

Proviso.

ment and the government of the institution, as they or a majority of them may deem necessary: *Provided*, That they be not contrary to the spirit and meaning of this act, nor to the constitution and laws of this state or of the United States, which rules and regulations shall always be open to the inspection of the students, their parents and guardians.

NER MIDDLESWARTH,

Speaker of the House of Representatives.

THOMAS S. CUNNINGHAM,

Speaker of the Senate.

APPROVED—The twenty-ninth day of March, Anno Domini, one thousand eight hundred and thirty-six.

JOS : RITNER.

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No. 77.

An Act

To incorporate the Chester and Delaware county Railroad 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 John Kerlin, Joshua P. Eyre, William Martin, William Eyre, junior, Samuel Edwards, A. T. Dick, Preston Eyre, Samuel West, John Dutton, John Garrett, Thomas Dutton, Richard S. Smith, John P. Crozer, Doctor Samuel Anderson, Daniel Lammott, Abraham W. Sharpless, John Edwards, Thomas Hemphill, James M. Wilcox, James Hickman, Hill Brenton, William G. Flauer, Samuel Riddle, and Joseph P. Yarnall, and William Beatty, of the county of Delaware, David Townsend, William Williamson, Sampson Babb, William Everhart, John W. Townsend, Walker Yarnell, George G. Ashbridge, Joseph M. Downing, Richard M. Thomas, Charles Downing, Henry Hoops, Thomas Park, Isaac Downing, Thomas S. Woodward, and Abiah Taylor of the county of Chester, and Joseph Hemphill, Mathew L. Bevan, Edward Coleman, Mathew Newkirk, Doctor Robert M. Huston, David Lewis, junior, Casper W. Sharples, Truman M. Hubbell, John W. Ashmead, John Lent, Francis M'Bride, William Moore, Thomas M. Femington, James M'Closkey, John Jones, Thomas. D. Grover, John W.

Odenhimer, M. N. Everly, Peter Williamson, Robert Coburn, Lewis Allen, Rees W. Flauer, John Pearce, and James P. Smith of the city and county of Philadelphia, or any five of them, are hereby appointed commissioners to do and perform the several things hereinafter mentioned, that is to say: they shall procure a sufficient 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 Chester and Delaware county railroad company, the sum of fifty 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 this commonwealth, entitled 'An act to incorporate the Chester and Delaware county railroad company;' Witness our hands, this day of in the year of our Lord one thousand eight hundred and ;"

And shall thereupon give notice, in two of the newspapers printed in the counties of Chester and Delaware, and two in the city of Philadelphia, 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 the 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 four 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 four 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, in his own name or in the name of another person, 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.

SECTION 2. When two thousand shares or more of the stock shall have been subscribed, and the sum of five dollars paid on each and every share, the commissioners, or a majority 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, where-

To procure books.
 Form of sub-
 scription.
 Shares \$50
 Notice.
 Who may subscribe.
 Whole num-
 ber of shares
 4000.
 Proviso.

upon 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 Chester and Delaware county railroad 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 portions 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 in 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 herein 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 railroad: *Provided further*, That the said company shall at no time hold or possess any land for any other purpose than the construction of the said railroad, 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 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 eight managers, all of whom shall be residents of this commonwealth; the president and managers aforesaid, shall conduct the business of said company until the second Monday in January then next ensuing, and until like officers shall be chosen, and

Name style and title.
Powers and privileges.
Seal.
By-laws.
Proviso.
2d Proviso.
Notice.
Organization of the company.
Proxies.

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.

SECTION 4. The stockholders shall meet on the second Annual election. Monday of January 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, the 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 of the stockholders. they shall have full power and authority to make, alter or repeal, by a majority of votes, in manner aforesaid, 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 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: Ratio of votes to the shares. 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 shall have 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 *Proviso*.

Lord, one thousand eight hundred and twenty, entitled "An act to regulate proxies."

Manner of
conducting
election.

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, 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 managers.

A failure to
elect officers
not to dis-
solve the
company.

Notice.

Vacancies,
how filled.

Proviso.

Meetings of
the board.

Quorum.
Minutes.

Powers of
the board.

SECTION 6. The 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, 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 times, manner and proportions in which the said stockholders shall pay the monies due on their respective shares, to draw orders on the treasurer for monies, 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.

SECTION 7. The president and managers first chosen, ^{Certificates.} 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 transferrable at his pleasure, in person or by attorney, ^{Stock trans-} duly authorized, in the presence of the president or ^{ferrable, and} treasurer, each of whom shall keep a book for that purpose, ^{how.} 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.

SECTION 8. If after thirty days notice in the public papers ^{Notice.} 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 ^{Penalty for} for, pay at the rate of two per centum per month for the delay of pay- ^{ment.} 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 ^{Forfeiture.} 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 ^{Dividends} company as shall appear advisable to the managers, shall be ^{twice a year.} 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; and the said company shall annually pay into the treasury

Tax. of the commonwealth, a tax of eight per centum on all dividends which may exceed six per centum on the capital stock actually paid in.

Route.

One or more tracks.

Not to obstruct the Pennsylvania railroad, or pass thro' burying grounds, etc.

May enter upon lands for materials on certain conditions.

Power to erect works, and to purchase lands, etc. for the purpose of erecting scales, toll houses, etc.

Power to occupy land for certain purposes.

SECTION 10. The president, managers and company of the said railroad, shall have power to survey, lay down, ascertain, mark and fix such routes as they shall deem expedient for said railroad, with one or more tracks, beginning at the most eligible point on the river Delaware, at or near the borough of Chester, and to extend from thence to the most convenient point on the Philadelphia and Columbia railroad, making West Chester or its vicinity a point, and keeping along the valley of Chester creek, or as near thereto 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 the 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 railroad; and the said railroad shall not pass through any burying ground, nor place of public worship, nor 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.

SECTION 11. The said president and managers, by and with their superintendents, engineers, artists, workmen and laborers, with their tools, instruments, carts, wagons and other carriages, and beasts of draught and burden, may enter upon the lands contiguous and near to said railroad, first giving notice to the owners or occupiers thereof, and from thereon to take and carry away stone or 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 damage that may have been done thereon, the amount whereof, if the parties do not agree, shall be assessed as hereinafter mentioned in this act.

SECTION 12. It shall and may be lawful for the company hereby incorporated, to make, erect, and establish a railroad, on the route laid out as aforesaid, connecting with the Philadelphia and Columbia railroad, and they are also hereby empowered to erect, make and establish all works, edifices and devices, to such railroad, 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 railroad, weigh scales, toll houses, depots and warehouses, or other necessary appendages.

SECTION 13. The said president and managers shall have power and authority, by themselves or their superintendents, engineers, artists and workmen, to enter in and upon, and occupy all land on which the said railroad or its depots and

warehouses may be located, or which may be necessary for the erection of its engine and water stations, weigh scales, or any other purpose necessary or useful in the construction and repairs of said railroad, and therein to dig and embank, make and construct the same; and the said company shall pay or satisfy the owner or owners of the ground so taken and occupied as aforesaid, 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 five suitable, judicious and disinterested persons, residing in the county wherein the lands may lie, who shall be under oath or affirmation fairly and impartially to estimate the same; but if either party refuses to join in such appointment, or they cannot agree upon such persons, then either of the parties, after giving ten days notice to the other, may make application to the court of Common Pleas of the proper county, wherein the lands may lie, to appoint six disinterested men of said county to view the said lands and tenements, and estimate the damages, if any, that has been sustained by the owner or owners of the said ground by reason of the construction of said railroad through the same, which said jury of valuers, being duly sworn or affirmed as aforesaid, and having viewed the premises, shall proceed to ascertain the quantity and quality of lands occupied by said railroad, and having taken into consideration the advantages that have or will be derived to the owner or owners of said land from the said road, shall estimate the compensation for said land, and report the same to said court, which report being confirmed by said court, judgment shall be entered thereon, and execution may issue, in case of non-payment of the sum awarded, and the expenses incurred by the jury, shall be paid by said railroad company: *Provided*, That either party may appeal to the court within thirty 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 in other cases: *And* provided also, That if any person or persons owning land or any other property which shall be affected by this act, be feme covert, under age, non compos mentis or out of the state, then, and in either of the cases, the president and managers of said company, and at the costs and charges of said company, shall, within one year after the construction of said railroad through said land, represent the same to the court of Common Pleas in the county where the lands lie, as the case may be, who shall proceed thereon in the same manner and to the same effect as directed by this act in other cases.

SECTION 14. The said railroad shall be so constructed by the said company as not to obstruct or impede the free use of the said roads, *Public roads not to be obstructed.*

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 railroad 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 traveling such public road to cross and pass over or under the said railway, 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 the 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.

Public causeways to be made and maintained by the company.

Penalty for neglecting public causeways.

Private causeways.

Proviso.

Penalty for neglecting private causeways.

Proviso.

SECTION 15. For the accommodation of all persons owning or possessing land through which the said railroad may or shall pass, and to prevent inconvenience 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 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 causeway through each plantation or lot of ground, for the accommodation of any one person owning or possessing land through which the said railroad may or shall pass; and the said causeway or causeways when so made, shall be maintained and kept in repair 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, 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 available in law as if served upon the president thereof: *Provided*, That the owner or owners of land through which said railroad passes, shall not be prevented from constructing crossing places over or under

such railroad, but the same to be such as are usually made by the company.

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 to be brought 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 railroad, or adjacent thereto, from making such lateral railroads, and to connect them with the said railroad, from their said lands, as the said person or persons may conceive necessary.

SECTION 18. On the completion of said road, or any five miles thereof, the same shall be esteemed a public highway, for the conveyance of passengers, and transportation of merchandise and commodities, under such regulations as the directors may prescribe; and the said company may charge and receive such sum or sums of money for toll as they shall think reasonable, not exceeding on any species of property four cents per ton per mile, nor on passengers, more than three cents each per mile. The said railroad to be a public highway. Tolls.

SECTION 19. If any owner or driver of any car, carriage, or conveyance whatsoever, upon the said railroad, 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 an 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 defrauding the company

SECTION 20. If any person or persons shall wilfully and knowingly break, injure or destroy the railroad, 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 the county in which the offence was committed; and upon conviction of such offence, shall be punished by fine and imprisonment, at the discretion of the court. Penalty for injuring the railroad.

SECTION 21. If the president, managers and company shall not proceed to carry on said work within five years from the passage of this act, and shall not complete four miles of the same as aforesaid, in seven years thereafter, according to the true intent and meaning of this act, or if after the completion of the said railroad as aforesaid, the said corporation shall suffer the same to go to decay, and be impassable 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.

SECTION 22. If any increase of the capital stock be deemed necessary by the stockholders to complete the said railroad, 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 eight 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.

SECTION 23. If the said company shall at any time misuse or abuse any of the privileges hereby granted, the legislature may resume all and singular, the rights and privileges hereby granted; and the legislature also reserves the right for the purchase by the state of the right, title and interest of the said company in the said railroad, with the appurtenances, at any time after thirty years from the passage of this act, by paying to said company a sum of money, which, together with the dividends declared, shall equal the cost and expenses of said railroad, with an interest of eight per centum per annum thereon.

NER MIDDLESWARTH,
Speaker of the House of Representatives.

THOMAS S. CUNNINGHAM,
Speaker of the Senate.

APPROVED—The thirtieth day of March, A. D.; one thousand eight hundred and thirty-six.

JOS: RITNER.