

by the location and erection of a bridge at the place last aforesaid, as if the same had been so directed by the act aforesaid.

SECTION 5. So much of an act entitled An act to authorize the Governor to incorporate sundry bridge and turnpike road companies, and for other purposes, passed the eighth day of April, eighteen hundred and thirty-three, as authorizes the Governor to incorporate the Somerset and Conemaugh turnpike road company, is hereby revived, and the time for commencing and carrying on the work on said road, agreeably to the sixth section of said act, is hereby extended for the term of two years from and after the passage of this act, the provisions of the said act to the contrary notwithstanding.

Somerset and
Conemaugh,
time for
completion
extended.

JAMES THOMPSON,

Speaker of the House of Representatives.

THOMAS S. CUNNINGHAM,

Speaker of the Senate.

APPROVED—The tenth day of April, Anno Domini, eighteen hundred and thirty-five.

GEO: WOLF.



No. 113.

An Act

To incorporate the Delaware county Branch Rail-Road 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 David Lyons, Jonathan Miller, James Bunting, Joseph Bunting, Oborn Levis, Edward Garrett, William Johnson, Lewis Davis, Reece Haycock, Charles Sellers, Abraham Powell, Elias B. Eckfeldt, Andrew Lindsay, Thomas Steele, sen'r. Samuel Garret, Samuel Smith, William Amies, George W. Bartram, Joseph M. G. Lescure, William Martin, George F. Lehman, Pierce Crósbey, George G. Leiper, William A. Martin, George Caldwell, Peter Keyser, Joseph Smith, Samuel Marks, Thomas Pratt, Paul S. Brown, Samuel Sellers, Joseph George, Abraham G. Hunt and Levis Passmore, are hereby appointed commissioners to do and perform the several things hereinafter mentioned, that is to say, they shall procure a suitable number of books, and in each of them enter as follows:—“We whose names are hereunto subscribed, do promise to pay to the president and managers of the Delaware county Branch rail-road company, the sum of fifty dollars for every share of stock set opposite to our respective names, in such manner and propor-

Commis'ners.

tions, 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 to incorporate the Delaware county Branch rail-road company: Witness our hands, this _____ day of _____

in the year of our Lord, one thousand eight hundred and _____; and shall thereupon, give notice in all the newspapers printed in the county of Delaware, for twenty days 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 names, or in the names of any other persons who shall authorize the same, for shares in said stock; and the said books shall be kept open respectively for the said purpose, at least six hours in each juridical day, for the space of three days, or until there shall have been subscribed one thousand shares, and if at the expiration of three days, the book or books aforesaid shall not have the number of shares aforesaid therein subscribed, the said commissioners may adjourn from time to time, and transfer the book or books elsewhere, until the whole number of one thousand shares shall be subscribed, of which adjournment and transfer, the commissioners aforesaid shall give such public notice as the occasion may require, and when the whole number of shares shall have been subscribed, then the books shall be closed: *Provided*, That no person shall be permitted to subscribe for more than ten shares on the first day, after which, any person may subscribe for any number of shares until the whole stock is taken.

Whole number of shares 1000.

Proviso.

When chart'r may issue.

Style & title.

Privileges & liabilities.

SECTION 2. When five hundred shares or more of the said stock shall have been subscribed, and the sum of five dollars paid on each and every share, the commissioners, or any five of them, may certify to the Governor, under their hands and seals the names of the subscribers and the number of shares subscribed by each, and the sums paid thereon, whereupon the Governor shall by letters patent under his hand and the seal of the Commonwealth, create and erect the subscribers, and if the subscription be not full at the time, then also those who shall thereafter subscribe to the number of shares as aforesaid, into a body politic and corporate, in deed and in law, by the name, style and title of "The Delaware county Branch rail-road company," and by the same name the subscribers shall have perpetual succession, and be able to sue and be sued, plead and be impleaded in all courts of record and elsewhere, and to purchase, receive, have, hold and enjoy, to them and their successors, lands, tenements and hereditaments, goods, chattles, and all estate real and personal or mixed, of what kind or quality soever, and the same from time to time to sell, mortgage, grant, alien or dispose of, and to make dividends of such portion of the profits as they

may deem proper, and also to make and have a common seal and the same to alter or renew at pleasure, and also to ordain, establish and put into execution such by-laws, ordinances and regulations as shall appear necessary and convenient for the government of the said corporation, not being contrary to the constitution and laws of the United States or of this Commonwealth, 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 management and ordering the affairs of the same: *Provided*, That nothing here- Proviso.
in contained shall be considered as in any way giving to the said corporation, any banking, manufacturing or trading privileges whatsoever, or any other liberties, privileges or franchises, but such as may be necessary or incident to the making of the said rail road: *Provided further*, That the said company shall at 2d Proviso.
no time hold or possess any land for any other purpose than the construction of the said rail road, or for toll houses, depots, weigh-houses or other necessary works.

SECTION 3. The said named commissioners or any five of them, shall as soon as conveniently may be after the said letters patent shall have been obtained, give at least twenty days previous notice in the newspapers hereinbefore 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, which proxy shall have been obtained and bear date within three months previously to the election at which such proxy shall be presented, duly authorized, one president and six managers, a majority of whom shall be residents of this Commonwealth. The president and managers aforesaid shall conduct the business of said company until the second Monday of May then next ensuing, and until like officers shall be 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, and that may be necessary for the well governing the affairs of the company. Organization of company.
Duty of officers.

SECTION 4. The stockholders shall meet on the second Monday of May then next as aforesaid, at such place as may be fixed upon by the by-laws, of which notice shall be given at least twenty days 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, and on the same day in each and every year thereafter a like election shall take place, when the necessary officers shall be elected, to continue in office for one year, or until others are chosen, and the stockholders shall also meet 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 meetings, they shall have full power and authority to make, alter or repeal, by a majority of votes in manner aforesaid, all such by-laws, Annual meeting for election of officers.

Ratio of votes
to shares.

rules, orders and regulations as aforesaid, to do and perform every other corporate act; and the number of votes to which each stockholder shall be entitled to at all elections, shall be according to the number of shares he or she shall hold, in the proportions following, that is to say, for each share not exceeding five shares, five votes; for every two shares above five and not exceeding ten, one vote; for every ten shares above ten and not exceeding forty, one vote; for every twenty shares above forty and not exceeding one hundred, one vote; but no share or number of shares above one hundred as aforesaid shall confer any additional right of voting; and no share shall confer a right of suffrage which shall not have been holden three calendar months prior to the day of election, nor 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 as an executor or administrator, trustee or guardian, or in the right and 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 person shall be permitted to vote at the first election of said company unless he or she has fully paid five dollars on each share of stock by him or her subscribed, as directed by the second section of this act, and at all subsequent elections of said company, no persons shall be permitted to vote, unless he or she shall have fully paid all the instalments called for and then due on the shares by him or her subscribed, 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 of our Lord one thousand eight hundred and twenty, entitled An act to regulate proxies.

Proviso.

How officers
are to be
elected.

SECTION 5. The election of officers provided for in the fourth section of this act, shall be conducted in the following manner, that is to say: the managers for the time being shall appoint two of the stockholders, not being managers, to be judges of the said election and to conduct the same, who after having severally taken and subscribed an oath or affirmation, before a 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 the voters, and when the election is closed shall count the votes, and the stockholders having the highest number of votes shall be declared duly elected. And if it shall at any time happen that an election of president or managers shall not be made, 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 or managers on the same day, or any other day thereafter, by giving at least ten days notice, signed by the president, in the newspapers before mentioned, of the time and place of holding said election; and they are hereby required so to do, at least once in every twenty days, till the requisite officers are

chosen ; and the president and managers of the preceding year shall in that case continue to act, and be invested with all powers belonging to their respective situations, until an election shall take place : In case of death or resignation, or removal from the state, of any president, manager or other officer, his place shall be filled by the board of managers until the next annual election : *Provided*, That none but stockholders shall be eligible to be elected president or manager. Proviso.

SECTION 6. The president and managers shall meet at such times and places as shall be found most convenient for the trans-acting of their business, and when met, four 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 work, and to fix their salaries and wages, to ascertain the time, manner and proportions in which the said stockholders shall pay the moneys due on their respective shares, to draw orders on the treasurer for the moneys, which orders shall be signed by the president, or in his absence by a majority of the managers present, and countersigned 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. Powers of president and managers.

SECTION 7. 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 such share or shares 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, each of whom shall keep a book for that purpose, subject however to all payments due or to become due thereon ; and the assignee holding any certificate, having first caused the assignment to be entered in a book of the company, to be kept for the transfer of stock, shall be a member of the said corporation, and for every certificate assigned to him as aforesaid, shall be entitled to a share or shares as is therein mentioned of the capital stock of all the estates and emoluments of the company incident to such share or shares, 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 subscriber would have been. Certificates of stock.
How transferred.

SECTION 8. 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 carrying on the work, any stockholder shall neglect to pay such pro- Penalty on delay in paying instalments.

portion 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 one 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 aforesaid, the president and managers may at their election cause suit to be brought before a justice of the peace, or in any court having competent jurisdiction for the recovery of the same, together with the penalty aforesaid.

SECTION 9. Dividends of so much of the profits of the company as shall appear advisable to the managers, shall be declared at least twice a year in every year, and paid to the stockholders on demand, at any time after the expiration of ten days therefrom, but they shall in no case exceed the amount of the nett profits actually acquired by the company.

SECTION 10. The president, managers and company of the said rail road, shall have power to survey, lay down, ascertain, mark and fix such routes as they shall deem expedient for said rail-road, with one or more tracks, beginning at the most eligible point on the Pennsylvania rail-road, and to extend from thence to a point at or near the head of tide navigation, on Darby or Cobb's creek, keeping as near the dividing ridge between the said creeks as conveniently may be, and having due regard to the situation and nature of the ground and of the buildings thereon, the public convenience and interest of the stockholders, and so as to do the least damage to private property, and to be so constructed as not to impede or obstruct the transit on the Pennsylvania rail road, and the said rail road shall not pass through any burying ground or any place of public worship, or any dwelling house, without the consent of the owner thereof, nor shall it pass through any out-buildings of the value of two hundred dollars, without such consent; and the said president, managers and company shall, within six months after ascertaining the route of the said rail road, cause an accurate survey of the lines of the said road to be made, a map or plot of which survey they shall cause to be filed in the Secretary's office of this State, which map or plot, or a certified copy thereof, shall be sufficient evidence of the course of the said road, which may then be opened, and all the expenses incurred thereby shall be defrayed by the said company.

SECTION 11. It shall be lawful for the said president, directors and company and their agents, and all persons employed by or under them, for the purpose contemplated in this act, to enter upon any land which they shall deem necessary for laying out

Semi-annual
declaration of
dividends.

Location and
route of r. r.'d.

Map of road
to be filed in
Secy's office.

Right to enter
enclosures,
&c.

said rail road, and also for the purpose of searching for stone, earth or gravel for constructing said road, but no stone, earth or gravel shall be taken away from any land without the consent of the owner thereof, until the rate of compensation for the same be ascertained and paid, which rate of compensation, if the parties cannot agree thereon, shall be ascertained in the manner hereinafter prescribed as to the compensation for lands over which the said road may be laid.

SECTION 12. It shall and may be lawful for the company hereby incorporated to make, erect and establish a rail road on the route laid out as aforesaid, and they are also hereby empowered to erect, make and establish all works, edifices and devices to such rail road as may by the said company be deemed expedient for the purpose of carrying into effect the objects of their incorporation, and also to contract or agree with the owner or owners for the purchase of any lands or tenements which may be necessary for the purpose of erecting the said rail road, weigh scales, toll houses, depots and warehouses; or other necessary appendages.

SECTION 13. Whenever it shall be necessary for the said president, directors and company to enter in and upon, and occupy, for the purpose of making said rail-road, any land upon which the same may be located, if the owner or owners of the said land shall refuse to permit such entry and occupation, and the parties cannot agree upon the compensation to be made for any injury or supposed injury that may be done to said land by such entry and occupation, it shall and may be lawful for the parties to appoint five suitable and disinterested persons of the county of Delaware, to estimate such damages, who shall be under oath or affirmation, fairly and impartially to estimate the same, and the expenses incurred by the said appraisers, shall be defrayed by the said rail-road company; but if the parties cannot agree upon such persons, or if the persons so chosen shall not decide upon the matter, or if the owner of such land shall refuse or neglect to join in such appointment within twenty days after the requisition for that purpose upon him, or if such owner shall be feme covert, under age, non compos mentis, out of the State or unknown, then it shall be lawful for the court of Common Pleas of the county of Delaware, on application of either party, and at the cost and charges of said corporation, to appoint five disinterested men of said county, to view, examine and survey the said lands, tenements and hereditaments, and estimate the injury or damage, if any, that in their apprehension will be sustained as aforesaid, by reason of said rail-road, and report the same, under their oaths or affirmations, to the said court, which report being confirmed by the said court, judgment shall be entered thereon, and the said viewers shall be entitled to the like fees for their services, as are allowed by law to viewers of public roads and highways, to be paid by said company; and it shall be the duty of the said appraisers, in estimating such

Power to
erect works.
&c.

Arrangement
for assessm't
of damages.

Appointment
of viewers.

Fees of
viewers.

Proviso. injury or damage, to take into consideration the advantages that will be derived to the owner or owners of the said lands from the said rail-road: *Provided*, That either party may appeal to the court within twenty days after such report may have been filed in the prothonotary's office of the proper county, in the same manner as appeals are allowed by the provisions of the arbitration act of the year eighteen hundred and ten, and upon the coming in of such report, and the confirmation thereof, or upon final judgment on appeal therefrom, and the said company, paying to such owner the sum in such report or judgment specified, in full compensation for said lands, or for the injury sustained as aforesaid, the said company shall become seized of the same estate in the said lands which the owner held in the same, and they, and all who act under them, shall be acquitted and freed from all responsibility for and on account of such injury: *Provided*, That upon payment or tender of payment by the said company, of the sum specified in the report of said viewers or appraisers to the owner of said land, the said president and managers of said company, their agents or contractors for making or repairing the said road, may immediately take and use the same, without awaiting the issue of proceedings as hereinbefore prescribed.

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Company to erect public causeways. SECTION 14. The said rail-road shall be so constructed by the said company, 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 way interfere with any public road now laid out, it shall be the duty of the said company to make, or cause to be made, a good and sufficient causeway or causeways, to enable all persons passing or travelling such public road, to cross and pass over or under the said rail-way, which causeway or causeways shall be made and maintained by the said company; and if the said company shall refuse or neglect to make such 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 neglected or refused to be made or repaired, after having been duly notified thereof, to be recovered by the supervisor of the township, with costs, for the use of the township, as debts of a like amount are by law recoverable; and shall moreover, be liable to an action or actions, at the suit of any person who may be aggrieved thereby, and the service of process upon any officer or agent of said company, shall be as good and available in law as if served upon the president thereof.

Penalty on neglect.

Erection of private causeways. SECTION 15. For the accommodation of all persons owning or possessing land through which the said rail-road may or shall pass, and to prevent inconveniences to such persons in crossing or passing the same, it shall be the duty of said company, when required, to make or cause to be made a good and sufficient causeway or causeways, wherever the same may be

necessary to enable the occupant or occupants of said lands to cross or pass over or under the same with wagons, carts, and implements of husbandry, as the occasion may require: *Provided*, That the said company shall in no case be required to make or cause to be made more than one 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 may or shall pass; and where any public road shall cross the said rail-road, the person owning or possessing land through which the said road shall pass, shall not be entitled to make such requisition on said company; and the said causeway or causeways, when so made, shall be maintained and kept in repair by said company; and if said company shall refuse or neglect to make such causeway or causeways, or, when made, to keep the same in good repair when duly-notified thereof, the said company shall be liable to pay to any person aggrieved thereby all damages sustained by such person in consequence of such refusal or neglect, to be sued for and recovered before any magistrate or any court having cognizance thereof; and the service of process upon any officer or agent of said company, shall be as good and as available in law as if served upon the president thereof: *Provided*, That the owner or owners of land through which said rail-road passes, shall not be prevented from constructing crossing-places over or under such rail-road, but the same to be such as are usually made by the company.

Proviso.

Penalty on neglect.

Proviso.

SECTION 16. No suit or action shall be brought or prosecuted by any person or persons for penalties incurred under this act, unless said suit or action shall be commenced within six months next after the offence shall have been 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 that the same was done in pursuance and by authority of this act.

Suits for penalties must be commenced within six months.

SECTION 17. The said company shall not prevent any person or persons, being the owner or owners of land bordering on said rail-road or adjacent thereto, from making such lateral rail-roads, and to connect them with the said rail-road from their said lands, as the said person or persons may conceive necessary: *Provided*, The said connexion shall be made under the direction of the managers of the company.

Right of others to connect with rail road.

SECTION 18. On the completion of the said rail-road, the same shall be esteemed a public highway, for the conveyance of passengers and transportation of merchandise and commodities; and the said company may charge and receive, not exceeding double, the rates of toll per mile for the transportation of passengers and all kinds of produce and commodities, and all transit or travelling on the said rail road, as are now charged on the Philadelphia and Columbia rail road: *Provided*, The said tolls do not reduce the nett revenue and profits of the said company below six per cent. per annum on the capital expended.

Rates of toll.

Proviso.

Penalty for passing without paying toll.

SECTION 19. If any owner or driver of any car, carriage or conveyance whatsoever, upon the said rail road, shall pass by any place appointed for receiving tolls, without making payment, with intent to defraud the said company, he, she or they so offending shall forfeit and pay for the use of the said company the sum of twenty dollars, to be sued for and recovered by action of debt before any justice of the peace, in like manner and subject to the same rules and regulations as debts under one hundred dollars may be sued for and recovered, together with costs of suit.

Penalty for wilful injury to works.

SECTION 20. If any person or persons shall wilfully and knowingly break, injure or destroy the rail road or any part thereof, or any work, edifice or device, or any part thereof, to be erected by the said company, in pursuance of this act, he, she or they shall forfeit and pay to the said company three times the actual damages so sustained, to be sued for and recovered with cost of suit, in any court having cognizance thereof, by action of debt, in the name and for the use of said company, and shall also be subject to indictment in the court of Quarter Sessions of Delaware county, and upon conviction of such offence, shall be punished by fine and imprisonment, at the discretion of the court.

Company to commence in 3 years, to complete 4 miles in 5 yrs. and keep road in repair.

SECTION 21. If the president, managers and company shall not proceed to carry on said work within three years from the passage of this act, and shall not complete four miles of the same as aforesaid, in five years thereafter, according to the true intent and meaning of this act; or if after the completion of the said rail road as aforesaid, the said corporation shall suffer the same to go to decay, and be impassible for the term of three years, then this charter shall become null and void, except so far as compels said company to make reparation for damages.

Capital stock may be increased to 2000 shares.

SECTION 22. If any increase of the capital stock be deemed necessary by the stockholders to complete the said rail road, it may be lawful for the said president, managers and company at a stated or special meeting convened for the purpose, to increase the number of shares, so that they shall not exceed in the whole two thousand; and to receive and demand the moneys for shares so subscribed, in like manner and under like penalties, as is hereinbefore provided for the original subscription, or as shall be provided for by their by-laws.

JAMES THOMPSON,
Speaker of the House of Representatives.

THOMAS S. CUNNINGHAM,
Speaker of the Senate.

APPROVED—The eleventh day of April, Anno Domini, eighteen hundred and thirty-five.

GEO: WOLF.