

for the sheriff to proceed thereon in the same manner, as if the said judgment and execution were against the said Alexander Boyd, severally and solely, without naming his sureties.

Passed Sept. 29, 1791. Recorded L. B. No. 4, p. 233, etc.

CHAPTER MDLXXXVIII

AN ACT TO ENABLE THE GOVERNOR OF THIS COMMONWEALTH TO INCORPORATE A COMPANY, FOR OPENING A CANAL AND LOCK-NAVIGATION BETWEEN THE RIVERS SCHUYLKILL AND SUSQUEHANNA, BY THE WATERS OF TULPEHOCKEN, QUITTAPAHILLA AND SWATARA, IN THE COUNTIES OF BERKS AND DAUPHIN.

Whereas the opening the communication by water for the transportation of the product of the country, and of goods, wares and merchandises between the city of Philadelphia and the western and northwestern counties of the state of Pennsylvania, will greatly tend to strengthen the bands of union between citizens inhabiting distant parts of a country governed by the same free and happy constitution and laws, to the encouragement of agriculture and manufactures and the promotion of commerce; and whereas from reports made by certain commissioners appointed by the late supreme executive council, in pursuance of an act of the general assembly of this commonwealth in such case provided, it appears that the waters of Tulpehocken, Quittapahilla and Swatara, in the counties of Berks and Dauphin, united by means of a canal and locks, will be sufficient for an inland navigation for the purposes aforesaid, and it is reasonable that the expense of procuring so great a convenience should be defrayed by the persons who will derive an immediate benefit by the use of it.

[Section I.] (Section I. P. L.) Be it therefore 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 Henry Drinker, Robert Hare, Joseph Hiester, George Latimer,

(George Fry, William Montgomery, and Samuel Miles, 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 day of December next, procure a book, and therein enter as follows: "We, whose names are hereto subscribed, do promise to pay to the president, managers and company of the Schuylkill and Susquehanna Navigation, the sum of four 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 the general assembly of Pennsylvania, entitled 'An act to enable the governor of this commonwealth to incorporate a company for opening a canal and lock navigation, between the rivers Schuylkill and Susquehanna, by the waters of Tulpehocken, Quittapahilla and Swatara, in the counties of Berks and Dauphin,' " and shall thereupon give notice in three of the public newspapers printed in Philadelphia, one whereof shall be in the German language, for one calendar month at the least, of the time and place when and where the said book will be opened to receive subscriptions of stock for the said company, at which time and place 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, which shall be kept open for at least fifteen days, for any number of shares of the said stock, not exceeding ten by or for any one person or copartnership at one time, and, if need be, shall adjourn from time to time as the said commissioners shall find proper and necessary, until the number of suscriptions shall amount to one thousand shares of stock, and if while the said subscription shall be open, a greater number of shares shall be applied for than will fill up the said number of shares, then the said commissioners shall apportion the whole number of shares previously applied for, by lottery, to and among the persons who shall have subscribed, or offered to subscribe, before the said commissioners shall have declared the subscriptions to be full, and the book closed, and when the said subscription shall be filled to the amount of five hun-

dred shares the said commissioners shall return to the governor of this commonwealth a full and perfect list of all the subscriptions to the said stock, with the number of shares by them respectively subscribed, certified under the hands and seals of the said commissioners.

[Section II.] (Section II, P. L.) And be it further enacted by the authority aforesaid, That whenever five hundred shares shall be subscribed to the capital stock of the company, that then it shall and may be lawful to and for the governor of this commonwealth, by letters patent, under the great seal of the state, to create and erect the said subscribers into one body corporate and politic 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, Managers and Company of the Schuylkill and Susquehanna Navigation, and by such name the said subscribers shall be able and capable, by force of this act and the said letters patent, of exercising all and singular the said privileges and franchises; and moreover, shall be able and 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, their successors and assigns, in fee simple, or for any lessor estate, all such lands, tenements and hereditaments, as shall be necessary for them in the prosecution of their works; and of doing all and every other act, 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 first seven persons named in the said letters patent shall, as soon as conveniently may be after sealing the same, give notice in three of the newspapers, published in the city of Philadelphia as aforesaid, of a time and place by them to be appointed, not less than thirty days from the time of issuing the said notice, at which time and place the said subscribers shall proceed to organize the said corporation, and shall choose by majority of votes of the said

subscribers, by ballots, 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, for one year, and until other such officers shall be elected, and shall or may make such by-laws, rules, orders and regulations 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 twenty votes in the said elections, or in determining any question arising at such meeting, whatever number of shares he may be entitled unto, and that each person holding one or more shares, under the said number of twenty, shall have one vote for every share by him 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 of January in each succeeding year, at such place within this state 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 time as they shall be assembled by the managers for the purpose of making such further by-laws, rules, orders and regulations, not inconsistent with the constitution and existing laws of this state, as shall from time to time be necessary, of which meetings previous notice shall be given in such manner as shall be provided by such rules and orders.

[Section V.] Section V, P. L.) And be it further enacted by the authority aforesaid, That the said president and managers shall procure certificates to be written or printed for every share of the capital stock of the said company, and deliver one to each subscriber signed by the president, and sealed with their common seal, he paying to the treasurer of the company the sum of seventy-five dollars for every share by him subscribed, which certificate shall be transferrable at his pleasure, in the presence of the treasurer of the said company, subject, however, to all payments thereupon due and to grow due, and the holder of every such certificate, hav-

ing first caused the assignment to him to be entered into a book of the company, to be kept for that purpose, shall be a member of the said corporation, entitled to one share of the capital stock and of all the estate and emoluments of the company, and to vote as aforesaid at the general meetings thereof.

[Section VI.] (Section VI, P. L.) And be it further enacted by the authority aforesaid, That the said president and managers shall have full power and authority to appoint all officers necessary to supply vacancies by death, resignation, or otherwise, and also to appoint one or more superintendent of the works to be undertaken by them and to hire and employ all such engineers, artists, workmen and laborers as they shall find necessary to carry on the same, and by the said superintendent, engineers, artists, workmen and laborers to enter into and upon all and singular the land and lands covered with the water situate upon, near and between Tulpehocken Creek, in the county of Berks, and Swatara Creek in the county of Dauphin, and to lay out and survey such route or tracks as shall be most practicable for effecting a navigable canal between the rivers Schuylkill and Susquehanna, by means of locks and other devices, doing, nevertheless, as little damage as possible to the grounds and enclosures in and over which they shall pass, and thereupon it shall and may be lawful to and for the said president and managers to contract and agree, with the owners of any lands and tenements, for the purchase of so much thereof as shall be necessary for the purpose of making, digging and perfecting the said canal and of erecting and establishing all the necessary locks, works and devices to such a navigation belonging, if they can agree with such owners; but in case of disagreement, or in case the owner thereof shall be feme covert, under age, non compos mentis, or out of the state, then it shall and may be lawful to and for the said president and managers to apply to two of the justices of the supreme court of this commonwealth, 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 county, in which such lands and tenements shall be, commanding him that by the oaths and affirmations of twelve good and lawful men of his bailiwick, who shall be indifferent to the parties, he shall inquire whether the person or persons owning any lands and tenements necessary to be used by the said president and managers, or which shall be injured in establishing the said canal and navigation, which person or persons shall be named, and which lands and tenements shall be described in such writ or writs, will suffer and sustain any, and what damages by reason or means of taking any lands, tenements, mill, mill pond, water, water-course, or other real hereditaments necessary for the use of the said canal and navigation, and the locks and works thereto belonging, and to return the same writ, together with the finding of the said jury, to the next supreme court of this commonwealth, after such finding; and upon such writ being delivered to the said sheriff, he shall give at least ten days' notice in writing to all and every the owners of the lands and tenements in the said writ described, 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 inquire concerning the matters and things in the said writ specified, and a true verdict give, according to the best of their skill and judgment, without favor or partiality, and thereupon the said sheriff and inquest shall proceed to view all and every the lands and tenements in such writ specified, and having considered the quantity of land, land covered with water, mills, buildings, or other improvements that shall be necessary to be vested in the said company for the purposes aforesaid, and any water-course then existing, the use whereof will be necessary for the purpose aforesaid, they shall cause the same to be minutely and exactly described by metes and bounds, or other particular descriptions, and shall value and appraise the injury or damages, if any, which the owner or owners of the said lands, tenements, mills, waters, water-courses, buildings or improvements, will, according to

their best skill and judgment, sustain and suffer, by means of so much of the said lands and tenements being vested in the said company, or by means of such improvements being destroyed or rendered useless or of less value, or by means of the said company being permitted to turn such water to fill their canal and locks, or by means of said company being permitted to enlarge any mill-pond, mill-race or other water-course, and to use the same as any for part of their said canal and navigation, or by any other means whatsoever, defining and ascertaining as well all such lands and tenements, 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 and plainly 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 supreme court, and at the first supreme court which shall be held next after the return of any such writ, the justices 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 sufficiently certain to ascertain the lands and tenements, rights, liberties and privileges, intended to be vested in the said company, and the several compensations awarded to the owners thereof, then the said court shall enter judgment, that the said company, paying to the several owners as aforesaid the several sums of money in the said inquisition assessed, or bringing the same into the said court, over and besides the costs of such 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 privileges 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 VII.] (Section VII, P. L.) And be it further enacted by the authority aforesaid, That wherever the said

canal shall cross any public or private laid out road or highway, or shall divide the grounds of any person into two parts, so as to require a ford or bridge to cross the same, the jury who shall inquire of the damages to be sustained in manner herein directed, shall find and ascertain whether a passage across the same shall be admitted and maintained by a ford, or by a bridge, and on such finding, the said president, managers and company shall cause a ford to be rendered practicable, or a bridge, fit for the passage of carts and wagons, to be built and forever hereafter maintained and kept in repair, at all and every the places so ascertained by the said jury, at the cost and charges of the said company, but nothing herein contained shall prevent any person from erecting and keeping in repair, any foot or other bridge across the said canal, at his own expense, where the same shall pass through his ground, provided the same shall be of such height above the water as shall be usual in the bridges erected by the company, and provided also that such foot or other bridges, so to be erected by the owners of such land, shall not interfere with any of the locks, buildings, or other works of the company.

[Section VIII.] (Section VIII, P. L.) And be it further enacted by the authority aforesaid, That the said president and managers shall have power and authority, from time to time, to fix the several sums of money which shall be paid by the subscriber or holder of every share of the stock of the said company, in part of the sum subscribed, and the time when each and every dividend or part thereof shall be paid, and the place where it shall be received, and shall give at least thirty days' notice in three of the public newspapers, published in the city of Philadelphia, as aforesaid, of the sum or dividend, and the time and place of receiving the same, and if any holder of any share shall neglect to pay such proportions at the place aforesaid, for the space of sixty days after the time so appointed for paying the same, every such share-holder, or his assignee, shall, in addition to the dividends so called for, pay after the rate of five per centum for every month's delay of such payment, and if the same and the said additional penalty, shall not be paid for such space of time as that the accumulated penalties

shall become equal to the sums before paid for and on account of such shares, the same shall be forfeited to the said company, and may and shall be sold by them to any person or persons willing to purchase, for such prices as can be obtained therefor.

[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, and their superintendents, engineers, artists, workmen and laborers, with carts, wagons, wains and other carriages, with their beasts of draft and burden, and all necessary tools and implements, to enter upon the lands contiguous or near to the said tract of the intended canal and navigation, first giving notice of their intention to the owners thereof, and doing as little damage thereto as possible, and repairing any breaches they may make in the enclosures thereof, and making amends for any damages that may be sustained by the owners of such ground, by appraisement in manner hereinafter directed, and upon a reasonable agreement with the owners, if they can agree, or, if they cannot agree, then upon an appraisement to be made upon the oath or affirmation of three, or, if they disagree, any two indifferent freeholders, to be mutually chosen, or if the owners neglect or refuse to join in the choice, to be appointed by any justice of the peace of the county, and tender of the appraised value, to carry away any stone, gravel, sand or earth, there being most conveniently situate for making or repairing the said canal and navigation, and to use the same in carrying on the said works.

[Section X.] (Section X, 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 of the said company, so soon as the said canal and navigation or any part thereof shall be perfected, to appoint such and so many collectors of tolls for the passage of boats and vessels in, through and along the same, and in such places as they shall think proper, and that it shall and may be lawful to and for such toll collectors and their deputies, to demand and receive, of and from the persons having the charge of all boats and vessels,

and rafts of timber, boards, plank or scantling, passing through the said canal and navigation, and the locks thereto 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 or scantling, in rafts, as the said president and managers shall think proper at any lock or other convenient place, provided that the amount of all the tolls, from the mouth of Swatara to the mouth of Tulpehocken, shall not exceed in the whole the sum of one dollar for every ton of the burden of such boat or vessel, and for every hundred feet cubic measure of timber, and twelve hundred feet board measure of boards, plank or scantling, and so in proportion for any smaller distance and lesser number of locks, in any interval between the mouths of the said creeks.

And in order to ascertain the tonnage of boats using the said canal navigation, and to prevent disputes between the supercargoes and collectors of tolls concerning the same:

(Section XI, P. L.) Be it further enacted by the authority aforesaid, That upon the request of the owner, skipper, or supercargo of such boat or raft, or of the collector of the said tolls at any lock upon the said canal and navigation, it shall and may be lawful for each of them to choose one skillful person to measure and ascertain the number of tons which the said boat or vessel is capable of carrying, and to mark the same 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 always be permitted to pass through the said canal and locks for the price per ton to which the number of tons so marked on her shall amount unto, agreeably to the rates fixed in the manner aforesaid, and if the owner, skipper or supercargo of such boat or vessel, shall decline choosing a person, resident within four miles of the place where such toll is 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 said president and managers, or chosen by the said collector of tolls for the said company, and the toll shall be paid according to such measurement, be-

fore any such boat or vessel shall be permitted to pass the lock or place where such toll shall be made payable by the said company.

[Section XII.] (Section XII, P. L.) And be it further enacted by the authority aforesaid, That if any person or persons whatsoever shall wilfully and knowingly do any act or thing, whatsoever, whereby the said navigation, or any lock, gate, engine, machine, or device, thereto belonging, shall be injured or damaged, he or they so offending shall forfeit and pay to the said company fourfold the costs and damages by them sustained, by means of such known wilful act, together with costs of suit in that behalf expended, to be recovered by action of debt, in any court having jurisdiction competent to the sum due.

[Section XIII.] (Section XIII, P. L.) And be it further enacted by the authority aforesaid, That the collectors of tolls, duly appointed and authorized by the said president and managers, may stop and detain all boats and vessels using the said canal and navigation, until the owner, skipper or supercargo of the same shall pay the tolls so as aforesaid fixed, or may distrain part of the cargo therein contained, sufficient by the appraisement of two credible persons, to satisfy the same, which distress shall be kept by the collector of the tolls taking the same for the space of five days, and afterwards be sold by public auction, at the most public place in the neighborhood, to the highest bidder, in the same manner and form as goods distrained for rent are by law sold and saleable, rendering the surplus, if any there be, after payment of the said tolls and the costs of distress and sale, to the owner or owners thereof.

[Section XIV.] (Section XIV, 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 superintendents, 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 or either of them, respectively committed.

[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 moneys 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 moneys by them expended in the payment of the costs and charges of procuring and purchasing all estates, rights and titles, in the said company to be vested in pursuance of this act, or by any other means, and in paying their several officers by them to be appointed, and the wages of the different engineers, artists, workmen and laborers by them to be employed, and for the materials and work furnished and done in the prosecution of the works projected by the said company, and shall, once at least in every year, submit such account to the general meeting of the stockholders, until the said canal and creeks therewith connected, shall be rendered navigable, 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 from and after the liquidation thereof, if the one thousand shares above mentioned shall not be sufficient, 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 preceding provisions, or called by the president and managers of the company for the especial purpose, by public notice in three newspapers in manner aforesaid (which shall be given three months previous to the opening of the said subscriptions) to increase the number of shares to such extent as shall be deemed sufficient to accomplish the object of this act, and to demand and receive such additional subscriptions from the former, or, in case of their neglect or refusal, from new stockholders, and upon such terms, and in such manner, as by the said general meeting shall be agreed upon, and the said president and managers shall also keep a just and true account of all and every the moneys received by their several and respective collectors, of tolls in and through the said canal and navigation, from

the one end thereof to the other, 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 subscribers to the said company's stock, and shall, on every the second Mondays of January and July 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 XVI.] (Section XVI, 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 purchasing real estates, and in digging, erecting and establishing the whole of the said canal, locks and works, and the whole income and profits arising from the said tolls for and during the said periods, together with the exact amount of the contingent charges of supporting, maintaining and keeping the same in repair for the said periods, to the end that the clear annual profits may be known, and if at the end of two years after the said canal and navigation shall be completed, it shall appear that the said clear 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, then it shall and may be lawful to and for the said president, managers and company to increase the tolls hereinabove allowed to them, so much per ton through the whole length of the canal and navigation, and in proportion for each separate part thereof, as will raise the dividends up to six per centum per annum, and at the end of every period of ten years after the said canal shall be completed, they shall render a like abstract to the general assembly 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 twenty-five per centum per annum, then, and in such case, the said tolls shall be reduced

so much per ton, as will reduce the said clear profits and income to a dividend not exceeding twenty-five per centum per annum.

[Section XVII.] (Section XVII, P. L.) And be it further enacted by the authority aforesaid, That whenever the profits of the said society shall amount to a clear annual dividend of fifteen per centum on the whole amount of their capital, there shall then be reserved one per centum out of the same, which shall be applied, at the discretion of the legislature, for the establishment of schools, and the encouragement of the arts and sciences, in one or more seminaries of learning, according to the provisions of the constitution.

[Section XVIII.] (Section XVIII, 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 two years from the passing of this act, or shall not, within the space of ten years from the passing of this act complete the same canal and navigation, so as to open an easy and safe water communication from the mouth of Swatara to the mouth of Tulpehocken, navigable for boats of at least seven tons burden, then, and in either of those 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.

Passed Sept. 29, 1791. Recorded L. B. No. 4, p. 234, etc. See the Act of Assembly passed February 12, 1795, Chapter 1792.

CHAPTER MDLXXXIX.

AN ACT TO PROVIDE FOR COMPLETING THE REPAIRS OF THE WHARF NEAR THE STATE HOSPITAL, AND FOR PAVING THE FOOTWAYS ROUND THE STATE-HOUSE SQUARE, AND FOR OTHER PURPOSES.

Whereas the sum appropriated by an act, entitled "An act to supply the deficiencies in certain appropriations hereafter made, and for other purposes therein mentioned,"¹ enacted the

¹ Chapter 1563.