

CHAPTER CXLVII.

AN ACT

Relative to the Octoraro Navigation company.

WHEREAS by an act, entitled "An act authorising the Governor to incorporate the Octoraro Navigation company," passed the twenty-ninth day of March, eighteen hundred and nineteen, it is provided that the said act shall have no force or effect until the same is concurred in by the legislature of Maryland. And whereas the legislature of Maryland, did on the third day of February, eighteen hundred and twenty, pass an act concurring in the act aforesaid, with some alterations and amendments. And whereas it is expedient that the said act of Maryland, should be approved of by the legislature of Pennsylvania, and also that it should be published with the pamphlet laws of this commonwealth :

Therefore,

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 the act passed by the legislature of Maryland on the third day of February, one thousand eight hundred and twenty, entitled "An act to incorporate the Octoraro Navigation Company," be, and the same is hereby re-enacted, and shall be annexed to this act, and published with the pamphlet laws of this commonwealth.

The law of Maryland re-enacted and annexed to this act.

LAW OF MARYLAND.

AN ACT

To incorporate the Octoraro Navigation Company.

BE it enacted by the General Assembly of Maryland, That Jesse Moore, Joshua Webster, David Dickey, Phineas Ash, David Thomas, John Andrews, Arthur Andrews, James Steel, William Noble, Simeon Pownell, Timothy Kirk, of the state of Pennsylvania; and William Stansbury, Charles Carroll, Elie Balderston, Thomas Tenant, of the city of Baltimore, James Jenny, Samuel Rowland, Reverend James McGraw, Samuel Clendenin, Thomas Richards, Jonas Preston, of Cecil county, state of Maryland, 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 of May, Anno Domini one thousand eight hundred and twenty, procure a sufficient number of books, one or more of which shall be opened at some convenient place in each of the following

Commissioners appointed to receive subscriptions.

places, viz. In the city of Lancaster, borough of Strasburg, Andrew's tavern, John Hill's tavern in the city of Lancaster, at George Phillip's tavern, David Thomas's tavern in Chester county, all in the state of Pennsylvania. In the city of Baltimore, Port Deposit and Nathaniel Ewings tavern, at Bald Fryer ferry, in the state of Maryland, and in each of them enter as follows, or to the following effect: " We whose names are hereunto subscribed, do promise to pay to the president and managers of the Octoraro Navigation company, the sum of twenty-five 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 Maryland, entitled "An act to incorporate the Octoraro Navigation company." Witness our hands this day of in the year of our Lord one thousand eight hundred and ;" and shall thereupon give notice in one or more newspapers printed in the city of Lancaster, in one or more newspapers printed in the county of Chester, in the state of Pennsylvania, and in two or more newspapers printed in the city of Baltimore, in the state of Maryland, 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 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 space of two days, or until there shall have been subscribed in the city of Lancaster three hundred shares, in the borough of Strasburg four hundred shares, at Andrews tavern five hundred shares, at Phillip's tavern five hundred shares, at Hill's tavern five hundred shares, at Thomas's tavern five hundred shares, in the city of Baltimore seven hundred shares, at Port Deposit three hundred shares, at Bald Fryer ferry three hundred shares; and if at the expiration of two 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 four thousand shall be subscribed, of which adjournment and transfer the commissioners aforesaid shall give 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 two dollars fifty cents for every share to be subscribed, out of which shall

When and where subscriptions shall be received.

Public notice to be given of the time.

The manner of receiving subscriptions

Payment on subscribing.

be defrayed the expenses attending the taking of such subscriptions and other incident 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.

When letters patent may issue, and the company be incorporated.

Sect. 2. *And be it enacted*, That whenever one thousand shares or more of the said stock shall be subscribed, and the Governor of Pennsylvania may by letters patent under his hand and the seal of the commonwealth, create and erect the subscribers, and those that shall thereafter subscribe, into one body politic and corporate in deed and in law, agreeably to an act of the Senate and House of Representatives of the commonwealth of Pennsylvania in General Assembly met, entitled "An act authorising the Governor to incorporate the Octoraro Navigation company," passed the twenty-ninth day of March, eighteen hundred and nineteen, that then and in that case, the subscribers and such as shall thereafter subscribe to the number of shares aforesaid, be, and they shall thereafter be created and erected into one body politic and corporate in deed and in law, by the name, style and title of the president, managers and company of the Octoraro 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 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 less 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.

Their name, style & title.

Their powers and privileges.

Sect. 3. *And be it enacted*, 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 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 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 first Monday of January next succeeding, and until like officers shall be chosen, and may make such by-laws, rules,

Having obtained letters patent, public notice to be given for a meeting of the subscribers.

To organize the corporation.

orders and regulations, as do not contravene the constitution and laws of the United States or of the state of Maryland, that may be necessary for the well governing the affairs of the company.

Sect. 4. *And be it enacted*, That the stockholders shall meet on the first Monday of 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: *Provided always*, That no person shall have more than twenty votes at any election, or in determining any question arising at any meeting, whatever number of shares he may be entitled to, and that each person be entitled to one vote for each share by him or her held under that number.

Annual elec-
tions.

Special elec-
tions.

Proviso.

Sect. 5. *And be it enacted*, 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 a quorum present, and generally to do all such acts, matters and things, as by this act and by the by-laws and regulations of the company they are authorised to do.

President &
managers,
their powers
and duties.

Sect. 6. *And be it enacted*, 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, he paying five dollars for each share, 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

Of certifi-
cates of stock

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.

Penalty in case of neglect in payment of instalments.

Sect. 7. *And be it enacted*, 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 the 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 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 previous to the said election or meeting.

Proviso.

The president and managers may enter upon said creek to open, &c.

Remove obstructions therein.

Sect. 8. *And be it enacted*, 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 said creek to open, enlarge or deepen the same in any part or place thereof which shall appear to them most convenient for opening, changing, making anew or improving the channel, and also to cut, break and remove and take away all trees, rocks, stones, earth, gravel and sand or other materials, or any obstruction or impediment whatsoever within the said creek, or to use all such timber, rocks, stones, gravel, earth or other materials in the construction of their necessary works, and to form, make, erect and set up any dams, locks or any other device whatever 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 and other vessels up as well as down said creek, or by means of such collateral sluices and locks as they may devise for the purpose.

And make a slack-water navigation.

Sect. 9. *And be it enacted,* 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 a lock, sluice or canal, 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 the proper county where the land lies, and the 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, will be 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 advantage 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 clerk's office of the proper county, in the same manner as appeals are allowed in other cases.

To enter in and upon, and occupy any land, &c.

In case of disagreement as to damage, how to be settled.

Proviso.

Sect. 10. *And be it enacted,* 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 creek, giving notice to the owner or occupier 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 neighborhood, under oath or affirmation, to be appointed by the consent of the parties, and if they cannot agree, by any disinterested justice of the peace of the proper county.

And also may enter upon other lands to take materials, &c.

Making amends for damages.

In case of disagreement how the value shall be ascertained.

When parts of the canal or slack-water navigation are completed the Governor to appoint persons to view the same.

And on a report in the affirmative to grant license to receive toll.

Proviso.

Sect. 11. *And be it enacted*, That as soon as the said president, managers and company shall have perfected five miles at any one place of the said canal or slack-water navigation, and so from time to time as they shall perfect five additional miles of the same, 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 report to him in writing whether the said navigation is so far executed in a masterly and workman-like 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 seal of the state, 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 or other vessels passing through any lock erected on said canal or slack-water navigation ten cents at each lock upon each and every ton of the ascertained burthen of such vessel. *Provided*, That at the expiration of two years after the said work shall be completed, the tolls together with the interest of money arising from the sale of water power, or the rents or 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.

A skilful person to be appointed to measure and ascertain the size of rafts and tonnage of boats, &c.

Sect. 12. *And be it enacted*, That in order to ascertain the size of rafts 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 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 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 colors 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 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 tolls shall be paid according to such measurement, before any such boat or craft shall be permitted to pass the place where such toll is made payable by the president and managers.

Sect. 13. *And be it enacted*, That it shall be the duty of the master or commander of any boat or vessel navigating the said creek, 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 or other vessel pass without unnecessary delay and in safety; and if any boat 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 so hindered the sum of two 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.

Master of any boat to blow a trumpet or horn:
Penalty for delay in opening a gate or sluice

Sect. 14. *And be it enacted*, 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, rafts or other vessels may at all times safely navigate the said creek, the president, managers and company shall for each and every such offence pay the sum of twenty dollars, to be recovered in the same manner as debts of equal amount are by law 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.

Dams and locks to be kept in repair.

Sect. 15. *And be it enacted*, 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 four-fold the damages by them sustained, together with the costs, to be recovered by action of debt before a justice of the peace, or in any court of competent jurisdiction.

Penalty for injuring any of the works

Sect. 16. *And be it enacted*, That the president and man-

Accounts to
be kept and
liquidated.

gers 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 to choose the officers of the company; 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 shall be provided by their by-laws.

Number of
shares may
be increased.

Accounts of
the collectors

Sect. 17. *And be it enacted*, 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 once 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.

Dividends to
be published
and where
paid.

Limitation
for commen-
cing & com-
pleting the
works.

Sect. 18. *And be it enacted*, That if the president, managers and company, shall not proceed to carry on the work within four 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 state of Maryland: *Provided always*, That in case of forfeiture or resumption by the legislature of the rights, liberties, privileges and franchises hereby granted, nothing herein contained shall be construed to work a forfeiture of the rights of individuals to water power under the grants made by the pre-

Proviso.

sident, 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 state of Maryland: *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. 2d Proviso.

Sect. 19. *And be it enacted,* That the Governor be and he is hereby directed to transmit an attested copy of this act to the Governor of the state of Pennsylvania, so that he may lay the same before the Legislature of that state for their information.

By the House of Delegates, February 3d, 1820.

This engrossed bill, the original of which passed the House of Delegates on the eighteenth day of January one thousand eight hundred and twenty, was this day read and assented to.

By order,
JOHN BREWER, *Clerk.*

In Senate, February 3d, 1820.

This engrossed bill, the original of which passed the Senate on the twenty-ninth day of January one thousand eight hundred and twenty, was this day read and assented to.

By order,
J. N. WATKINS, *Clerk.*

SAMUEL SPRIGG.

* The Great *
* Seal of the *
* State. *

MARYLAND, sst.

I hereby certify that the foregoing is a full and true copy, taken from the original engrossed bill deposited in, and belonging to, the office of the court of appeals for the Western Shore of said state.

In testimony whereof I hereunto subscribe my name and affix the seal of the said court of appeals, this twenty-first day of March, in the year of our Lord one thousand eight hundred and twenty.

THOMAS HARRIS, *Clerk*
of the court of appeals, W. S.

THE STATE OF MARYLAND, TO WIT:

I, Ninian Pinkney, clerk of the executive council of the state of Maryland, do hereby certify that Thomas Harris, Esquire, whose name is signed to the foregoing certificate, was at the time of signing the same, and now is, clerk of the court of appeals for the Western Shore of the state of Maryland, duly appointed and authorised, and that to all acts by him done in that capacity, full faith and credit are and ought to be given as well in courts of justice as thereout.

In testimony whereof I have hereunto set my hand at the city of Annapolis, this twenty-first day of March in the year of our Lord one thousand eight hundred and twenty.

NINIAN PINKNEY, *Clerk*
of the Council.

JOHN GILMORE, *Speaker*
of the House of Representatives.

PHILIP S. MARKLEY,
Speaker of the Senate.

APPROVED—April the second, one thousand eight hundred and twenty-one.

JOSEPH HIESTER.

CHAPTER CXLVIII.

AN ACT

Laying a duty on the retailers of foreign merchandize.

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 every person who shall deal in the selling of any goods, wares or merchandizes, wines or distilled liquors, except such as are the growth, produce or manufacture of the United States, and except such as are sold by the importer thereof in the original cask, case, box or package wherein the same shall have been imported, excepting also sales made by auctioneers appointed by law, and by licensed tavern keepers, shall on or before the first day of September, one thousand eight hundred and twenty-one, take out from the treasurer of the proper city or county a license for vending such foreign merchandize or liquors, which license shall be in the following form, to wit.

Every retailer of foreign merchandize to take out a license.