

## No. 189.

## AN ACT

## Regulating lateral Rail-Roads.

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 if any owner or owners of land, mills, quarries,

coal mines, lime kilns, or other real estate, in the vicinity of any rail-road, canal or slack water navigation, made or to be made by any company, or by the state of Pennsylvania, and not more than three miles distant therefrom, shall desire to make a rail-road thereto over any intervening lands, he or they, their engineers, agents and artists, may enter upon any lands, and survey and mark such route as he or they shall think proper to adopt, doing no damage to the property explored, and thereupon may present a petition to the court of Common Pleas of the county in which said intervening land is situated, setting forth his or their desire to be allowed to construct and finish a rail-road, in and upon the said route, and the beginning, courses and distances thereof, and place of intersection of the main rail-road, canal or slack-water navigation, which shall be filed and entered of record in the said court, whereupon the said court shall appoint six disinterested and judicious men, resident in the said county, who shall view the said marked and proposed route for a rail-road, and examine the same, and if they or any four of them shall deem the same necessary and useful for public or private purposes, they shall report in writing to the subsequent term of said court, what damages will be sustained by the owner or owners of the said intervening land, by the opening, constructing, completing and using the said rail-road, and the report of the said viewers and appraisers shall be filed of record in the said court, and if not appealed from, be liable to be confirmed or rejected by the said court, as to right and justice shall appertain; and if either of the parties shall be dissatisfied with said report, he or they may appeal therefrom to the said court of Common Pleas within twenty days after such report has been filed in the prothonotary's office, and not after; and after such appeal, either party may put the cause at issue, in the form approved of by the court, and the said issue shall be placed first on the trial list of the next regular term of the said court, and be there tried and determined by the court and jury, and the verdict so rendered, and judgment thereon, shall be final and conclusive, without further appeal or writ of error, and it shall be the duty of the said viewers and jury, to take into consid-

Owners of mills, mines, &c. within 3 miles of any rail-road, canal, &c. may connect therewith.

Right of entry upon lands. Mode of proceeding.

Six viewers to decide upon expediency, and assess damages.

Court to decide upon report.

Right of appeal.

be the duty of the said viewers and jury, to take into consid-

Viewers to consider advantages of road.

eration the advantages which may be derived by the owner or owners of land, passed by the said rail-road, when making up their report or forming their verdict thereon.

Of the fees of viewers, &c.

SECT. 2. *And be it further enacted by the authority aforesaid,* That the said court shall tax and allow such fees to the viewers and appraisers and officers of the court, as are chargeable for such services under the existing fee bills, which shall be paid by the petitioners for the said rail-road, and if necessary, their payment shall be compelled by attachment, and it shall be at the option of the petitioner or petitioners for the said rail-road, either after the report filed, or after the verdict of the jury, after paying the legal costs to be taxed as aforesaid, to abandon the further prosecution of the said rail road, and as evidence thereof, shall file his or their declaration of that intent in writing, in the said court, which shall terminate all further proceedings on the said petition.

Petitioners may abandon work at any time upon payment of costs.

Description of roads authorized to be made under this act.

SECT. 3. *And be it further enacted by the authority aforesaid,* That the said rail-road shall not exceed in breadth twenty feet, nor pass through any burying ground or place of public worship, nor any dwelling house or out buildings, without the consent of the owner thereof; it shall be of single or double track, and formed of wood, stone and iron, each or all of them as the proprietors of the said road shall adopt; the streams of water over which it may pass, shall be bridged with stone or wood, and the right of property in the said rail-road, shall be vested in him or them, his or their heirs and assigns who shall have subscribed the said petition for the said rail road, and whose funds shall have been contributed and paid for the construction thereof, in such just proportions as each contribution and payment shall bear to the whole amount expended in the formation and completion of the said rail road, and the satisfaction of damages for lands, and materials appropriated thereto; and the said rail-road shall be jointly and severally enjoyed and used by the proprietors thereof: the proprietors of the said rail-road, their workmen and agents, shall not break ground or commence the construction of the said rail-road, until the damages reported by the viewers or awarded by the verdict of the jury, shall be tendered or paid to the party or parties entitled thereto, except in cases of their being unknown to the petitioners.

Damages to be paid before breaking ground or commencing work.

Petitioners for rail-road to give 15 days notice of intention. Similar notice to land owners of intention to view, assess, &c.

SECT. 4. *And be it further enacted by the authority aforesaid,* That fifteen days notice shall be given of the intention to file a petition for a rail-road, in the court of Common Pleas, and of the time of viewing the premises, by the viewers, to the owner or owners of the lands over which the route of the contemplated rail road shall pass, if the said owners shall be resident in this commonwealth; and if in any case the owner or owners of said lands shall be unknown,

an affidavit thereof being filed by any petitioner for said road, notice shall be given in one public newspaper, printed in the county where the land lies, for three successive weeks; and if there is no newspaper printed in the county where the land lies, then publication in any newspaper printed in the adjoining county shall be sufficient.

Public notice requisite where owners are unknown.

SECT. 5. *And be it further enacted by the authority aforesaid,* That he or they who shall construct the said rail-road, after having paid the damages ascertained as aforesaid, shall be entitled to use and apply all the said gravel, timber and other materials on the route adopted, and within the breadth of twenty feet to and for the formation and completion of the said road and bridges, and it shall be lawful for the petitioners for, and the proprietors of the said rail-road, his or their heirs and assigns, and their agents and persons employed by or under him or them, to enter upon any land near or adjoining said rail-road, to search for stone, gravel, sand, wood or other materials to be used in the construction of the said road; but no stone, gravel, sand, wood or other materials, shall be taken from any land for the purposes aforesaid, until the rate of compensation therefor shall be ascertained and settled with the owners of the said lands; but if the parties cannot agree thereon, each party shall choose a man, who, if they cannot agree, shall choose an umpire, all of whom shall, under oath or affirmation, fairly and impartially estimate the same, and such award shall be final and conclusive; but if the owner or owners of such land, out of which the said materials shall be designed to be taken, shall be a feme covert, non compos mentis, out of the state or unknown, the court of Common Pleas of the proper county shall, in writing, appoint three impartial men, who, on oath or affirmation, shall fairly and impartially estimate the same materials, the amount of which said valuation shall be paid or tendered to the owner or owners thereof, if within the state, and known before they are removed or applied to the construction of the said rail-road.

Right of persons constructing rail-roads to take materials.

Not until rate of compensation be ascertained.

Arrangement for assessment of amount.

Court to appoint viewers when owners cannot act. Award to be paid before removal of materials.

SECT. 6. *And be it further enacted by the authority aforesaid,* That the proprietor or proprietors of the said rail road on the completion of the same, shall file in the court of Common Pleas a full statement and account of all the expenses incurred in the formation and completion of the said road, under the oath or affirmation of some one or more who shall have had knowledge of the same, within three months after the same shall be completed and put in use, under the penalty of one hundred dollars, to the end that the said road and the privileges appurtenant thereto may be resumed by this commonwealth, whenever the legislature shall enact the payment to the proprietors of such rail road, their heirs and assigns, of the principal money expended in the construction of the same.

Rail road proprietors to file a statement of expenses within three months from completion, under a penalty.

Commonwealth may purchase at any time.

Rates of toll which may be charged by road proprietors.

SECT. 7. *And be it further enacted by the authority aforesaid,* That the said rail-road shall and may be used by any person or persons transporting any thing thereon, in such cars, wagons and vehicles, as are adapted to and used thereon by the proprietor or proprietors of the said rail-road or their agents, and no other, he or they using the same, paying four cents per mile on each and every ton weight of the article transported thereon, and on all single articles weighing less than a ton it shall be lawful to charge and receive an advance not exceeding twenty per cent. on the rate as above established.

Bridges or causeways to be erected so as not to obstruct any public roads.

SECT. 8. *And be it further enacted by the authority aforesaid,* That the said rail-road shall be so constructed as not to obstruct or impede the free use and passage of any public road or roads which may cross or enter the same, being now laid out or hereafter to be laid out, and in all places where the said rail-road may cross or in any manner interfere with any public road, the proprietors of the said rail-road shall make, or cause to be made, a good and sufficient bridge or bridges, causeway or causeways, to enable all persons passing or travelling such public road to cross and pass over said rail-road, and if the proprietor or proprietors of said rail-road shall refuse or neglect to make such bridge or bridges, causeway or causeways, or when made to keep the same in good repair, they shall be liable to pay a penalty of ten dollars, for every day the same shall be so neglected or refused to be made or repaired, to be recovered by the supervisor of the township, with costs, for the use of the township, as debts of like amount are by law recoverable, and the service of process on any one of the proprietors of the said rail-road shall be as good and effectual as if made on all of them.

Penalty on neglect.

Bridges or causeways for the convenience of individuals.

SECT. 9. *And be it further enacted by the authority aforesaid,* That for the accommodation of all persons owning or possessing land through which the said rail road may pass, and to prevent inconvenience to such persons in crossing or passing over the same, it shall be the duty of the proprietors of the said rail road, if required, to make or cause to be made a good and sufficient bridge or bridges, causeway or causeways, whenever the same may be necessary to enable the occupant or occupants of said land to cross or pass over the same with wagons, carts and implements of husbandry, as occasion may require: *Provided,* That the proprietors of the said rail-road shall in no case be required to make, or cause to be made, more than two such causeways through each plantation or lot of land, for the accommodation of any one person owning or possessing land through which the said rail-road shall pass; and where any public road shall cross the said rail-road, the person owning or

Proviso. Not more than two for one person—none where a public road crosses.

possessing land through which the said rail-road shall pass, shall not be entitled to make such requisition on the proprietors of the said rail-road, and the said bridge or bridges, causeway or causeways, when so made, shall be maintained and kept in repair by the proprietor or proprietors of the said rail-road, and if they shall refuse or neglect to make such bridge or bridges, causeway or causeways, or when made to keep the same in good repair, the said proprietors shall be liable to pay any person aggrieved thereby all damages sustained by such person or persons, in consequence of such neglect or refusal, to be sued for and recovered before any magistrate or court having cognizance thereof, and the service of process on any one of the proprietors of the said rail-road shall be as good and effectual as if made on all of them.

Penalty on neglect.

SECT. 10. *And be it further enacted by the authority aforesaid,* That no suit or action shall be brought or prosecuted by any person or persons, for any penalties incurred under this act, unless such suit or action shall be commenced within twelve months after the offence committed or the cause of action shall have accrued; and the defendant or defendants in such suit or action may plead the general issue, and give this act and the special matter in evidence, and that the same was done in pursuance and by authority of this act.

Suits for penalties must be brought within 12 months from time of offence.

SECT. 11. *And be it further enacted by the authority aforesaid,* That if any person or persons shall wilfully and knowingly break, injure or destroy the said rail-road, or any part thereof, or any work or device or any part thereof, to be erected by the proprietors of the said rail-road, or shall wilfully place any obstruction in and upon the said rail-road, he or they so offending shall forfeit and pay to the proprietor or proprietors of the said rail road three times the actual damages so sustained, to be sued for and recovered with costs of suit, before any justice of the peace or court having cognizance thereof, by action of debt, in the name and for the use of the proprietor or proprietors of the said rail-road.

Penalty on wilful injury to rail-roads, &c.

How recovered and appropriated.

SECT. 12. *And be it further enacted by the authority aforesaid,* That the provisions of this act shall extend to the counties of Lycoming, Luzerne, Schuylkill and Northumberland only: *Provided,* That if any lateral rail road so constructed as aforesaid, shall be disused or suffered to remain out of repair for the space of two years, all right of way or other privilege therein shall cease and revert to the original owners of the land, their heirs and assigns.

Provisions of this act restricted to 4 counties.

Proviso. 2 years neglect of road to cause reversion of ownership to land holders.

SECT. 13. *And be it further enacted by the authority aforesaid,* That the legislature reserve the right to repeal or alter

Reservation of right to repeal

this act, either in whole or in part, as may respect any railroad constructed under the provisions of this act.

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

WM. G. HAWKINS,  
*Speaker of the Senate.*

APPROVED—The fifth day of May, Anno Domini, eighteen hundred and thirty-two.

GEO. WOLF.

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No. 190.

A FURTHER SUPPLEMENT

To an act entitled, "An act to appoint commissioners to regulate the streets, lanes and alleys, in the district of Southwark, and to lay out new streets, lanes and alleys therein, for the accommodation of the inhabitants, and to lay out the roads therein mentioned through the said district and parts of the townships of Moyamensing and Passyunk," passed the twenty-ninth day of September, one thousand seven hundred and eighty-seven.

Preamble,  
relative to a  
plan of the  
streets, &c. in  
Southwark.

WHEREAS, in the report and plan of the commissioners appointed by the act to which this is a supplement, it is declared that the streets and ways on the said plan, which are colored with yellow, are intended to show the direction of the several streets which may hereafter be laid, and prove a convenience in the improvement and division of estates in those parts of the district, and prevent further irregularities in buildings: *And whereas*, the said plan, agreeably to the directions of the said act, is the public plan of the said district, and is recorded in the office for recording of deeds for the county of Philadelphia: *And whereas*, it is proper to provide for the opening of the said streets and ways, from time to time, as the increasing improvements shall require:

Certain  
streets, &c.  
declared high-  
ways.

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 all the streets, lanes, alleys and roads, on the said plan, laid out and coloured with yellow as aforesaid, shall henceforth and forever be, and shall be adjudged and taken to be public highways, for the use of the inhabitants of this commonwealth.