

## CHAPTER MMDCCCXXII.

AN ACT TO AUTHORIZE THE GOVERNOR TO INCORPORATE A COMPANY FOR MAKING AN ARTIFICIAL ROAD FROM THE PHILADELPHIA AND LANCASTER TURNPIKE ROAD IN LANCASTER COUNTY, AT OR NEAR THE GAP TAVERN, TO THE LINE OF THE STATE OF DELAWARE.

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 James Boyd, Ellis Pusey, William West, Robert Cochran and Joseph Johnson of Chester county, and Henry Slaymaker, Michael Gundacker, Francis Bailey and James Moore, junior, of Lancaster county, be, and they are hereby appointed commissioners to do and perform the several things hereinafter mentioned: that is to say, they shall on or before the first Monday in June next, procure two books, and in each of them enter as follows; "We whose names are hereunto subscribed do promise to pay to the president, managers and company of the Gap and Newport Turnpike Road, the sum of fifty 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 president and managers of the said company in pursuance of an act of the general assembly of this commonwealth, entitled "An act to enable the governor to incorporate a company for making an artificial road, from the Philadelphia and Lancaster turnpike road in Lancaster county, at or near the Gap tavern, to the line of the state of Delaware," witness our hands the                      day of  
in the year of our Lord, one thousand eight hundred and

;" and shall thereupon give notice in two of the public papers printed in the borough of Lancaster, one of which to be in the German language, and in one or more of the public papers printed at Philadelphia, and one or more of the public papers printed at Wilmington, in the state of Delaware, for one calendar month at least, of the times and places when and

where the said books shall be opened to receive subscriptions for the stock of the said company; at which respective times and places some two of the said commissioners shall attend, and shall permit and suffer all persons of lawful age who shall offer to subscribe in the said books, in their own name, or names of any other persons who shall duly 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 the said book opened at Lancaster shall have three hundred shares therein subscribed, and the said book opened at Chatham three hundred shares therein subscribed; and if at the expiration of the said six days, the books aforesaid or any of them, shall not have the respective number of shares as aforesaid therein subscribed, the said commissioners respectively may adjourn from time to time, and transfer the said books from place to place as aforesaid, until the whole number of shares shall be subscribed; of which adjournments and transfer the commissioners aforesaid shall give such public notice as the occasion may require, and when the whole number of shares subscribed in all the said books shall amount to six hundred, the same shall be closed: Provided always, that every person offering to subscribe in the said books, in his own name or any other name, shall previously pay to the attending commissioners the sum of ten dollars for every share to be subscribed; out of which shall be defrayed the expenses attending the taking such subscriptions and other incidental charges, 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 fifty persons or more shall have subscribed four hundred shares of the said stock, the said commissioners shall certify under their hands and seals, the names of the subscribers and the number of shares subscribed by each, to the governor of this commonwealth; and thereupon it shall and may be lawful for the governor,

by letters patent under his hand and seal of the state, to create and erect the subscribers; and if the said subscriptions be not full at the time, then, also those who shall afterwards subscribe to the number aforesaid, into one body politic and corporate in deed and in law, by the name, style and title of "The President, Managers and Company, of the Gap and Newport Turnpike Company;" and by the said name, the said subscribers shall have perpetual succession, and all the privileges and franchises incident to a corporation; and shall be capable of taking and 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 fulfill the intent of this act; and of purchasing, taking and holding to them and their successors and assigns, and of selling, transferring and conveying in fee simple, or for any lesser estate all such lands, tenements, hereditaments and estate, real and personal, as shall be necessary to them in the prosecution of their works; and of suing and being sued, and of doing all and every other matter and thing, which a corporation or body politic may lawfully do.

Section III. (Section III, P. L.) And be it further enacted by the authority aforesaid, That the commissioners aforesaid, as soon as conveniently may be, after the said letters patent shall be sealed and obtained, shall give notice in two of the public papers in Lancaster, (one of which shall be in the German language) and also in the Philadelphia and Wilmington papers, of a time and place by them to be appointed, not less than twenty days from the publication of the first 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 duly authorized, one president and twelve managers, one treasurer, and such other officers as they shall think necessary to conduct the business of the said company for one year, and until other such officers shall be chosen; and shall and may make such by-laws, rules, orders and regula-

tions, not inconsistent with the constitution and laws of this commonwealth, as shall be necessary for the well-ordering the affairs of the said company: Provided always, that no person shall have more than five votes at any election, or in determining any question arising at such meeting, whatever number of shares he may be entitled to, and that each person shall be entitled to one vote for every share by him held under the said number: Provided, nevertheless, that all future annual elections of the said corporation, shall be held with such notice and in manner and form aforesaid, at such places as the managers aforesaid shall direct and appoint.

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 of January in every year, at such place as shall be fixed by their by-laws, for the purpose of choosing officers as aforesaid for the ensuing year in manner aforesaid; and at such other times as they shall be summoned by the managers, in such manner and form as shall be prescribed by their 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, rules, orders and regulations as aforesaid, and to do and perform any other corporate act.

Section V. (Section V, P. L.) And be it further enacted by the authority aforesaid, That the president and managers first to be chosen as aforesaid, shall procure certificates to be written or printed, for all the shares of the stock 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 share by him subscribed and held, he paying to the treasurer in part of the sum due thereupon, the sum of ten dollars for each share; which certificate shall be transferable at his pleasure, in person or by attorney, in the presence of the president or treasurer, subject however to all payments due and to grow due thereon; and the assignee holding any certificate, having first caused the assignment to be en-

tered in a book of the company to be kept for the purpose, shall be a member of said corporation; and for every certificate by him held shall be entitled to one share of the capital stock, and of all the estates and emoluments of the company, and to vote as aforesaid at the meetings thereof.

Section VI. (Section VI, 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 seven 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; and a quorum being met they shall have full power and authority to agree with and appoint all such surveyors, superintendents, artists and officers as they shall judge necessary to carry on the intended works, and to fix their salaries or wages; to ascertain the times, manner and proportions when and in which the stockholders shall pay the money due on their respective shares, in order to carry on the work; to draw orders on the treasurer for all monies necessary to pay the salaries or wages of persons by them employed, and for the labor done and materials provided in the prosecution of the work; which orders shall be entered or registered in their book of minutes, and shall be signed by the president or in his absence by a majority of a quorum, and countersigned by their secretary, and generally to do all such other acts, matters and things as by the by-laws, rules, orders and regulations of the company shall be committed to them.

Section VII. (Section VII, P. L.) And be it further enacted by the authority aforesaid, That if any stockholder whether original subscriber or assignee, after thirty days notice in two of the public papers in Lancaster, one of which shall be in the German language, and also in the Philadelphia and Wilmington papers, of the time and place appointed for the payment of any proportion or installment 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 sixty days after the time appointed for the payment thereof, every such stockholder shall, in addition to the installment so called for, pay at the rate of five per centum per month, for every delay of such payment; and if the same and the said 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 share, the same may be forfeited by and to the said company; and may be sold by them to any other person or persons willing to purchase, for such price as can be obtained therefor; or in default of payment by any stockholder of any such installment as aforesaid, the said president and managers may, at their election, cause suit to be brought in any court having competent jurisdiction for the recovery of the same, together with the penalty aforesaid: Provided, always, that the recovery in any suit shall in no case exceed the amount of such installment or installments, as may be due on such share, together with such accumulated penalty at the rate aforesaid, as shall equal the sums before paid on the same share. And provided also, 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, unless the whole sum due and payable as aforesaid, on the share or shares by him held at the time of such election or general or special meetings of the said company, shall have been fully paid and discharged as aforesaid.

Section VIII. (Section VIII, 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, their superintendents, surveyors, engineers, artists and chain-bearers, to enter into and upon all and every the lands, tenements and inclosures, in, through and over which the said intended turnpike road may be thought proper to pass; and to examine the ground most proper for the purpose, and the quarries and beds of stone and gravel, and other materials in the vicinity, that will be necessary in making and constructing the said

road; and to survey, lay down, ascertain, mark and fix, such route or track for the same road, as in the best of their judgment and skill, will combine shortness of distance with the most practicable ground from the Philadelphia and Lancaster turnpike road in Lancaster county, at or near the Gap tavern, and to extend thence the nearest and best practicable course by Cochran's, Chatham and Chandler's taverns to the line of the state of Delaware, so as to communicate with a contemplated artificial road, to extend thence the nearest and best practicable course to Newport on Christiana creek, in the state of Delaware, to be authorized by a law of that state.

Section IX. (Section IX, 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, by and with their superintendents, engineers, artists, workmen and laborers, with their tools and instruments, carts, wagons, wains, and other carriages, and beasts of draught or burden, to enter upon the lands, in, over, contiguous to and near to which the route and track of the said intended road shall pass; first giving notice of their intention to the owners or occupiers thereof, and doing as little damage thereto as possible; and repairing any breaches they may make in inclosures thereof, and making amends for any damages that may be done to any improvements thereon; upon a reasonable agreement, if they can agree, or if they cannot agree, then upon an appraisement to be made upon oath or affirmation by three disinterested freeholders, any two of them agreeing, mutually to be chosen; or if the owners upon due notice shall neglect or refuse to join in the choice, then to be appointed by any justice of the peace of either counties of Lancaster or Chester, not interested therein; and upon tender of the appraised value, to cut down, dig, take and carry away, any timber, stone, gravel, sand, earth or other materials, there being most conveniently situated for making or repairing the said road.

Section X. (Section X, P. L.) And be it further enacted by the authority aforesaid, That the said president, managers and company, shall have power to erect permanent bridges

over Octoraro creek, as well as over all the waters crossed by the said route or track, whereon the same shall be found necessary; and shall cause a road to be laid out, not exceeding one hundred feet in width, from the Gap, to Newport by the aforesaid route; and shall cause twenty feet thereof in breadth at least, to be made an artificial road; which shall be bedded with wood, stone, gravel, clay or other proper and convenient materials, well compacted together, a sufficient depth to secure a solid foundation for the same; and the said artificial road, shall be faced with clay, gravel or stone pounded, or other small hard substance, in such manner as to secure a firm and as nearly as the nature of the country and the materials will admit, an even surface, arising towards the middle by a gradual arch, and shall forever hereafter maintain and keep the same in perfect order and repair: Provided, that no toll be demanded or taken from any person passing or repassing from one part of his or her farm to another, or to and from any place of public worship, or funeral, on days appointed for that purpose.

Section XI. (Section XI, P. L.) And be it further enacted by the authority aforesaid, That as soon as the said president, managers and company, shall have perfected the said road, from the Philadelphia and Lancaster turnpike at the place aforesaid, any distance not less than fifteen miles, and so from time to time any distance not less than five miles, progressively towards Newport aforesaid, they shall give notice thereof to the governor of this commonwealth; who shall thereupon forthwith nominate and appoint three skillful and judicious persons to view and examine the same, and report to him whether the road is so far executed in a complete and workmanlike manner, according to the true intent and meaning of this act; and if their report shall be in the affirmative, then the governor shall, by license under his hand and the lesser seal of the commonwealth, permit and suffer the said president, managers and company to erect and fix such and so many gates or turnpikes upon and across the said road as

will be necessary and sufficient to collect the tolls and duties hereinafter granted to the said company, from all persons traveling on the same with horses, cattle and carriages.

Section XII. (Section XII, P. L.) And be it further enacted by the authority aforesaid, That the said company having perfected the said road, or such part thereof from time to time as aforesaid, and the same being examined, approved and licensed as aforesaid, it shall and may be lawful for them to appoint such and so many toll-gatherers as they shall think proper to collect and receive of and from all and every person and persons using the said road, the tolls and rates hereinafter mentioned; and to stop any person riding, leading or driving any horse or mule, or driving any cattle, hogs, sheep, sulky, chair, chaise, phaeton, cart, wagon, wain, sleigh, sled, or other carriage of burden or pleasure from passing through the said gates or turnpike until they shall have respectively paid the same: that is to say, for every space of five miles in length of the said road, the following sums of money, and so in proportion for any greater or less distance, or for any greater or less number of hogs, sheep or cattle, to wit: For every score of sheep, four cents; for every score of hogs, six cents; for every score of cattle, twelve cents; for every horse or mule, laden or unladen, with his rider or leader, three cents; for every sulky, chair, [or] chaise with one horse, and two wheels, six cents, and with two horses, nine cents; for every chair, coach, phaeton, chaise, stage-wagon, coachee or light-wagon, with two horses, and four wheels; twelve cents; for either of the carriages last mentioned, with four horses, twenty cents; for every other carriage of pleasure; under whatever name it may go, the like sums according to the number of wheels and of horses drawing the same; for every sleigh or sled, two cents for each drawing the same; for every cart or wagon or other carriage of burden, the wheels of which do not in breadth exceed four inches, four cents for every horse drawing the same; for every cart or wagon, the wheels of which shall exceed in breadth four inches, and shall not exceed seven inches, three cents for each

horse drawing the same; for every cart or wagon the breadth of the wheels of which shall be more than seven inches, and not more than ten inches, or being of the breadth of seven inches and shall roll more than ten inches, two cents for each horse drawing the same; for every cart or wagon the breadth of the wheels of which shall be more than ten inches and not exceeding twelve inches, or being ten inches, shall roll more than fifteen inches, one cent and a half for each horse drawing the same; and for any such carriage the breadth of the wheels of which shall be more than twelve inches one cent for each horse drawing the same; and when any such carriage as aforesaid shall be drawn by oxen or mules, in the whole or in part, two oxen shall be estimated as equal to one horse, and every ass or mule as equal to one horse in charging the aforesaid tolls.

Section XIII. (Section XIII, P. L.) And be it further enacted by the authority aforesaid, That if any person or persons owning, riding in or driving any carriage of burden or pleasure as aforesaid, or owning, riding, leading or driving any horse or mule, or driving any hogs, sheep or cattle as aforesaid, shall with an intent to defraud the said company, or to evade the payment of any of the tolls or duties aforesaid, pass therewith through any private gate or bar, or along, or over any private passageway, or along or over any other ground or land near to or adjoining any turnpike or gate, which shall be erected in pursuance of this act; or if any person or persons shall with the intent aforesaid, take off or cause to be taken off any horse or other beast or cattle of draught or burden from any carriage of burden or pleasure; or shall practise any other fraudulent means or device, with the intent to evade or lessen the payment of any such toll or duty, all and every such person or persons offending in manner aforesaid, shall for every such offense respectively forfeit and pay to the president, managers, and company of the Gap and Newport turnpike road, the sum of fifteen dollars; to be sued for and recovered with costs of suit, before any justice

of the peace, in like manner and subject to the same rules and regulations as debts of equal amount are or may be by law recoverable.

Section XIV. (Section XIV, P. L.) And be it further enacted by the authority aforesaid, That if the said company shall neglect to keep the said road in good and perfect order and repair, for the space of fifteen days; and information thereof shall be given to any justice of the peace of the proper county; such justice shall issue a precept, directed to any constable, commanding him to summon three judicious freeholders to meet at a certain time, in the said precept to be mentioned at the place in the said road which is complained of; of which meeting notice shall be given to the keeper of the gate or turnpike nearest thereto; and the said justice shall at such time and place by the oath or affirmation of the said freeholders, inquire whether the said road or any part thereof is in such good and perfect order and repair as aforesaid; and shall cause an inquisition to be made under the hands and seals of himself and a majority of the said freeholders; and if the said road shall be found by the said inquisition not to be in such good order and repair as herein is required, he shall so certify, and send one copy of the said inquisition to each of the keepers of the turnpike or gates between which such defective place shall be; and from thenceforth the tolls hereby granted to be collected at such turnpikes or gates for the intermediate distance between them shall cease to be demanded, paid or collected, until the said defective part or parts of the said road shall be put into good and perfect order and repair as aforesaid; and if any of the keepers of the gates aforesaid, shall take or attempt to exact tolls for the intermediate distance between the gates aforesaid, from any traveler during the time the road shall continue out of repair, such keeper shall forfeit and pay to the person who shall prosecute for the same, the sum of five dollars, to be recovered before any justice of the peace, as debts of equal amount are, or may be by law recoverable; but if the same road shall not be put into good and perfect order and repair, before the next

ensuing court of quarter sessions of the proper county, the said justice shall certify and send a copy of the said inquisition to the justices of the said court; and the said court thereupon shall cause process to issue, and bring in the bodies of the person or persons entrusted by the company with the care and the superintendence of such part of the said road as shall be found defective as aforesaid; and shall direct a bill of indictment to be sent to the grand inquest against the person or persons entrusted as aforesaid; and upon conviction shall give such judgment, according to the nature and aggravation of the neglect, as the said court in their discretion shall judge proper: Provided, the fine in no instance shall be less than twenty dollars, nor exceeding one hundred dollars; and the fines so to be imposed shall be recovered in the same manner as fines for misdemeanors are usually recovered in the said county; and shall be paid to the supervisors of the highways of the place wherein the offense was committed, to be applied to repairing such highways as the township or county is bound to repair at the public expense 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 shall keep fair and just accounts of all monies which shall be received by them from the said commissioners and from the subscribers for the stock of the said company, on account of their several subscriptions; and of all penalties for the delay in the payment thereof, and of the amount of the profit on the shares which may be forfeited as aforesaid; and also of all monies by them to be expended in the prosecution of their said work; and shall once at least in every year, submit such accounts to a general meeting of the stockholders, until the said road shall be completed, and until all the costs, charges and expenses of effecting the same shall be fully paid and discharged, and the aggregate amount of such expenses shall be liquidated and ascertained; and if upon such liquidation or whenever the whole capital stock of the said company shall be nearly expended it shall be found that the said capital stock will not be sufficient to complete the

said road according to the true intent and meaning of this act, it shall and may be lawful for the said president, managers and company at a stated or special meeting to be convened according to the provisions of this act or their own by-laws, to increase the number of shares to such extent as shall be deemed sufficient to accomplish the work; and to demand and receive the monies subscribed for such shares, in like manner and under the like penalties as are hereinbefore provided for the original subscriptions, or as shall be provided by their by-laws.

Section XVI. (Section XVI, P. L.) And be it further enacted by the authority aforesaid, That the said president, managers and company shall also keep a just and true account of all and every the monies to be received by their several and respective collectors of tolls, at the several gates or turnpikes on the said road; which shall not exceed one for every five miles after the said road is completed from the beginning to the end thereof, or such part thereof as shall from time to time be completed as aforesaid; and after the said road shall be completed or so much thereof as it may from time to time be deemed expedient to make and finish, shall make and declare a dividend of the clear profits and income thereof, all contingent costs and charges and a reasonable fund for repairs and for the progressive improvement and accomplishment of the said work, being first deducted and reserved, among all the subscribers to the stock of the said company; and shall on the first Monday in February and August in every year publish the half yearly dividend, to be made of the clear profits among the stockholders, and of the time and place when and where the same will be paid, and shall cause the same to be paid accordingly.

Section XVII. (Section XVII, P. L.) And be it further enacted by the authority aforesaid, That the said president and managers shall at the end of every third year from the date of the incorporation, until two years next after the whole road shall be completed, lay before the general assembly of this commonwealth, an abstract of their accounts; showing

the whole amount of their capital expended in prosecution of the said work, and of the income and profits arising from the said toll, for and during the said respective periods; together with an abstract account of the costs and charges of keeping the said road in repair, and all other contingent costs and charges; to the end that the clear annual income and profits thereof may be ascertained and known; and if at the end of two years after the said road shall be completed from the beginning to the end thereof, it shall appear from the average profits thereof for the said two years, that the said clear income and profits thereof will not bear a dividend of six per centum per annum on the whole capital stock of the said company so expended, then it shall be lawful to and for the said president, managers and company, to increase the tolls hereinabove allowed in equal proportions upon each and every allowance thereof, so as to raise the dividends up to six per centum per annum; and at the end of every ten years after the said road shall be completed they shall render to the general assembly, a like abstract of their accounts for three preceding years; and if at the end of any such decennial period, it shall appear from such abstract, that the clear profits and income of the said company will bear a dividend of more than nine per centum per annum, then the said toll shall be so reduced as to reduce the said dividend down to nine per centum per annum.

Section XVIII. (Section XVIII, P. L.) And be it further enacted by the authority aforesaid, That the said company shall cause posts to be erected at the intersection of every [public] road falling into and leading out of the said turnpike road, with boards and index-hands pointing to the direction of such road; on both sides whereof shall be inscribed in legible characters, the name of the town or place to which such road leads, and the distance thereof in measured or computed miles; and shall also cause milestones to be placed on the side of the said road, to designate the distances to and from the principal places thereon; and also shall cause to be affixed on the

gates to be erected for the information of travelers and others using the said road, a printed list of the rates of toll which from time to time may be lawfully demanded.

Section XIX. (Section XIX, P. L.) And be it further enacted by the authority aforesaid, That if any person or persons shall wilfully break, deface, pull up or prostrate any milestone which shall be placed in pursuance of this act on the side of the said road, or shall obliterate the letters or figures inscribed thereon, or shall wilfully break, pull down, deface, destroy or injure any direction-post which shall be erected in pursuance of this act at the intersection of any road as aforesaid, or the board or index-hand affixed thereto in conformity with the directions of this act, or shall obliterate the letters or figures inscribed or marked thereon, or destroy, deface or obliterate the letters, figures, or other characters, marked at any turnpike or gate which shall be erected in pursuance of this act, for all or any of the purposes therein mentioned, or the whole or any part of any printed list of the rates of tolls, which shall be affixed in pursuance of the directions of this act at any such gate or turnpike, he or they so offending in the premises, shall, and each of them shall for every such offense, severally and respectively, forfeit and pay to the said president, managers and company, the sum of twenty dollars, to be sued for and recovered with costs of suit, before any justice of the peace, in manner aforesaid.

Section XX. (Section XX, P. L.) And be it further enacted by the authority aforesaid, That all wagoners, carters and drivers of carriages of all kinds, whether of burden or pleasure using the said road, shall, except when overtaking and passing by a carriage of slower draught, keep their horses and carriages on the righthand side of the said road in the passing direction, leaving the other side of the said road free and clear for other carriages to pass and repass; and if any wagoner, carter or driver shall offend against this provision, he shall forfeit and pay any sum not exceeding two dollars,

to any person who shall by reason thereof be obstructed in his passage, and will sue for the same before any justice of the peace; to be recovered with costs in like manner aforesaid.

Section XXI. (Section XXI, P. L.) And be it further enacted by the authority aforesaid, That if any toll-gatherer on the said road shall demand from any person or persons using the said road, any greater rate of toll than by this act is authorized and allowed, such toll-gatherer shall forfeit and pay the sum of twenty dollars for every such offense; one-half to the use of the supervisors of the roads or highways of the township in which the forfeiture shall be incurred, and the other half to the use of the person suing for the same; to be recovered before any justice of the peace of the county where such offense shall have been committed.

Section XXII. (Section XXII, P. L.) And be it further enacted by the authority aforesaid, That if in the case of any suit or prosecution which shall be commenced under the directions of this act, for any penalty incurred under the same, whether by or against the said company, their servants or assignees, the said suit or prosecution shall not be sustained by the plaintiff or prosecutor, then, and in such case the person or persons prosecuted as aforesaid, shall recover by the judgment of the justice before whom such suit or prosecution shall be depending, or by action before the court of the common pleas of the proper county (if such prosecution had been instituted before the court of general quarter sessions of the peace), such sum, not exceeding the amount of the penalty for which the suit or prosecution shall be commenced, as shall be deemed a reasonable retribution for the vexation of such suit or prosecution.

Section XXIII. (Section XXIII, P. L.) And be it further enacted by the authority aforesaid, That no suit or action shall be brought or prosecuted, by any person or persons for any penalties incurred under this act, unless such suit or action shall be commenced within three months next after the fact committed; 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 the authority of this act.

Section XXIV. (Section XXIV, 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 three years after this act comes into operation, or shall not within ten years thereafter complete the said road, according to the true intent and meaning of this act, then in either of those cases it shall and may be lawful for the legislature of the commonwealth to resume all and singular the rights, liberties, privileges and franchises by this act granted to the said company.

Section XXV. (Section XXV, P. L.) And be it further enacted by the authority aforesaid, That if the legislature should at any time after the year one thousand eight hundred and thirty, think proper to take possession of the said road, three persons shall be appointed by the governor, and three by the president and managers of the said company, and three by the judges of the supreme court, who are hereby required to appoint the same; who, or any six or more of them not having any interest in the said road, shall proceed to examine and estimate the value of the property which the said company have therein; and certify the amount thereof to the governor of this commonwealth, who shall cause the same to be laid before the legislature at their next session; and whenever the amount so certified shall be paid by the state to the said company, their right to take toll on the said road together with all their right, title, claim and interest therein, shall cease and determine.

Section XXVI. (Section XXVI, P. L.) And be it further enacted by the authority aforesaid, That this act shall commence and take effect, from, and immediately after the legislature of the state of Delaware shall authorize and empower the making of a like artificial road by the same company, from where the road herein authorized strikes the line of that state, by the nearest and best practicable route to Newport, on Christiana creek in said state.

Section XXVII. (Section XXVII, P. L.) And be it further enacted by the authority aforesaid, That if the said road shall be laid out and founded over and upon any land, whereby the owner thereof shall suffer damage; the person or persons sustaining such damage, may make application to the court of the county in which such damage shall have been done; and thereupon the court shall appoint six fit and disinterested persons, to view and adjudge the amount of the damages so done; which if approved of by the court shall be paid by the company: Provided always, that it shall be the duty of the viewers in assessing damages, to take into consideration the advantages derived from said road passing through the land of the complainant; and that when the said road shall happen to be laid out and founded on any former laid out and confirmed road, the owner or owners of such lands shall not be entitled to receive compensation from the company for any damages sustained thereby.<sup>(1)</sup>

Approved April 7, 1807. Recorded in L. B. No. 11, p. 2.  
 Note (\*) See Chapter 2942; *Infra* this volume, p. 794.

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## CHAPTER MMDCCCXXIII.

### AN ACT GRANTING JACOB BOTTIMORE A TRACT OF DONATION LAND.

Whereas it has been represented to the legislature, that Jacob Bottimore served as a soldier in the second regiment of Pennsylvania, for upwards of four years; that on the second of January one thousand seven hundred and seventy-seven, in a skirmish which ensued after the battle of Trenton, he was wounded by a musket ball which passed through his body and broke two of his ribs; that he was honorably discharged from the service, and is now become old and infirm, and by reason of said wound is unable to procure a livelihood by manual labor: Therefore,

Section I. (Section I, P. L.) Be it enacted by the Senate and House of Representatives of the Commonwealth of Penn-