[No. 115.]

AN ACT

To authorize the Governor to incorporate the Delaware Canal company, and for other purposes.

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 Evan Rodgers, Benjamin W. Richards, John J. M'Cahen, William Carman, James M. Linnard, Jacob Carrigan, Jr., Morris Buckman, John Stallman and Jacob Gratz, of the city of Philadelphia, John Forry, William K. Huffnagle and Israel Carpenter of Lancaster county, Jacob M. Haldeman of Dauphin county, Solomon Fogel, Christian Pretz and Charles S. Bush of Lehigh county, Jacob Waggener, Jacob Able, Peter S. Michler and Richard Brodhead, Jr. of Northampton county, Asa Packer of Carbon county, Samuel Holland, George M. Hollenback and George P. Steel of Luzerne county, Daniel Stroud of Monroe county, Simeon Guilford of Lebanon county; Samuel D. Ingham, John Ruckman and Mordecai Thomas of Bucks county, and Daniel K. Hottenstein and Henry A. Muhlenberg of Berks county, or any five 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 day of June next, procure a book which shall be opened at the Merchants' Exchange, in the city of Philadelphia, in which they shall enter as follows: We whose names are hereunto subscribed, do promise to pay to the commonwealth of Pennsylvania, the sum of one hundred dollars for every share of stock set opposite our respective names, to be paid in certificates of loan of the said commonwealth, in case sixteen thousand five hundred shares shall be subscribed in pursuance of an act of the general assembly of this commonwealth, entitled "An Act to authorize the Governor to incorporate the Delaware canal company." Witness our hands this day of , one thousand eight hundred and forty ; and thereupon give notice in one or more newspapers in the cities of Philadelphia, Pittsburg, the borough of Easton, New York and Boston, for four weeks, at least, of the time and place when and where said books shall be kept open to receive subscription for the stocks of said company, at which time and place one or more of the

Comms

Form of subscription

Open books

said commissioners shall attend and permit all persons of lawful age who shall offer to subscribe in the said book, in their own names, or the names of any person or persons or corporations, who shall authorize the same, for shares in the said stock; and the said book shall be kept open for the said purpose at least six hours in every juridical day, for the space of ten days, or until there shall have been subscribed sixteen thousand five hundred shares; and if at the expiration of ten days the books aforesaid shall not have the number of shares aforesaid therein subscribed, the said commissioners may adjourn from time to time, and transfer the books elsewhere until the whole number of sixteen thousand five hundred shares shall have been 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 aforesaid shall have been subscribed, then the books shall be closed.

Shares

SECTION 2. That whenever sixteen thousand five hundred shares of said stock shall have been subscribed as aforesaid, the commissioners shall give notice by publication or otherwise, as they may deem expedient, of that fact, to the subscribers, and that they will be required to transfer or cause to be transferred to the commonwealth of Pennsylvania, certificates of loan of the said commonwealth, equal in amount to the number of shares subscribed by them respectively, within thirty days thereafter—and at the expiration of thirty days, said commissioners shall certify to the Governor the names of the subscribers, and the number of shares subscribed by each; whereupon the Governor shall, if he has sufficient evidence that the entire amount of sixteen thousand five hundred shares of said stock has been subscribed, and actually paid to the commonwealth as hereinbefore provided, by letters patent, under his hand and the seal of the commonwealth, create and erect the said subscribers into a body politic and corporate, in deed and in law, by the name, style and title of the "Delaware canal company," and by the same name the subscribers shall have perpetual succession, and be able to sue and be sued, implead and be impleaded in all courts of record and elsewhere, and to purchase, receive, have, hold and enjoy, to them and their successors, such lands, tenements and hereditaments, goods, chattles and estate, real, personal or mixed, of what kind or quality soever, as shall be necessary for the repairs and management of said canal, and the same from time to time to sell, exchange, mortgage, grant, alien or otherwise dispose of, and also to make and keep a common seal, and the same to alter and renew at pleasure, and also to ordain, establish and put in execution such by-laws, ordinances and regulations as shall appear necessary and convenient for the govern-

Certificates of loan

Letters patent

Name

Seal

By-laws

ment of said corporation, not being contrary to the constitution of the United States, or of this state; and generally to do all and singular the matters and things, which to them it shall lawfully appertain to do, for the well being of the said corporation, and the due managemant and ordering the affairs of the same: *Provided*, That nothing herein contained shall be so construed as to give to the said corporation any kind of banking privileges whatsoever, or any other liberties, priviliges or franchises, but such as may be necessary or incident to the repairing and maintaining of the said canal. Proviso

SECTION 3. That the said commissioners or a majority of them, shall as soon as conveniently may be, after the said letters patent shall be obtained, appoint a time and place for the subscribers to meet, in order to organize the said company, and shall give at least twenty days previous notice thereof in the newspapers before mentioned; and the said subscribers when met, shall choose by a majority of votes, eight directors, all of whom shall be stockholders and residents of this commonwealth, and shall be the owners respectively of at least twenty shares of the said stock; the said directors shall conduct the business of the said company, until the first Monday of March then next, and until other directors are chosen, and may make such by-laws, rules, orders and regulations as are not inconsistent with the constitution and laws of the United States, or of this state. Organization

SECTION 4. That the stockholders shall meet on the first Monday of March, in every year, at such places as may be fixed upon by the by-laws of the company, of which notice shall be given at least twenty days previously, in two or more newspapers published in the city of Philadelphia and borough of Easton, and choose by a majority of the votes present, directors, qualified as is provided in the third section, for the ensuing year, who shall continue in office for one year, and until others are chosen; and the stockholders may meet at such other time as they may be summoned by the directors, in such manner and form, and giving such notice 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 the votes given, all such by-laws, rules, orders and regulations as aforesaid, and to do and perform every other corporate act; and the number of votes to which each stockholder shall be entitled, shall be according to the number of shares he or she shall hold, in the proportions following: for every share not exceeding two shares one vote, for every two shares above two shares and not exceeding ten shares one vote, and for every five shares above ten shares one vote, but no share shall con- Annual meeting Ratio of votes fer a right of suffrage unless it be holden by the person in whose name it appears absolutely and bona fide in his own right, or in that of his wife, or for his or her sole use and benefit, or as executor, administrator, trustee, or guardian, or in the right, or for the use and benefit of some co-partnership, corporation, or society, of which he or she may be a member, and not in trust for and to the use and benefit of any other person: *Provided*, That no corporations or persons holding shares by transfer, shall be entitled to vote, unless the same shall have been transferred at least three months before the election: *And provided also*, That no voting by proxy shall be allowed at any of the elections or meetings of the said company.

Proviso

2d proviso

SECTION 5. That the election of directors provided for in this act, shall be conducted in the following manner, that is to say; the directors for the time being shall appoint two of the stockholders not being directors, to be judges of the said election, and to conduct the same, who shall severally take and subscribe an oath or affirmation before an alderman or justice of the peace, well and truly and according to law, to conduct such election to the best of their knowledge and abilities, and the said judges shall decide upon the qualifications of voters, and when the election is closed, shall count the votes and declare who has been elected; and if it shall at any time happen, that an election of directors shall not be made, the corporation shall not for that reason be dissolved, but it shall be lawful to hold and make such election of directors on any day thereafter, by giving at least ten days notice of the time and place of holding the said election in the newspapers as aforesaid, and the directors of the preceding year shall in that case continue to act, and be invested with all the powers belonging to them as directors, until an election shall take place; and in case of the death, resignation, or removal from the state, of any one of the directors elected by the stockholders, or in case any one of them shall cease to be a stockholder, the vacancy may be filled by the board of directors.

Election of directors

Vacancy

SECTION 6. That the directors shall meet at such times and places as shall be found most convenient for the transaction of their business, and when met, five shall be a quorum; they shall elect a president of their own number, who shall always be a stockholder, and in his absence, shall choose a president pro tempore, and shall keep minutes of their transactions fairly entered in a book; they shall be empowered to choose a secretary, treasurer, and appoint all such other officers and agents as may be necessary in conducting the affairs of said corporation, in such manner and under such regulations as

Quorum

President

Minutes

Officers

they may determine; they may require security of said officers in such amounts as they may deem necessary, and generally to do all such other acts, matters and things as by this act and by the by-laws and regulations of this company, they may be authorized to do.

Salaries

SECTION 7. The directors shall fix the salaries and wages of the several officers or agents employed by them; but no director shall be allowed any compensation, except the president, whose salary shall be fixed by the stockholders at some annual meeting held in pursuance of the charter.

Repairs

Dividends

Proviso

SECTION 8. The directors shall not have power to borrow money for repairs and necessary work, except on the security of the corporate property, without the consent of the legislature; they shall from time declare and make dividends of the nett profits of the said company, into and among the whole number of shares into which the capital of the said company is divided, and shall pay the dividends to the owners of the stock respectively: *Provided however*, That before making any dividends of nett profits as aforesaid, the said directors shall reserve therefrom two per centum, to be invested in loans, which shall, together with its accumulations, constitute a contingent fund, to provide for extraordinary repairs, and as a sinking fund for the extinguishment of any loans which said company may make; but no part of the two per cent, nor any other of the funds of the said company, shall at any time, either directly or indirectly, be loaned to any director, officer or agent thereof.

Certificates of stock

SECTION 9. That the said directors shall procure certificates or evidences of stock for all the shares of the stock of the said company, duly numbered from one to eighteen thousand, and shall deliver a certificate, signed by the president, and sealed with the common seal of the said corporation, to each person, for each share of stock by him or her subscribed and paid for as aforesaid, which certificate shall be transferable at his or her pleasure, in person, or by attorney duly authorized, in the presence of the president or treasurer of the company, on the books of the said company, which transfer shall be entered by the president or treasurer on the face or back of such certificate, which shall be delivered again to the assignee or his attorney.

Canal vested in corporation

SECTION 10. That immediately upon the issuing of the letters patent by the governor, as provided by the second section of this act, the Delaware division of the Pennsylvania canal, from Easton to Bristol, shall be immediately vested in the said corporation, authorized to be created by this act, and their successors for ever, together with all the surplus water power of said canal, all toll houses, appendages, and all the estate, real and personal, purchased and owned by the commonwealth, for the use of the said canal.

Tolls

SECTION 11. The said company shall be empowered to charge and receive tolls, for the passage of persons and merchandize on the said canal, subject to the restrictions and limitations hereinafter provided: *Provided*, That said canal shall forever be and remain a public highway, for the passage at all times of all persons with horses, boats and merchandize, they paying toll therefor under such general regulations as the said company may from time to time ordain and publish: *Provided however*, That no person or persons shall be permitted, without the license of the said company, to employ steam power on said canal: *And provided*, That the out-let lock at Easton, shall for ever be kept in good order and repair by the said Delaware canal company, and remain free of toll for the passage of all boats, rafts and crafts proceeding to or from the Lehigh navigation: *Provided*, That said company shall have the right to construct one or more out-let locks at suitable points, to form a connection with the feeder of the Delaware and Raritan canal, and may charge additional tolls on boats, merchandize and commodities passing through the same, at the rate of one dollar for each boat, and seven cents per ton on all such merchandize and commodities.

Proviso

Out-let lock at Easton

Rates

SECTION 12. The rates of toll to be charged and received by the said company, shall at no time, without the approbation of the legislature, exceed those now charged on the said canal, and the said canal, lock-houses and lands now attached thereto, shall never be made the subject of taxation.

State may resume works

SECTION 13. If at the expiration of twenty years from the date of the letters patent, erecting said corporation hereby created, the legislature should see fit to resume the said works and the privileges and franchises hereby granted, they shall have a right so to do by re-imbursing to the stockholders the amount of their stock at par, together with twenty-five per centum advance thereon in gold or silver money; but if the legislature shall not at the expiration of the said period of twenty years resume the said works, then the said company with all its rights, franchises and privileges, shall continue for another period of twenty years, subject to resumption by the legislature at the expiration thereof, on the same terms and conditions as aforesaid, and so on from twenty years, to twenty years: *Provided*, That in the event of resumption by the legislature as aforesaid, the contingent or sinking fund as well as the undivided profits on hand after the payment and discharge of all debts and claims against the said company, shall

Proviso

be divided among the stockholders in the same manner as the nett profits are hereinbefore authorized to be divided.

SECTION 14. The directors shall make a report to the legislature on the second Tuesday of January, in every year, of their proceedings during the past year, together with the account of the treasurer, and such other information as they may deem proper on the condition of the work and the prospects of the company.

Report

SECTION 15. No sale or lease of water privileges on the canal hereby vested in the said company shall be made, except under and subject to the exceptions and regulations prescribed in the eighth, ninth, tenth, eleventh and twelfth sections of the act of the fifth of May, one thousand eight hundred and forty-one, entitled "An Act to incorporate the Allegheny and Butler turnpike road company, and for other purposes."

Water privileges

SECTION 16. The said company shall be bound by all contracts heretofore made by the commonwealth in the grant or lease of water privileges heretofore made, and shall be entitled to all the rights and privileges of the commonwealth under such contracts; and they shall maintain and keep in repair all farm bridges and causeways on the line of said canal.

Former contracts

SECTION 17. As soon as the said company shall be organized and shall give notice to the governor of their readiness to take possession of the said works, he shall cause notice thereof to be given to all the superintendents, toll collectors, officers and agents of the commonwealth, employed on or about said canal, who shall continue nevertheless to discharge the duties of their said offices or employments, and be entitled to receive their present rate of compensation from the said company until removed by the directors thereof; and the official bonds of the said officers and agents shall enure to the use of said company, as to all moneys received by them on account of the works subsequent to the time when the said company shall so take possession of them as aforesaid.

Superintendents &c

SECTION 18. That it shall be lawful for the said company to enlarge the said canal and locks, to make such additional locks as may be deemed expedient, and for their officers, engineers, contractors and agents, to enter upon any lands adjoining or in the neighborhood of said canal, and take, dig and carry away therefrom any stone, gravel, clay or earth necessary for the maintaining, enlarging and repairing said canal, for constructing any bridges, culverts, viaducts and other buildings which may be required in the maintenance and repair of said canal: *Provided however*, That compensation shall be made to the owner or owners of any such lands

Power to enter lands for repairs

Compensation

or materials as shall be agreed upon between the parties, or in such manner as is hereinafter pointed out.

Proceedings when parties cannot agree

SECTION 19. That when the said company cannot agree with the owner of any lands or materials for the compensation proper for the damage done or likely to be done or sustained by any such owners of such lands and materials, which it may be necessary for said company to enter, use or take away, in the enlargement or repair of said canal, or by reason of any legal incapacity of any such owner or owners, no such compensation can be agreed upon, [by] the court of quarter sessions of the proper county on application thereto by petition, either by said company or owner, or any one in behalf of either, and at the cost and charge of said company, shall issue their precept to the sheriff of the county, commanding said sheriff to summon five discreet and disinterested persons, freeholders of said county, to meet on the lands from whence materials are to be taken, in not less than ten or more than twenty days, giving such reasonable notice as the court may designate to both parties by publication or otherwise, in the discretion of the court; and if three or more of said jurors attend they shall be empannelled, and if three do not attend the sheriff may summon others at a day fixed by him for that purpose, or at once; and the said three or more jurors being so empannelled and sworn or affirmed, faithfully, justly and impartially to value the materials to be taken, and find the rate of compensation to be paid therefor by said company, the said jury shall have power to administer oaths and examine witnesses, and make report of their proceedings to the said court, stating the compensation adjudged and to whom payable, who upon confirmation thereof may order such damages to be paid or order new inquisition until full justice is rendered: *Provided always nevertheless*, That any owner or owners applying for a review shall be liable for the costs of the proceedings prayed for, in case a report more favorable is not obtained upon such review: *Provided further*, That either party may by certiorari or writ of error, remove the said proceedings to the supreme court.

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Power of Legislature over books &c

SECTION 20. It shall at all times be lawful for a committee of the legislature or either branch thereof, appointed for that purpose, to inspect the books and examine into the proceeding of the corporation hereby created, and to report whether the provisions of this charter have been by the same abused or violated; and if the officers of said corporation should refuse to be sworn or affirmed or give evidence, or to produce such of their books or papers as may be demanded before any such committee, then the legislature may by law declare the said charter void and repeal the same; and whenever any committee as aforesaid shall find and report, or the governor shall have reason to believe from other evidence that the charter has been violated, it may be lawful for the legislature to direct, or the governor to order a scire facias to be issued out of the supreme court of Pennsylvania, in the name of the commonwealth of Pennsylvania, (which shall be executed on the president of the corporation for the time being, or the secretary or treasurer, at the office of said company, at least ten days before the commencement of the term of the said court,) calling on the said corporation to show cause wherefore the charter hereby granted shall not be declared forfeited; and it shall be lawful for the said court upon the return of the said scire facias, to examine into the truth of the alleged violations, and if such violations be made to appear, then to adjudge that the said charter is forfeited; and thereupon, and in case the legislature shall declare the said charter void and repeal the same for the cause aforesaid, the canal aforesaid, with its appurtenances, and all the estate, real and personal, of the said corporation, shall revert to and be vested in the commonwealth, upon the payment by the commonwealth to the stockholders of the par value of their stock; and until the commonwealth shall have made such payment to the directors of said company, to be by them distributed among the stockholders, the rights, privileges and franchises of said corporation shall remain as though said judgment of forfeiture had not been pronounced: *Provided however*, That every issue of fact which may be joined between the commonwealth and the corporation in said proceeding shall be tried by a jury, summoned by an officer to be named by the court, from the body of the state; and it shall be lawful for the court aforesaid to require and compel the production of such of the books and papers of the corporation on such trial as it may deem necessary for the ascertainment of the controverted facts; and the final judgment of the court shall be subject to all the usages of law as in other cases.

Forfeiture of charter

Proviso

Section 21. That the provisions of an act of assembly entitled "An Act to protect the public in the full benefit and enjoyment of the works constructed for the purposes of inland navigation," passed the tenth day of April, eighteen hundred and twenty-six, be and they are hereby conferred upon the aforesaid Delaware canal company, for the use and protection of said company.

Protection of public

Section 22. That if any foreign holder of any loans of this commonwealth, domiciled or resident abroad out of these United States, shall have heretofore died or shall hereafter die, it shall and may be lawful for the person or persons duly authorized by the laws of the state or country in which the said

Foreign holders of loans

foreign loanholder was so domiciled or resident at the time of his or her death, to administer or take charge or possession of the personal estate of the said decedent, in person or by attorney, duly constituted and appointed, to transfer and assign, upon the books of the proper office or agency, all loans of this commonwealth held by or standing in the name of such decedent: *Provided always however*, That the person or persons so authorized to administer and take charge and possession of the personal estate of such decedent or his attorney, shall be required to produce and file full and complete evidence of his authority from the officer or tribunal having jurisdiction of the subject, certified under the hand or seal of any minister plenipotentiary, charge d'affairs, consul or vice consul of the United States.

Proviso

HENDRICK B. WRIGHT,
Speaker of the House of Representatives.
B. CRISPIN,
Speaker of the Senate.

Approved—The thirteenth day of April, one thousand eight hundred and forty-three.

DAVID R. PORTER.

[No. 116.]

AN ACT

To annul the marriage contract between Samuel Selby and Elizabeth his wife.

Preamble

Whereas, Samuel Selby and Elizabeth Orry were legally married in the city of Philadelphia, on the eleventh day of April, Anno Domini one thousand eight hundred and forty-one, at which time the said Elizabeth was *enciente* of a child, of which her husband is not the father; therefore,

Contract annulled

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 the marriage contract entered into between Samuel Selby and Elizabeth his wife, be and the same is hereby declared null and void, and the parties discharged from all the obligations and liabilities growing out of