

sufficient security before the court of common pleas of Lancaster county, that all the monies arising from the sales authorized by this act, shall after paying the debts (if any) of the said lunatic, be so disposed of as will be most for the benefit of the said lunatic and his heirs.

Section II. (Section II, P. L.) And be it further enacted by the authority aforesaid, That the monies arising from the sale of the said estate, shall descend at the death of said lunatic to the same heirs, and in the same proportions as the real estate would have done if this act had not been passed.

Approved March 17, 1806. Recorded in L. B. No. 10, p. 290.

CHAPTER MMDCLXXIII.

AN ACT AUTHORIZING THE GOVERNOR TO INCORPORATE A COMPANY, FOR MAKING THE RIVER CONESTOGA NAVIGABLE FROM ITS CONFLUENCE WITH THE RIVER SUSQUEHANNA TO ABRAHAM HOSTETTER'S MILL.

Section I. (Section I, P. L.) 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 George Moore, Jacob Krug, Casper Shaffner, junior, William Bausman, Henry Dehuff, of the borough of Lancaster, and John Funk, of the village of Strasburg, be, and they are hereby appointed commissioners to do and perform the several duties hereinafter mentioned; that is to say, they shall and may on or before the first Monday of May next, procure a book or books and therein enter as follows: "We, whose names are hereunto subscribed do promise to pay to the president and managers of the river Conestoga lock and dam navigation, the sum of one hundred dollars for every share of stock in the said company, set opposite to our respective names, in such manner and proportions, and at such times as shall be determined by the said president and managers, in pursuance of an act of general assembly, entitled, "An act authorizing the governor to incorporate a company for making the river Conestoga navigable from its

confluence with the river Susquehanna to Abraham Hostetter's mill;" and shall thereupon give notice in three of the public newspapers printed in Lancaster, one whereof shall be in the German language, one calendar month, at least, of the time and place or places when and where the said book or books will be opened, to receive subscriptions of stock for the said company; at which time and place or places, the said commissioners or any three of them shall attend, and shall permit and suffer all persons who shall offer to subscribe in the said book or books, which shall for that purpose be kept open, at least six hours in every juridical day, for the space of at least three successive days, and on any of the said juridical days, within the hours aforesaid, any person of the age of twenty-one years, shall have liberty to subscribe in his own name or in the name or names of any person or persons by whom he shall be authorized, for one share, on the second day, for one or two shares, on the third day, for one, two or three shares, and on any succeeding day, while the said books shall remain open, for any number of shares in the said stock; and if at the expiration of the said three first days, the said book or books shall not have five hundred shares subscribed therein, the said commissioners may adjourn from time to time, until the said number of shares shall be subscribed; of which adjournment, public notice shall be given in at least one public newspaper; when the said subscriptions in the said book or books shall amount to the respective numbers aforesaid, the same shall respectively be closed; and if on the day, and before the said subscriptions shall be declared to be full, application shall be made to subscribe more shares than will amount to the number aforesaid, then the said commissioners shall apportion the whole number of shares unsubscribed on the morning of that day, among all those who shall have subscribed or offered to subscribe as aforesaid, on the said day, Provided always, that every person offering to subscribe in the said book or books, in his own name or any other name, shall previously pay to the attending commissioners, ten dollars for every share for which he may subscribe, out of which shall be paid the expenses of taking such subscriptions, the

compensation to the commissioners and other incidental charges: Provided, that compensation to said commissioners, shall not exceed two dollars to each of them, for every day they shall be publicly employed in the said business, and the remainder shall be paid over to the treasurer of the corporation, as soon as the same shall be organized and the officers chosen as hereinafter mentioned.

Section II. (Section II, P. L.) And be it further enacted by the authority aforesaid, That when twenty persons or more shall have subscribed two hundred and fifty shares in the said stock, the said commissioners, may, or when the whole number of shares aforesaid shall be subscribed, they shall certify under their hands and seals, the names of the subscribers, and the number subscribed by or apportioned to each subscriber, to the governor of this commonwealth, and thereupon it shall and may be lawful for the governor by letters patent under the great seal of the state, to create and erect such subscribers into one body politic and corporate, in deed and in law, with perpetual succession, and with all the privileges and franchises incident to a corporation, by the name, style and title of "The President and Managers of the River Conestoga Lock and Dam Navigation;" and by such name, the said subscribers and such others as may thereafter become shareholders, shall be capable of holding their said capital stock, and the increase and profits thereof, and of enlarging the same from time to time by new subscriptions, in such manner and form as they shall think proper, if such enlargement shall be found necessary to fulfil the end and intent of this act, and of purchasing, taking and holding, to them and their successors and assigns, in fee simple, or for any less estate, all such lands, tenements, hereditaments, goods, chattels or other effects, as shall be necessary for them in the prosecution of their work, and the same to sell and dispose of at their pleasure, and of doing every act, matter or thing, which a corporation or body politic lawfully may or of right ought to do.

Section III. (Section III, P. L.) And be it further enacted by the authority aforesaid, That the five persons first named

in the said letters patent, shall as soon as conveniently may be after sealing the same, give notice in three public newspapers of a time and place, by them to be appointed not less than thirty days from publishing such notice, at which time and place the said subscribers shall proceed to organize the said corporation, and shall choose by a majority of votes of the said subscribers, by ballot, to be delivered in person or by proxy, one president, twelve managers, one treasurer, and such other officers as they shall think necessary to conduct the business of the said company, who shall continue in office for one year, and until such other officers shall be elected, and shall and may make such bylaws, rules, orders and regulations, not inconsistent with the constitution and laws of this commonwealth, as shall be necessary for the well-ordering of the affairs of the said company: Provided always, that no person shall have more than five votes on his own account in any election, or in determining any question arising at such meeting, whatever number of shares he may be entitled to; and that each person holding one or more shares under the said number of five, shall be entitled to one vote for every share by him so held.

Section IV. (Section IV, P. L.) And be it further enacted by the authority aforesaid, That the said company shall meet on the first Monday in January, in each succeeding year, at such place as shall be fixed by the rules and orders of the said company, to be made as aforesaid, for the purpose of choosing such officers as aforesaid for the ensuing year, and at such other times as they shall be assembled by the managers, in such manner and form as shall be prescribed by their bylaws; 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 bylaws, rules, orders and regulations as aforesaid, and to do and perform every other corporate act.

Section V. (Section V, P. L.) And be it further enacted by the authority aforesaid, That the said president and managers shall meet at such times and places, and be convened

in such manner, as shall be agreed on for transacting their business; at which meetings, five members shall form a quorum, who in the absence of the president may choose a chairman, and shall keep minutes of all their transactions, fairly entered in a book or books to be kept for the purpose; and a quorum being met, they shall have full power and authority to agree with and appoint all such officers, artists and workmen, as they shall judge necessary, to carry on the intended works, and to fix their salaries or their wages, to ascertain the times, manner and proportions when, and in which the stockholders shall pay the monies due on their respective shares, in order to carry on the work; to draw orders on the treasurer for all money necessarily expended, which orders shall be signed by the president, or in his absence by a majority of a quorum, and countersigned by their clerk, and generally to do and perform all such other acts, matters and things, as by the bylaws, orders and regulations of the company, shall be committed to them.

Section VI. (Section VI, P. L.) And be it further enacted by the authority aforesaid, That the said president and managers, shall procure certificates to be printed or written for every share of the capital stock of the said company, and deliver one such certificate, signed by the president, and countersigned by the treasurer, and sealed with the common seal of the corporation, to each person for every share by him subscribed and held, he paying the treasurer in part of the sum due thereon, the sum of twenty dollars for each share; which certificate shall be transferable at his pleasure, in person or by attorney, in presence of the president or treasurer, subject however to all payments due and 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 purpose, shall be a member of the corporation, and entitled to all the privileges and emoluments of the said company, and to vote as aforesaid at the meetings thereof.

Section VII. (Section VII, P. L.) And be it further enacted by the authority aforesaid, That if any stockholder after

thirty days notice in three public newspapers, published in the borough of Lancaster, one whereof shall be in the German language, of the time and place appointed for the payment of any proportion of the said capital stock, in order to carry on the work, shall neglect to pay such proportion at the place appointed for the space of twenty days after the time so appointed for the payment thereof, every such stockholder or his assignee, shall in addition to the proportion so called for, pay after the rate of five per centum per month for every delay of such payment; and if the said sum and the said additional penalty shall remain unpaid for such a space of time, as that the accumulated penalty shall be equal to the sums directed and appointed to be paid on account of the said share, then the said share, and all the monies thereon paid, shall be forfeited to the company, and may be sold by them to any person or persons willing to purchase, for such price as can be obtained therefor.

Section VIII. (Section VIII, P. L.) And be it further enacted by the authority aforesaid, That it shall and may be lawful for the said president and managers, by and with their officers, artists and workmen, with their tools and instruments, carts, wagons, carriages and beasts of draught or burden, to enter upon any of the lands contiguous to the said river Conestoga, first giving notice of their intention to the owners or possessors thereof, or their representatives, and doing as little damage thereto as possible, and repairing any breaches they may make in the inclosures thereof, and making amends for any damage which any person may thereby sustain, or by taking away stone, earth or other materials; which shall be ascertained by three indifferent persons to be mutually chosen by the parties, or if they neglect or refuse to join in the choice, then by three disinterested persons to be appointed by any two justices of the peace, in the county of Lancaster, and the sum of money so ascertained, shall be the sum to be paid by the company and no more.

Section IX. (Section IX, P. L.) And be it further enacted by the authority aforesaid, That it shall and may be lawful for the said president and managers, to contract and agree

with the owner or owners of any lands and mill-dams, for the purchase of so much thereof, as shall be necessary for the purpose of making, digging, perfecting and establishing all the necessary dams, locks, canals, works and devices to such navigation belonging, if they can agree with such owners; but in case of disagreement, or in case the owner thereof shall be a feme covert, under age, non compos mentis or out of the state, or otherwise incapacitated to convey, then it shall and may be lawful to and for the said president and managers, to apply to any two of the judges of the court of common pleas of the county of Lancaster, who, upon such application, are hereby authorized, empowered, enjoined and required, to frame and issue one or more writ or writs as occasion shall require, in the nature of a writ of ad quod damnum, to be directed to the sheriff of the said county, describing the lands and tenements, and naming the owner or owners thereof, and commanding the said sheriff, that by the oaths and affirmations of twelve good and lawful men of his bailiwick, who shall be indifferent to the parties, he shall enquire whether the person or persons owning any lands and mill-dams, necessary to be used by the said president and managers, or which shall be injured by the establishment of the said lock navigation, will suffer and sustain any and what damages by reason or means of taking any such lands, mill-dams or other real hereditaments, necessary for the use of the said navigation and the locks and works thereunto belonging, and to return the same writ together with the finding of the said jury, to the next court of common pleas, after such finding; and upon such writ being delivered to the said sheriff, he shall give at least ten days notice in writing to the parties in the said writ named, or their representatives, of the time of executing the same, and shall cause to come upon the premises at the time appointed, twelve good and lawful men of his bailiwick, who shall be selected in such manner as struck juries usually are, to whom he shall administer an oath or affirmation that they will diligently enquire concerning the matters and things in said writ specified, and a true verdict give according to the best of their judgment and ability, without favor or partiality to any; and

thereupon the said sheriff and inquest shall proceed to view all and every the land and mill-dams, or other real hereditaments in such writ specified, and having considered the quantity and quality of so much as shall be necessary to be vested in the said company for the purposes aforesaid, they shall cause the same to be minutely and exactly described by meets and bounds or other particular descriptions, and shall value and appraise the injury and damages, which the owner or owners of such lands and mill-dams or other improvements will, according to their best skill and judgment, sustain and suffer by means of the same being vested in the said company; or by means of any works being destroyed or rendered useless, or of less value; or by means of the said company being permitted to enlarge any pond or mill-dam, and to use the same for the purposes aforesaid, or by any other means whatsoever; defining and ascertaining, as well all such lands and mill-dams, liberties and privileges so to be vested in the said company, as the several sums at which the said injuries and damages shall be so assessed; and the said sheriff and jury, shall make an inquisition under their hands and seals, distinctly setting forth all the matters and things aforesaid, and the sheriff shall forthwith return the same together with the said writ, to the office of the prothonotary of the court of common pleas of the county aforesaid; and at the first court of common pleas, which shall be held next after the return of any such writ, the judges of the said court shall examine the same; and if the said writ shall appear to have been duly executed, and the return thereof be sufficient to ascertain all lands, mill-dams, rights, liberties and privileges, intended to be vested in the said company, and the several compensations awarded the owner or owners thereof, then the said court shall enter judgment, that the said company, on paying to the owners as aforesaid the several sums of money in the said inquisition assessed, or bringing the same into court for the use of such owners, and also paying the costs of said writ, and of executing and returning the same, shall be entitled to have and to hold to them and their successors and assigns, forever, all, and every the lands, tenements, rights, liberties, and privi-

leges, in the said inquisition described, as fully and effectually as if the same had been granted to them by the respective owners thereof; and if any return so to be made, shall not be sufficiently certain for the purposes aforesaid, the said court shall award an inquisition de novo.

Section X. (Section X, P. L.) And be it further enacted by the authority aforesaid, That any dam which shall be erected by the said company in the river aforesaid, it shall and may be lawful for the owner or owners of the land adjoining thereto to erect such water-works as they may think proper, and shall have the privilege of conveying a sufficiency of water out of such dam, for the use of such water-works: Provided, such owner or owners thereby do not injure the said navigation, and pay to the said company for such privilege, such a sum of money as the parties may agree on; but if they cannot agree, then the same shall be ascertained and determined by a jury in manner as is by this act directed.

Section XI. (Section XI, P. L.) And be it further enacted by the authority aforesaid, That where any public laid out road or highway now crosses the said river Conestoga, and the present fording or fordings should be rendered impassable or materially injured by virtue of this act, the said president and managers shall cause a bridge fit for the passage of carts, wagons and other carriages to be built, and forever maintained and kept in repair at all and every the fordings aforesaid, at the proper cost and charges of the said company.

Section XII. (Section XII, P. L.) And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for the said president and managers, so soon as the said navigation shall be perfected, to appoint such and so many collectors of tolls for the passage of boats, vessels and rafts, in, through and along the same, and in such places as they shall think proper, and that it shall and may be lawful for such toll-collectors and their deputies, to demand and receive of and from the persons having charge of all boats, vessels and rafts, passing through the locks thereunto belonging, such tolls and rates, for every ton weight of the ascertained

burden of the said boats and vessels, and for every hundred feet cubic measure of timber, and twelve hundred feet board measure of boards, plank and scantling in rafts, as the said president and managers shall think proper, at any lock or other convenient place: Provided, that the amount of said tolls shall not in the whole exceed the rate of six cents per mile, for every ton of the burden of such vessel, and for every hundred feet cubic measure of timber, and twelve hundred feet board measure of boards, plank or scantling.

Section XIII. (Section XIII, P. L.) And be it further enacted by the authority aforesaid, That in order to ascertain the size of rafts and the tonnage of boats, using and passing the said navigation, and to prevent disputes between the supercargoes and collectors of toll, respecting the same; upon the request of the owner, shipper or supercargo of such boat or raft, or of the collectors of said tolls, it shall and may be lawful for each of them, to choose one skillful person, to measure and ascertain the size of the said rafts, or the number of tons, which the said boat or vessel is capable of carrying, and to mark the said tonnage so ascertained in figures upon the head and stern of the said boat in colors mixed with oil; and that the said boat or vessel so measured and marked, shall be permitted to pass through the said locks for the price which the number of tons so marked on her shall amount to, agreeably to the rates fixed in the manner aforesaid; and if the owner, shipper or supercargo of such boat or vessel, shall decline choosing a person resident within two miles of the place where such tolls are payable, to ascertain the tonnage thereof, then, the amount of such tonnage shall be fixed and ascertained by the person appointed for that purpose by the president and managers, or chosen by the said collectors of tolls for the said company, and the tolls shall be paid accordingly to such measurements before any such boat or vessel shall be permitted to pass the place, where such toll shall be made payable by the said company: Provided always, that if any of the said boats shall have been marked on any other toll navigation, the said collectors shall admit the same at the true

rate of tonnage, unless they shall have cause to suspect that the same is not correct, in which case, the same proceedings shall be had as are hereinbefore directed, and a new mark may be printed without defacing the old mark.

Section XIV. (Section XIV, P. L.) And be it further enacted by the authority aforesaid, That the collectors of the tolls duly appointed, may stop and detain all boats and vessels using the said lock navigation, and also all rafts passing the same, until the owner, shipper or supercargo thereof shall pay the toll so as aforesaid fixed; or on default thereof may distrain part of the cargo therein contained, or a part of such rafts sufficient by the appraisement of two credible persons to satisfy the toll; which distress shall be kept by the collector of the toll taking the same for the space of five days, and afterwards sold by public auction, at some public place in the neighborhood, in the same manner and form as goods distrained for rent are by law made saleable, rendering the surplus if any there be, after payment of the said toll, and the costs of distress and sale to the shipper, supercargo or owner thereof.

Section XV. (Section XV, P. L.) And be it further enacted by the authority aforesaid, That the president and managers of the said company, may demand and require of and from the said treasurer, and of and from all and every other the officers and other persons by them employed, bonds in sufficient penalties, and with such sureties as they shall by their rules, orders and regulations require, for the faithful discharge of the several duties and trusts to them or any of them respectively committed.

Section XVI. (Section XVI, P. L.) And be it further enacted by the authority aforesaid, That the president and managers of the said company, shall keep fair and just accounts of all monies received by them from the subscribers to the said undertaking, for their subscriptions thereto, and all penalties for delay or non-payment thereof, and of all monies by them expended, and on what account the same was expended; and shall at least once in every year, submit such account to a general meeting of the stockholders, until the work shall be

completed, and until all the costs, charges and expenses, of effecting the same shall be fully paid and discharged, and the whole amount of the said expenses adjusted and settled; and if the said work shall not then be sufficiently perfected, or from any casualty should be injured, so as to require an increase of the capital stock, it shall and may be lawful to and for the said president, managers and company, at a general meeting of the stockholders thereof, held in pursuance of the provision of this act, or called by the president and managers of the company for the purpose, by public notice in three newspapers, in manner aforesaid, (which notice shall be given at least three months previously to the opening any such subscription), to increase the number of shares to such extent as shall be deemed sufficient to accomplish the work, upon such terms and under such regulations and restrictions, as the said stockholders may deem proper, and also to demand and receive such additional subscriptions from the stockholders, as at the said general or special meeting shall be agreed on.

Section XVII. (Section XVII, P. L.) And be it further enacted by the authority aforesaid, That the president and managers shall keep a just and true account of all and every the monies received by their several and respective collectors of tolls, on the said river, and of the monies expended; and shall make and declare a dividend of the clear profits and income thereof, (all contingent costs and charges being first deducted) among all the stockholders respectively; and shall on the first Mondays of December and June, in every year, publish the half-yearly dividend to be made of the said clear profits, to and amongst the stockholders, and of the time and place when and where the same shall be paid, and shall cause the same to be paid accordingly.

Section XVIII. (Section XVIII, P. L.) And be it further enacted by the authority aforesaid, That the said president and managers, shall, at the expiration of every third year from the date of their incorporation, lay before the general assembly of this commonwealth an abstract of their accounts, showing the whole amount of the capital expended in erecting and establishing the said navigation, and the whole in-

come and profits arising from the same; together with the exact amount of the contingent expenses of supporting, maintaining, and keeping the same in repair for and during the said periods, to the end that the clear annual profits may be known; and if at the expiration of two years after the said navigation shall be completed, it shall appear that the said profits and income will not bear a dividend of six per centum per annum on the whole capital stock of the said company so expended, it shall and may be lawful to and for the said president, managers and company, to increase the rate of tolls hereinbefore allowed to them, so as to raise the dividend up to six per centum per annum; and if at any time it shall appear by such abstract so rendered, that the clear profits and income of the said company, will bear a dividend of more than nine per centum per annum, then, and in such case, the rates of the said tolls shall be reduced, so that the clear profits and income shall not exceed nine per centum per annum.

Section XIX. (Section XIX, P. L.) And be it further enacted by the authority aforesaid, That if the said company shall not proceed to carry on the said work within the space of three years after they shall have been incorporated, or shall not within the space of ten years from the passing of this act, complete the navigation in the river aforesaid, from its confluence with the river Susquehanna to Abraham Hostetter's mill, then, and in either of these cases it shall and may be lawful for the legislature of this commonwealth, to resume all and singular the rights, liberties and privileges, hereby granted to the said company.

Section XX. (Section XX, P. L.) And be it further enacted by the authority aforesaid, That if at any time hereafter the said president, managers and company, shall think proper to extend the said navigation further up the said river than is hereinbefore mentioned, they are hereby authorized and empowered to do the same under the same regulations and restrictions, and with the same powers, privileges, franchises and emoluments, as are hereinbefore mentioned.