

CHAPTER CCCCLXXII.

AN ACT TO ENABLE THE OWNERS AND POSSESSORS OF SCHUYLKIL POINT MEADOW LAND, IN THE COUNTY OF PHILADELPHIA, TO KEEP THE BANKS, DAMS, SLUICES AND FLOOD-GATES IN REPAIR AND TO RAISE A FUND TO DEFRAY THE EXPENSE THEREOF.

Whereas there is a certain parcel of meadow land and marsh, situate in the township of Passyunk on the east side of the river Schuylkil, beginning at the fast land of Henry Elves and John Hannis, near the mouth of Spike's Creek and running thence along the several courses of the river Schuylkil to the mouth thereof, thence up the river Delaware to the mouth of Hollander's Creek, thence up the same creek to the line between Joseph Turner and Joseph Sims up a small branch called Little Creek, thence along the said line to the fast land, thence along the several courses of the fast land to the place of beginning, named and called The Schuylkil Point Meadows, which for a considerable time past has been embanked, but of late has been greatly impaired and out of order for want of proper management and regulations:

[Section I.] Therefore be it enacted by the Honorable James Hamilton, Esquire, Lieutenant-Governor under the Honorable Thomas Penn and Richard Penn, Esquires, true and absolute Proprietaries of the Province of Pennsylvania and counties of Newcastle, Kent and Sussex upon Delaware, by and with the advice and consent of the Representatives of the freemen of the said Province in General Assembly met, and by the authority of the same, That Hugh Roberts, Enoch Flower, Samuel Rhoads, Andrew Bankson, Joseph Johnson and John Smith, or any four of them are hereby nominated, authorized and appointed within two months after the publication of this act to divide the banks which surround and include all that the said tract or piece of marsh and meadow land, and allot and appoint how many perches of the said bank each owner or possessor of the said tract shall make, repair, maintain and support in proportion to the

number of acres of meadow he holds therein, allotting the part and proportion so to be made, repaired, maintained and supported as near and convenient as may be to the land of each respective owner thereof, beginning the allotments at the place of beginning aforesaid, all which said allotments and divisions, so made and signified by an instrument in writing under the hands and seals of any four of them, shall be the proper shares, parts, proportions, and quantities of bank for the several owners or possessors of the said meadow to make, repair and support at their own proper expense and charge.

[Section II.] And be it further enacted by the authority aforesaid, That the owners, occupiers and possessors of the said tract of meadow land respectively whose allotments, shares or parts of the bank are in any wise defective shall within three months from the publication hereof cause them to be put in good and substantial repair, and make up or cause their respective parts of the banks so as aforesaid allotted to be made up level on the top and sufficiently strong and secure to defend the said meadows from all inundations; for which end the said banks shall always be kept at least six inches above all tides by each and all of the said owners, possessors or occupiers on their and each of their parts so as aforesaid to them respectively allotted under the penalty of ten shillings for each and every acre they respectively hold in the said tract, to be paid to the said company's treasurer by the persons so neglecting or refusing, to be levied by the managers for the said tract hereafter to be chosen if they see cause and added to the common stock.

[Section III.] And be it further enacted by the authority aforesaid, That the costs and charges of making, maintaining and amending the dams, sluices or flood-gates hereafter to be made, maintained or amended shall be paid by all the owners, occupiers or possessors of the land in the said tract according to the number of acres that they and each of them shall hold, possess and occupy, and that the same shall be made, supported and amended in such manner as the managers for the said Schuylkil Point Meadows hereafter to be chosen shall direct.

[Section IV.] And be it enacted by the authority aforesaid, That it shall and may be lawful for the owners of the said

Schuylkil Point Meadows, or as many of them as shall think fit to meet together on the second Tuesday in October yearly and every year at the court-house in Philadelphia or such other convenient place as shall hereafter be appointed by the managers to be chosen by virtue of this act, and then and there, by a majority of those met, shall choose by ballot five fit persons, owners or possessors of the said land, to be managers and one fit person to be treasurer for the said Schuylkil Point Company for the year then next ensuing.

[Section V.] And be it enacted by the authority aforesaid, That if any of the owners or possessors elected managers as aforesaid, on due notice given in writing of his election by some of the company present at the said election, shall refuse or afterwards neglect to do the duty required of him or them by this act, he or they so refusing or neglecting his duty shall forfeit and pay to the treasurer for the time being the sum of forty shillings, to be added to the common stock of the said company, unless he shall have served two years successively in the said office, which fine shall be recovered in the manner hereinafter directed for the recovery of other money payable to the treasurer of the said company, and the other managers shall proceed in the execution of their office without him or them, or if they think fit may choose others of the said owners or possessors to be manager or managers in the place of him or them so refusing or neglecting. And if the person so elected treasurer shall refuse or neglect to take upon him the duties or give the securities required by this act, or shall misbehave himself or by death or otherwise be rendered incapable to execute the said office, in any of these cases the managers for the time being shall choose another fit person (not a manager) to be the treasurer for that year.

[Section VI.] And be it enacted by the authority aforesaid, That every treasurer hereafter to be chosen shall, before he takes upon him the execution of his office, enter into an obligation with at least one sufficient security in double the value of the money that doth or may probably come into his hands during the continuance of his office as near as can be estimated by the managers, conditioned that he will, once in every three months

or oftener if required, render his accounts to the said managers and well and truly account, adjust and settle with them when required for and concerning all moneys that are or shall come to his hands by virtue of this act or that belong to the said company, and shall well and truly pay the balance that shall appear on such settlement to be in his hands to such persons and to such services as any three of the managers for the time being shall order and appoint and not otherwise, and that he will, at the expiration of his office, well and truly pay or cause to be paid and delivered all the money then remaining in his hands, together with the books of accounts concerning the same, and all other papers and writings in his keeping belonging to the said company unto his successor in the said office and that he will do and execute all other matters and things as treasurer to the said company according to the true sense and meaning of this act.

[Section VII.] And be it further enacted by the authority aforesaid, That it shall and may be lawful for the said managers as often as they shall see occasion to meet together and lay such assessments and taxes on every acre of land belonging to the said company as they shall judge to be necessary for the benefit and security of the same.

And the said managers for the time being in every year are hereby empowered, authorized and required to enter upon and inspect, at least four times each year, the condition of all the said banks, dams, sluices, flood-gates and other conveniences necessary for stopping out the tides or draining the water from the said meadows, and if any part shall appear unfinished, damaged, decayed or destroyed, or more liable by its situation, nature of the soil or other circumstances to be washed away or destroyed than other parts, or shall be in any manner insufficient for the purposes aforesaid, they, the said managers, shall consider and determine by what methods such part or parts may be made good and secure by stone or other firm and durable materials and on such inspection and determination the said managers shall give notice to, and require the said owners or possessors or their guardians (if minors) and within the county of Philadelphia, forthwith to amend their and each of their parts or al-

lotments in such manner as they shall direct, all of which banks shall be of sufficient breadth and at least six inches above any tide that hath been known; and if such extraordinary work shall be directed by the managers to be done for the mending and supporting of any such parts of the banks as are or have been allotted as aforesaid so to be made, mended or supported by any of the particular owners or possessors, then the expense and costs of such extraordinary work shall not be put on the person to whom that allotment was made, but shall be allowed to him and paid out of the common stock, he contributing his proportionable share and part thereto.

[Section VIII.] And be it enacted by the authority aforesaid, That if by any general overflowing of the water hereafter the banks, dams or sluices belonging to the owners of any one allotment shall be damaged or destroyed by the force of the water from within which hath been admitted by defects in the banks or dams belonging to the owners of other allotments in all such cases the delinquent owners shall pay all the costs of repairs unless the managers for the time being shall from any circumstances consider it as an act of Providence, in which case they may repair it at the general expense of all the owners of the said meadow lands and order the treasurer to pay the charge thereof.

[Section IX.] And be it enacted by the authority aforesaid, That if any owners or occupiers of the said lands or any guardian of a minor owner thereof so warned by the said managers shall refuse or neglect after such warning to amend and repair their respective parts agreeable to the direction of the said managers, or if any of the said owners or guardians are not known, or readily to be found within the said county at the time aforesaid, that then and as often as it shall so happen it shall and may be lawful to and for the said managers or any of them, together with such workmen, horses, carts, barrows and other tools as they shall think necessary to enter into and upon the lands of him, her or them where such breach or defect shall happen to be, and then and there to dig and carry earth or purchase suitable materials to make, amend and repair the said banks, dams, sluices, flood-gates and all other conveniences necessary for stopping out the tide or for draining the waters off the meadows

in such manner and by such ways and means as they shall think fit and reasonable, any law of this province, usage or custom to the contrary in any wise notwithstanding. And they, the said managers, or any three of them, shall adjust and settle the expense thereof with those to whom such parts and shares of the banks so amended and repaired were before allotted as they shall think just and reasonable except as is before mentioned in case of any extraordinary expense arising from its situation, nature of the soil or other circumstances, in all which cases the extraordinary charge beyond what other allotments are subject to shall be paid out of the common stock, and shall also deliver to the said owners, guardians or possessors of the said meadow lands on whose allotments such repairs shall be made or to as many of them as shall be found their respective bills of the charge of repairing the said part of the bank to them before allotted and shall order payment accordingly; and in case of their or any of their refusal or delay of payment they shall order the treasurer for the time being to advance and pay so much out of the public stock as shall be sufficient to satisfy the said charge until it can be obtained of those who ought to pay the same.

And in order to establish a fund to defray sundry contingent and yearly expenses and to prevent any delay hereafter for want of money in case of inundations or extraordinary accidents:

[Section X.] Be it enacted by the authority aforesaid, That every owner or possessor of land in the aforesaid meadow tract shall, on or before the second Tuesday in November next, after publication hereof, pay or cause to be paid or deposited into the hands of the treasurer aforesaid the sum of two shillings current money of Pennsylvania for each and every acre they respectively have, hold, occupy or possess in the said meadow tract, exclusive of flats, creeks or waste lands. And all and every person or persons, whether owners or renters, who shall, on the second Tuesday in November in every year hereafter be owner, occupier or possessor of meadow land in the said tract, shall in like manner pay or deposit or cause to be paid or deposited into the hands of the treasurer for the time being such sum or sums of money as the managers for the time being shall find necessary

to assess and order, which sum, if paid by the aforesaid renter, he, the said renter, shall and is hereby empowered to deduct out of his rent.

So always and provided, That the sum of sixty pounds shall in the beginning of every year be in the treasurer's hands ready to be applied in the premises as occasion may require; of all which sums of money and all other money coming to his hands by virtue of this act, and of all disbursements and payments thereof from time to time made, the said treasurer shall, in books to be provided for that purpose, keep a just and true account, and shall pay and deliver the same according to the directions and orders of the managers for the time being or any three of them, and not otherwise.

[Section XI.] And be it further enacted by the authority aforesaid, That the managers for the time being shall, before the day hereinbefore appointed for the payment of the yearly quotas, deposit money or assessment cause a true list of the names of all and every of the said owners or possessors, with a true account of all and every acre of meadow in the aforesaid tract which they respectively have, hold, occupy and possess, exclusive of flats and creeks, according to the best information they can obtain, noting from time to time the several changes, alterations, transfers and alienations of right in the several parts and parcels thereof as they shall come to their knowledge, and shall furnish the treasurer with a true copy thereof, together with the sum per acre of the general assessment for the current year, when any alteration shall be of the aforesaid deposit of two shillings, according to which list or account the treasurer for the time being shall receive and take the several sums of their and each of their deposit money and assessment respectively in every year raised or assessed by this act, and shall cause public notice of the said rate or assessment per acre to be given at least ten days before the day of payment in every [year] hereafter, and in case any of the said owners, occupiers or possessors aforesaid shall refuse or neglect to pay or cause to be paid to the treasurer aforesaid on the days and times aforesaid the several sums of money which they respectively ought to pay or deposit according to the true intent and mean-

ing of this act, they and each of them so neglecting and refusing shall forfeit and pay to the said treasurer the additional sum of two pence for every shilling unpaid which they respectively ought to have paid by the direction of this act, and afterwards shall, for every three months' neglect or refusal in like manner, forfeit and pay to the treasurer for the time being the like sum of two pence for every shilling which he, she or they failed of paying on the day or time appointed when they respectively ought to pay by the direction of this act at any time hereafter.

[Section XII.] And be it further enacted by the authority aforesaid, That if any of the said owners, possessors or occupiers shall neglect or refuse as aforesaid to pay the several sums of money, together with the forfeitures arising thereon, which they respectively ought to pay at any time or times hereafter for the space of twelve months after any of the days or times in which it ought to be paid, or shall have neglected or refused to make, amend or repair his, her or their part or share of the bank so as aforesaid to them allotted, or shall have neglected or refused to reimburse the treasurer for the time being the necessary expense thereof, agreeable to the direction of this act, that then and so often it shall and may be lawful to and for the said treasurer by direction of the said managers, or any three of them, in his own name, to sue all and every such person or persons so refusing or neglecting for the respective sum or sums of money which he, she or they ought to have paid by virtue hereof by action of debt, if five pounds or under, before any justice of the peace of the county, or if above [five] pounds, in any court of record where the same may be cognizable, and give this act and the said assessment or the said account, as the case may require, in evidence; and the said justice of the peace and the said court are hereby empowered and directed to give judgment and grant execution for the same, with costs of suit accordingly, to be levied on the tract or piece of marsh, meadow or cripple belonging as aforesaid to such owner or owners so neglecting or refusing, and delivered unto the managers for the time being, who, or any three of them, are hereby empowered and authorized to let out or rent any part of the said meadow belonging to any of the said owners who shall so neglect or

refuse or who shall not be found in the county as aforesaid from year to year for so long time as until the rent or rents arising therefrom shall, as nearly as may be computed, pay all such sum or sums of money so assessed or so charged, together with all costs and forfeitures arising thereon, for his or their neglect or refusal to pay the same as aforesaid, and no longer.

Provided always, That in letting out the said meadow the said managers do publicly notify the leasing thereof, and let the same to the highest bidder at private sale or bargain.

[Section XIII.] And be it enacted by the authority aforesaid, That no process, suit or proceedings whatsoever which at any time hereafter shall be commenced, sued or brought before any justice of the peace or judges or justices of the common pleas or supreme court or before any magistrate of this province in the name of any treasurer of the said company by direction of the said managers or any three of them, shall be discontinued or put without day by reason of the death, disability or removal of such treasurer, but shall stand good and effectual in law to all intents and purposes notwithstanding such death, disability or removal.

[Section XIV.] And it is hereby further enacted by the authority aforesaid, That the managers for the time being, or any three of them, shall have the power of disposing of all moneys paid to the treasurer by virtue of this act, and of hiring and appointing at the expense of the said company any person or persons from time to time to inspect the condition of all the banks, dams, sluices, or flood-gates belonging to the owners of the said meadow land, who shall inform the respective owners and the said managers when any repairs are wanting; and the said managers, or any three of them, shall have power to displace such person or persons and appoint others as often as they shall think fit, and have power to offer and pay such reward as they think necessary out of the common stock for the destruction of such vermin as usually damage the said banks and dams, as well as for other general services of the said company.

[Section XV.] And be it further enacted by the authority aforesaid, That the said managers for the time being, or any

three of them, are hereby authorized and empowered, in behalf of the said owners to settle accounts with the treasurer from time to time and shall do and execute all other matters and things pertaining to the general good and benefit of the said owners.

Provided nevertheless, That if any owner or owners shall think him, her or themselves aggrieved by any order, account or proceeding of the said managers, such owner or owners shall, if he or they think proper, choose two fit and disinterested persons, and the said managers, or three of them, shall choose two other fit and disinterested persons, who (or any three of them) shall finally settle the same and all other matters and things in dispute that shall be referred to them by the said parties.

[Section XVI.] And be it further enacted by the authority aforesaid, That the orders of any three of the managers on the treasurer for the time being shall be complied with by the said treasurer and shall be good vouchers to indemnify him for the payment and delivery of the money and effects committed to his care by virtue of this act, and that all bonds, mortgages, deeds and conveyances in trust for the use of the said owners shall be taken in the name of the treasurer of the Schuylkil Point Meadows and be payable to him and his successors and shall be mentioned to be for the use of the owners thereof, and with or without assignment shall be good and available in law to his successor or successors in the said trust for the use of the owners [as] aforesaid, and shall be recoverable in any court of record in this province where the same may be cognizable, as fully and effectually to all intents and purposes as if the same were private property and duly assigned in all the forms of law; and the receipts and discharges of such succeeding treasurer or treasurers for any such sum or sums of money paid to him or them shall be effectual in law.

And whereas the well draining, preserving and keeping open the drains of the said meadow land, is of great importance to the said owners:

[Section XVII.] Be it enacted by the authority aforesaid, That all and every of the said owners shall be allowed, permitted and suffered to discharge all or any of the waters off their

respective lands through their natural channels or by a direct course across the land of any other of the said owners as shall, by the managers for the time being, or the major part of them, be judged convenient into the main channel, creek or sluice best suiting to discharge the same into the river, and shall be allowed to open, scour and cleanse the same when and as often as they and the said managers shall think convenient or necessary, any law, usage or custom to the contrary in any wise notwithstanding.

Provided always, That such owner so requiring a passage for his water shall first pay all the damages sustained, or that shall be sustained by such neighbor through whose land the water is to be discharged, and also all such damages as shall be done to the banks within his said neighbor's allotment in such manner and proportion as shall be settled by a majority of said managers.

[Section XVIII.] And be it enacted by the authority aforesaid, That if any person or persons shall wickedly or maliciously cut through and break down or endamage any of the said banks, dams, sluices or flood-gates, either their own or others, or shall let in any creek or water to annoy, injure or overflow any of their neighbors' lands, and shall thereof be convicted before the justices of the court of quarter sessions of the said county of Philadelphia, in all such cases the persons so offending shall be fined treble the value of all the damages to be assessed by two or more indifferent persons to be appointed by the said court to value the same, which fine shall be added to the common stock for the general use and benefit of the said company.

Passed September 26, 1761. Referred for consideration by the King in Council, February 15, 1762, and allowed to become a law by lapse of time in accordance with the proprietary charter. See appendix XXIV, Section II, and the Acts of Assembly passed February 15, 1765, Chapter 523; April 15, 1782, Chapter 980; April 4, 1831, P. L. 496; March 13, P. L. 85.