

No. 159.

AN ACT

To incorporate the "West Branch" Franklin Rail-Road Company.

SECTION 10. *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 Dunwoody, Elliott T. Lane, Jacob Brewer, William Metcalf, Daniel Schaffer, P. W. Little, John M'Farland, Joseph M. Hiester, James Dickey, Robert M'Curdy, James Patterson, John Johnston, James Carson, Robert Dick, John M'Dowell, William Shannon, James Grub, Thomas Reynolds, James Lawson, John Cooper, John Poe, John M'Coy, Henry Habaker, John H. Murphy, Peter Cook, Joseph Brewer, of Franklin county; Thomas Bakewell, George Darsie, John D. Davis, Samuel P. Darlington, William Hays, William Bell, William Little, Samuel Walker, Garret Wall, and John Gamble, of Allegheny county; Andrew Stewart, H. W. Beason, Daniel Rogers, John Boyd, Solomon Spear, and William Findlay, of Fayette county; George Handy, Britton Cooper, Henry Toland, Thomas Biddle, Charles S. Boker, Nathaniel Foster, Joseph B. Mitchell, of Philadelphia, or any of them, be and they 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, in each of which they shall enter as follows, viz: "We whose names are hereunto subscribed, do promise to pay to the president and managers of the West Branch Franklin rail-road company, the sum of fifty dollars for every share of stock set opposite 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 West Branch Franklin 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 two or more newspapers printed in the county of Franklin, three weeks at least of the time and places, when and where said books shall be kept open to receive subscriptions for the stock of 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 in the name of any other person who shall authorize the same, for any number of shares in the 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 six days, or until there shall have been subscribed five hundred shares; and if at the expiration of six days, the books, aforesaid, shall not have the number of shares, aforesaid, therein subscribed, the said commissioners may adjourn from time to time, and transfer the book or books elsewhere, until the whole number of five hundred 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 be subscribed, the books shall be closed: *Provided*, That five dollars on each share shall be paid at the time of subscribing.

SECTION 2. When five hundred shares or more of the said stock shall be subscribed, the said commissioners, or a majority of them, may certify, under oath or affirmation to the governor, whereupon the governor shall, by letters patent, under his hand and 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, aforesaid, into one body politic and corporate, in deed and in law, by the name, style, and title of "The West Branch Franklin rail-road company," and by the same name the subscribers shall have perpetual succession, and be able to sue and be sued, implead and be impleaded in all courts of record, and elsewhere, and to purchase, receive, have, hold, and enjoy to them and their successors lands, tenements, hereditaments, goods, and chattels, as may be necessary and requisite to carry on the business of the said company, and all estate, real, 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 and renew at pleasure; and also to ordain and 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 shall lawfully appertain, for the well being of the said corporation, and the due management and

Who may
subscribeNumber of
shares

Proviso

Letters patent

Name, style
and titlePrivileges and
liabilities

Seal

Of by-laws

ordering of the affairs of the same: *Provided*, That nothing herein contained shall be considered as in way giving to the said company any banking privileges, whatever, or any other liberties, privileges, or franchises, but such as may be necessary or incident to the making and maintaining of the said rail-road. Proviso

SECTION 3. The stockholders shall meet on the first Monday of January next, and annually thereafter, at such place as may be fixed upon by a majority of the aforesaid commissioners, or thereafter 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 of the said subscribers by ballot, to be given in person or by proxy, duly authorized, one president, and six managers, a majority of whom shall be residents of this commonwealth, and such other officers as may be deemed necessary, 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 president and 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 the 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, shall be according to the number of shares he or she shall hold, that is to say; for one share, one vote; and for every additional three shares, one vote; and no share shall confer a right of suffrage, which shall not have been holden three calendar months prior to the election, nor unless it be holden by the person in whose name it appears, absolutely and bona fide, in his own right, or that of his wife, or for his or her sole use and benefit, or as 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 shares held by transfer shall be entitled to vote, unless the same shall have been transferred at least three months before the election: *Provided further*, That no transfer shall be made without securing the payment of the stock, 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 one thousand eight hundred and twenty, entitled "an act to regulate proxies." Meeting of stockholders

To choose president, &c.

Power to alter by-laws, &c.

Ratio of votes

Proviso

2nd proviso

Of proxies

SECTION 4. The election of officers, provided for in the third section of this act, shall be conducted in the following manner, that is to say—the managers, or the commissioners, Manner of conducting elections

or a majority of them, 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, after having severally taken and subscribed an oath or affirmation, before an alderman or justice of the peace, well and truly, and according to law, to conduct such election. And the said judges shall decide on the qualification of the votes, and when the election is closed, shall count the votes, and declare who has been elected. And if it shall at any time happen that an election of president, managers, or other officers, 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, managers, or other officers, on the same day, or any other day thereafter, by giving at least ten days notice, signed by the president or secretary, in the newspapers before mentioned, of the time and place of holding said election. And the president, managers, treasurer, and other officers of the preceding year, shall, in that case, continue to act and be invested with all the powers belonging to their respective situations, until an election shall take place.

In case of failure to elect In case of death or resignation, or removal from the state, of any president, managers, treasurer, or other officers, his place shall be filled by the board of managers, until the next annual election.

Of vacancies

Meeting of president and managers and their duties SECTION 5. The said president and managers shall meet at such time and places as shall be found most convenient for the transaction of their business, and so met, a majority shall be a quorum, who, in the absence of the president, may choose a chairman, and shall keep minutes of their transactions fairly entered therein; and a quorum being formed, they shall have authority to appoint such engineers, surveyors, superintendants, and other artists and officers, as they may deem necessary to carry on the intended work, and to fix their salaries and wages; to ascertain the times, manner, and proportion, in which the said stockholders shall pay the money due on their respective shares; to draw orders on the treasurer for the same, which 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.

Certificates of stock, how issued SECTION 6. 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 such share or shares by him subscri-

bed 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 the purpose,) subject, however, to all payments due, or 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, and 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 the balances and penalty due, or to become due on each share, as the original subscriber would have been.

SECTION 7. 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 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, as aforesaid, the president and managers may, at their election, cause suit to be brought before any 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 previously to the said election or meeting.

SECTION 8. The president and managers of the company shall demand and require of, and from the treasurer, all, and every other the officers and other persons by them employed, bond in sufficient penalties, and with such securities, as they shall by their rules, orders, and regulations, required, for the faithful discharge of the several duties and trusts to them respectively committed.

**Dividends
how made**

SECTION 9. Dividends of so much of the profits of the institution, as shall appear advisable to the managers, shall be declared at least twice a 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 nett profits actually acquired by the company, so that the capital stock shall never be thereby impaired. If the said managers shall make any dividend which shall impair the capital stock of the said institution, the managers consenting thereto, shall be liable in their individual capacities, to said company, for the amount of the stock so divided; and each manager present, when such dividend shall be made, shall be adjudged to be consenting thereto, unless he forthwith enter his protest on the minutes of the board, and give public notice to the stockholders at the declaring of such dividend: *Provided*, No such dividend shall exceed fifteen per cent. per annum, nor shall the contingent fund of the company, at any time, exceed one-fourth of their capital stock.

**Liability of
managers**

Proviso

**Annual state-
ment to legis-
lature**

SECTION 10. When actual operations shall have commenced, and at the end of every year thereafter, there shall be furnished to the legislature an abstract of the accounts of the company, showing the whole amount of their capital actually paid into the funds of the company, the sum expended, the tolls and other profits accruing within the year, and the amount of dividends declared in each year, or the losses sustained, as the case may be, which abstract shall be verified by the oath or affirmation of the president of the company, for the time being; and said company shall pay annually into the treasury 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.

Tax

**Commence-
ment and ter-
mination of
rail road**

SECTION 11. The president and managers of the said rail road company, shall have power to survey, lay down, ascertain, mark, and fix such route as they shall deem expedient for a rail road, with as many sets of tracks as they may deem necessary, beginning at some point of the Franklin rail road, in Franklin county, and terminating at some suitable point of the Baltimore and Ohio rail road, on the Potomac river, having due regard to the shortest practicable route, in the formation of a continuous rail road from east to west, in connexion with the rail road now completed from Philadelphia to Chambersburg. *Provided*, That said rail road (except in deep cuts and filling, or at points selected for depots, engine or water stations,) shall not exceed four rods in width, and it shall not pass through any burying ground, or place of public worship, or any dwelling house, without the consent of the owner thereof. That said corporation shall obtain the consent of the said Baltimore and Ohio rail road company,

Proviso

to form a connexion therewith and also the necessary authority from the legislature of the respective states through which the said rail road may pass, for the right of territory, before the commencement of the construction of their road through any part of such state or states. The president and managers, 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 office of the canal commissioners 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 the expenses incurred thereby, shall be defrayed by said company.

Consent of Baltimore and Ohio rail road

Map of road to be filed

SECTION 12. It shall be lawful for the president and managers themselves, their engineers, superintendents, artists and workmen to enter upon any land which they shall deem necessary for laying out said road, and also for the purpose of searching for stone, sand, gravel or wood, for constructing said road, but no stone, sand, gravel or wood shall be taken away from any land without the consent of the owner thereof until compensation for the same, be ascertained and paid, which 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.

Authority to enter upon lands

SECTION 13. It shall and may be lawful for the company hereby incorporated, to make and establish lateral tracks, not exceeding one and a half miles in length, and 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 and agree with the owner or owners, for the purchase of any lands, or tenements, which may be necessary for the purpose of constructing the said rail road.

Lateral tracks

SECTION 14. Whenever it shall be necessary for the president, managers and company of the said rail road 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 or occupation; and the parties cannot agree upon the compensation to be made for any injury or supposed injury that may be done to such land, by such entry and occupation, it shall and may be lawful for the parties to appoint six suitable and disinterested persons to estimate such damage; a majority of whom shall under oath or affirmation fairly and impartially, to estimate the same; and shall reside within the proper county where the land lies, 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

Damages how ascertained

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 requisition for that purpose, upon him made, or if such owner shall be *feme covert* under age, *non compos mentis* or out of the state, then it shall be lawful for the court of common pleas of the county in which the land lies, on application of either party, and at cost and charges of the said corporation to appoint six disinterested persons of the said county to view, examine and survey the said lands, tenements or hereditaments, and estimate the injury or damage, if any 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 the viewers of public roads and highways, to be paid by the said company, and it shall be the duty of the appraisers in estimating such injury or damage, to take into consideration the advantage 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 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 upon the coming in of such a report or inquisition and the confirmation thereof, or upon final judgment, an appeal therefrom, and the said company shall pay the owner the sums in such report or judgment specified, in full compensation, for the injury sustained as aforesaid, and the said company 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 owners of said land, the president and managers, 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.

SECTION 15. 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 at 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, it shall be the duty of said company to make or cause to be made, a sufficient causeway or causeways, to enable all persons passing or travelling such public road, to cross and pass over said rail road, which causeway or causeways, shall be

Judgment of
court

Proviso

Right of ap-
peal

2nd proviso

Rail road not
to obstruct
highways

Causeways to
be made

made and maintained by the said company, and the sufficiency of the same shall be adjudged of by the supervisor or supervisors of the proper township, at the expense of 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 for penalty of five dollars for every time the same shall be so neglected, or refused to be made or repaired, to be recovered pair by the supervisor of the township with costs, for the use of the township, as debts of 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 or process upon any officer or agent of said company, shall be as good and available in law, as if served upon the president thereof.

SECTION 16 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 person in crossing or passing over the same, if shall be the duty of the 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 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 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 said rail road, the person owning or possessing land through which the said road shall pass, shall not be entitled to make requisition on said company, and the said causeways, when so made, shall be maintained and kept in repair by said company; and if the said company shall neglect or refuse to make such causeway or causeways, or when made, to keep the same in good repair, the said company shall be liable to pay 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 on the president thereof. *Provided*, That this act shall not be so construed as to prevent owners of land through whose property the said rail road passes, from constructing a causeway or crossing place over said rail road, but the same to be such as are usually made by said company.

SECTION 17. No suit or action shall be brought or prose-

Of suits and actions cuted by any person or persons, for any penalty incurred under this act, unless such suit or action shall be commenced within six months 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, and that the same was done in pursuance and by authority of this act.

When tolls may be received SECTION 18. On the completion of said rail road, or any portion of the track not less than ten miles, the same shall be esteemed a public highway, for the conveyance of passengers, merchandize and commodities, under such regulation as shall be prescribed by the managers; and it shall and may be lawful for the said company to demand and receive such sum or sums of money for tolls of persons and property as they shall from time to time think reasonable. *Provided*,

Proviso That the tolls on any species of property shall not exceed
Rates of toll seven cents per ton per mile, and upon passengers, more than four cents per mile; and the legislature reserves the right to reduce and regulate the tolls hereby authorized, and it shall be further lawful for the president and managers of said company to prescribe the kind of carriages, wagons and conveyances, which shall be used on the said rail road for the transportation of the mail, persons and commodities, and to adopt such regulations as to the transit of wagons and carriages on the said road, as may seem to them most conducive to the interests of the public, and the persons using the same.

Penalty for frauds on company SECTION 19. If any owner or driver of any car, carriage, wagon or conveyance upon the said rail road, shall pass by any place appointed for receiving toll without making payment thereof, with intent to defraud the said company, he, she or they, so offending; shall forfeit and pay for every such offence, for the use of 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.

For injuring road SECTION 20. If any person or persons shall willfully 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 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 the said company, and shall be subject to indictment in the court of quarter sessions of the proper county, and upon conviction of

such offence, shall be punished by fine and imprisonment, at the discretion of the court.

SECTION 21. If an 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 the capital of said company shall not exceed five hundred thousand dollars, and to receive and demand the moneys for shares so subscribed, in like manner and under like penalties as are hereinbefore provided for in the original subscription, or shall be provided for by their by-laws.

SECTION 22. It shall be lawful for the first seven commissioners nominated in the first section of this act, from and after the passage of the same, to do and perform all the duties enjoined on the president and managers of said company in the foregoing sections, until others are duly elected and qualified as prescribed in this act, a majority of whom shall be a quorum, and they shall, at their first meeting, elect one of their number president, and shall appoint a treasurer, secretary, engineer, and such other officers and agents, as they shall deem necessary.

SECTION 23. If 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 to said company, and the legislature also reserves the right to purchase the right of said company, and the rail road, with its appurtenances, at any time after twenty years from the passage of this act, by paying the said company a sum of money, which, together with the tolls received, shall be equal to the cost and expense of said rail road, with an interest of six per centum per annum thereon.

WM. HOPKINS,

Speaker of the House of Representatives.

CHARLES B. PENROSE,

Speaker of the Senate.

APPROVED—The twenty-fourth day of June, eighteen hundred and thirty-nine.

DAVID R. PORTER.