance of the same from time to time; and, for that purpose, the company shall have full power and authority to regulate and fix, from time to time, and at all times, as they may declare by their by-laws, the rates of toll to be paid on the said descending navigation, by all persons using the same, upon all boats and other craft using the same, sufficient to assure the

payment of the said ten per centum per annum: *Provided, Proviso.* That if at any time hereafter, the Legislature may allow the said company fifteen per centum per annum on the capital stock of the said company, if the business done on the said navigation shall warrant the same, but in no event shall the company be permitted to divide beyond that claim, and the tolls shall be reduced so that the dividends shall not exceed that amount. Limit to dividends.

SECTION 15. If the president, managers and company, shall neglect or refuse to keep in good order, or repair, the said descending navigation, or shall neglect to remove any obstacle that may occur, so that boats and other craft descending the same may at all times safely pass down the said creek, the president, managers and company, shall for every such offence forfeit and pay the sum of ten dollars, to be recovered in the same manner as debts of equal amount are by law now recoverable, before any justice of the peace of the proper county where the offence shall be committed, one half to the use of the informer, and other half to the use of the county of Centre. Penalty in case of neglect, &c.

SECTION 16. If any person or persons shall wilfully and maliciously do any act or thing, whereby the navigation shall be impeded, or any dam, lock, gate, 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 four fold the damages by them sustained, together with costs to be recovered by action of debt as before mentioned in this act, or in any court of competent jurisdiction, or be liable to be prosecuted in the court of Quarter Sessions of the county of Centre, for every such offence as a misdemeanor, and upon conviction thereof, be subject to fine or imprisonment, or both at the discretion of the said court. Penalty in case of wilful injury.

SECTION 17. The president and managers of the said company may demand and require of and from the treasurer, and all and every other officer or person employed by them, bond with sufficient penalties and surety as they shall by their rules, orders, by-laws, or regulations, require for the faithful discharge of the several duties and trusts to them or any of them respectively committed. Officers to give bond.

SECTION 18. It shall be the duty of the president and managers of the said company, to keep fair and just accounts of all moneys received by them from the commissioners mentioned in this act, and from the subscribers to the said navigation, all penalties for delays in the payment thereof, and the amount of the profits on the shares that may be forfeited, also, of all moneys expended in the prosecution of the work, 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 Duties of the president and managers.

found that the said capital stock will be insufficient to complete the said navigation, according to the true intent and meaning of this act, or the said work from any casualty shall be injured so as to require an increase of the capital stock, 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 said descending navigation, and to receive and demand the money for shares so subscribed in like manner, and under like penalties as are herein before prescribed for the original subscriptions, or as shall be provided by the by-laws (of the said corporation.)

Semi-annual
dividends to
be declared.

SECTION 19. The said president, managers and company shall also keep a just and true account of all moneys received by their several and respective collectors of tolls, and all other moneys received for and on account of the said corporation, and shall make and declare a dividend of the clear profit 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 second Tuesday in July, in every year, declare and publish the half yearly dividends made of the clear profit, and the time when, and the place where the same will be paid to the stockholders, not exceeding thirty days thereafter, and shall cause the same to be paid accordingly, and shall on or before the fourth Monday in January, in every year, from and after the completion of the said navigation, lay the accounts of their receipts and disbursements before the legislature, under oath or affirmation of the president and treasurer of the company for the time being.

Right to
repeal.

SECTION 20. If the company shall not be incorporated within three years after passing of this act and the work commenced, and if the president, managers and company shall not within five years thereafter complete the same 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 the said company, shall revert to the Commonwealth.

WM. PATTERSON,

Speaker of the House of Representatives.

JACOB KERN,

Speaker of the Senate.

APPROVED—The fourteenth day of April, Anno Domini, eighteen hundred and thirty-four.

GEO: WOLF.