

months from and after the cause thereof shall have happened.

Passed April 10, 1793. Recorded L. B. No. —, p. —.

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CHAPTER MDCLXXXIV.

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AN ACT TO ENABLE THE GOVERNOR OF THIS COMMONWEALTH TO INCORPORATE A COMPANY FOR OPENING A CANAL AND LOCK NAVIGATION ON THE WATERS OF BRANDYWINE CREEK.

Whereas the improvement and extension of inland navigation in the state will not only be in many respects conducive to the interest of the commonwealth, but particularly advantageous to the good citizens thereof, by affording a cheap and easy transportation of the produce of the country to a convenient market, and it being represented to the legislature that a canal and lock navigation on the waters of Brandywine creek may be effected at the expense of individual citizens, if duly authorized and encouraged thereto by law.

[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 Abijah Dawes, Joseph Parker Norris, Samuel Mickle Fox, Jonathan Harvey, Andrew Pettit, Hugh Roberts, John Fleming, Charles Dilworth, Nathan Scofield, Robert Hamilton, John Hayes and William Poole, 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 fifteenth day of May next procure a book or books and therein enter as follows, "We whose names are hereunto subscribed do promise to pay to the president and managers of the Brandywine canal navigation the sum of two 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 pur-

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suance of an act of general assembly, entitled 'An act to enable the governor of this commonwealth to incorporate a company for opening a canal and lock navigation on the waters of Brandywine creek,'” and shall thereupon give notice in three of the public newspapers printed in Philadelphia, one whereof shall be in the German language, one calendar month at least, of the time and places when and where the said book or books will be opened to receive subscriptions of stock for the said company, at which time and places the said commissioners, or any three of them, shall attend and shall permit and suffer all persons who shall offer to subscribe in the said book or books, which shall for that purpose be kept open at least six hours every juridical day for the space of at least three successive days, and on any of the said juridical days within the hours aforesaid, any person of the age of twenty-one years shall have liberty to subscribe in his own name or in the name or names of any person or persons by whom he shall be authorized, for one share; on the second day, for one or two shares; on the third day, for one, two or three shares; and on any succeeding day, while the said books shall remain open, for any number of shares in the said stock, and if at the expiration of the said three first days, the said book or books shall not have one thousand five hundred shares therein subscribed, the said commissioners may adjourn from time to time until the said number of shares shall be subscribed, of which adjournment public notice shall be given in at least one public newspaper. When the said subscriptions in the said books shall amount to the respective numbers aforesaid, the same shall, respectively, be closed, and if on the day the said books shall be closed, and before the said subscriptions shall be declared full, application shall be made to subscribe more shares than will amount to the number aforesaid, then the said commissioners shall apportion the whole number of shares unsubscribed on the morning of that day among all those who shall have subscribed or offered to subscribe, as aforesaid, on the said day:

Provided always, that every person offering to subscribe in the said book or books in his own name, or any other name, shall previously pay to the attending commissioners ten dol-

lars for every share for which he may subscribe, out of which shall be paid the expenses of taking such subscriptions, the compensation to the commissioners and other incidental charges, provided that the compensation to the said commissioners shall not exceed two dollars to each of them for every day they shall be publicly employed in the said business, and the remainder shall be paid over to the treasurer of the corporation as soon as the same shall be organized and the officers chosen, as hereinafter mentioned.

[Section II.] (Section II, P. L.) And be it further enacted by the authority aforesaid, That when one hundred persons or more shall have subscribed five hundred shares in the said stock, the said commissioners may, or when the whole number of shares aforesaid shall be subscribed, they shall certify under their hands and seals the names of the subscribers and the number of shares subscribed by, or apportioned to, each subscriber, to the governor of this commonwealth, and thereupon it shall and may be lawful for the governor, by letters patent under the great seal of the state, to create and erect such subscribers into one body politic and corporate in deed and in law, with perpetual succession and with all the privileges and franchises incident to a corporation, by the name, style and title of, The President, Managers and Company of the Brandywine Canal navigation, and by such name the said subscribers and such others as may thereafter become shareholders, not exceeding the number of one thousand five hundred as aforesaid, shall be capable of holding their said capital stock and the increase and profits thereof, and of enlarging the same from time to time by new subscriptions, in such manner and form as they shall think proper, if such enlargement shall be found necessary to fulfill the end and intent of this act, and of purchasing, taking and holding to them and their successors and assigns in fee simple, or for any less estate, all such lands, tenements, hereditaments, goods, chattels or other effects as shall be necessary for them in the prosecution of their work, and the same to sell and dispose of at their pleasure, and of doing every act, matter and thing which a corporation or body politic lawfully may or of right ought to do.

[Section III.] (Section III, P. L.) And be it further enacted by the authority aforesaid, That it shall and may be lawful for the said president and managers to cause a navigable canal to be made on the east branch of Brandywine creek, beginning the same at some place near where the turnpike road leading from Philadelphia to Lancaster shall cross the same, and also a canal on the west branch of the said creek, at some place near where the said road shall cross the same, from thence along the said branches, respectively, and as near thereto as may be judged convenient, until the said canals shall intersect and be joined together near the junction of the said two branches, thence along the said Brandywine creek, keeping as near thereto as may be judged convenient to the line dividing this state from the state of Delaware; provided no part of the said work shall be commenced before the said president and managers shall have ascertained and paid for the value of the ground to be occupied by the said canal and works; also any damage which any person may sustain by means of the said canal passing through his grounds, or otherwise, agreeably to the method hereinafter mentioned.

[Section IV.] (Section IV, P. L.) And be it further enacted by the authority aforesaid, That Josiah Matlack, Moses Coates, Rumford Dawes, Job Harvey and Samuel Hollingsworth be and they are hereby appointed commissioners, to view and lay down the courses and distances of the said canals, and return a plan thereof, with topographical observations thereon, to the next general assembly of this commonwealth, which said plan, being approved by the legislature, shall be pursued by the said president and managers, and shall not be altered or deviated from by them in the construction of the said canals, without leave first had and obtained in writing from the owner or owners of the land through which the course of the said canal so to be altered shall pass, or from the legislature of this commonwealth.

[Section V.] (Section V, P. L.) And be it further enacted by the authority aforesaid, That the seven persons first named in the said letters patent shall, as soon as conveniently may be after sealing the same, give notice in three public newspapers

of a time and place by them to be appointed, not less than thirty days from publishing such notice, at which time and place the said subscribers shall proceed to organize the said corporation, and shall choose by a majority of votes of the said subscribers by 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, who shall continue in office for one year and until such other officers shall be elected, and shall and may make such by-laws, rules, orders and regulations, not inconsistent with the constitution and laws of the commonwealth, as shall be necessary for the well ordering of the affairs of the said company:

Provided always, that no person shall have more than twenty votes on his own account in any election, or in determining any question arising at such meeting, whatever number of shares he may be entitled to, and that each person holding one or more shares under the said number of twenty shall be entitled to one vote for every share by him so held.

[Section VI.] (Section VI, P. L.) And be it further enacted by the authority aforesaid, That the said company shall meet on the first Monday of June in each succeeding year, at such place as shall be fixed by the rules and orders of the said company, to be made as aforesaid, for the purpose of choosing such officers as aforesaid for the ensuing year, and at such other times as they shall be assembled by the managers, in such manner and form as shall be prescribed by their by-laws, at which annual or special meetings they shall have full power and authority to make, alter or repeal, by majority of votes in manner aforesaid, all such by-laws, rules, orders and regulations as aforesaid, and to do and perform every other corporate act.

[Section VII.] (Section VII, 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 or books to be kept for that purpose, and a quorum being met, they shall have full power and authority to agree with and appoint all such officers, artists and workmen as they shall judge necessary to carry on the intended works, and to fix their salaries or other wages, to ascertain the times, manner and proportions when and in which the stockholders shall pay the moneys due on their respective shares in order to carry on the work, to draw orders on the treasurer for all moneys necessarily expended, which orders shall be signed by the president, or in his absence, by a majority of a quorum, and countersigned by their clerk, and generally to do and perform all such other acts, matters and things as by the by-laws, orders and regulations of the company shall be committed to them.

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

[Section IX.] (Section IX, P. L.) And be it further enacted by the authority aforesaid, That if any stockholder, after thirty days' notice in three public newspapers published in the city of Philadelphia, of the time and place appointed for the payment of any proportion of the said capital stock in order to carry on the work, shall neglect to pay such proportion at the place appointed for the space of twenty days after the time

so appointed for the payment thereof, every such stockholder, or his assignee, shall, in addition to the proportion so called for, pay after the rate of five per centum per month for every delay of such payment, and if the same and the said additional penalty shall remain unpaid for such a space of time as that the accumulated penalties shall be equal to the sums directed and appointed to be paid on account of the said share, then the said share and all the moneys thereon paid shall be forfeited to the company, and may be sold by them to any person or persons willing to purchase for such price [as] can be obtained therefor.

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

[Section XI.] (Section XI, P. L.) And be it further enacted by the authority aforesaid, That it shall and may be lawful for the said president and managers to contract and agree with the owner or owners of any lands and 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 a feme-covert, under age, non compos mentis, or out of the state, or otherwise incapacitated to convey, then it shall and may be lawful to and for the said president and managers to apply to two of the judges 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, describing the same and naming the owner thereof, and commanding the said sheriff that by the oaths and affirmations of twelve good and lawful men of his bailiwick, who shall be indifferent to the parties, he shall 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 by the establishment of the said canal, will suffer and sustain any and what damages by reason or means of taking any such lands, tenements 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 the parties in the said writ named, or their representatives, of the time of executing the same, and shall cause to come upon the premises at the time appointed twelve good and lawful men of his bailiwick, who shall be selected in such manner as struck juries usually are, to whom he shall administer an oath or affirmation, that they will diligently inquire concerning the matters and things in the said writ specified, and a true verdict give according to the best of their judgment and ability, without favor or partiality to any, and thereupon the said sheriffs and inquest shall proceed to view all and every the lands and tenements or other real hereditaments in such writ specified, and having considered the quantity and quality of so much as shall be necessary to be vested in the said company for the purposes



aforesaid, they shall cause the same to be minutely and exactly described by metes and bounds, or other particular descriptions, and shall value and appraise the injury and damages which the owner or owners of such lands, tenements, hereditaments or other improvements will, according to their best skill and judgment, sustain and suffer, by means of the same being vested in the said company, or by means of any works being destroyed and rendered useless, or of less value, or by means of the said company being permitted to enlarge any pond or watercourse, and to use the same for the purpose aforesaid, 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 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 judges of the said court shall examine the same, and if the said writ shall appear to have been duly executed, and the return thereof be sufficient to ascertain 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 owners as aforesaid the several sums of money in the said inquisition assessed, or bringing the same into court for the use of such owners, and also paying the costs of the said writ, and of executing and returning the same, shall be entitled to have and to hold to them and their successors and assigns forever, all and every the lands, tenements, rights, liberties and 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 XII.] (Section XII, P. L.) And be it further enacted by the authority aforesaid, That whenever 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 bridge to cross the same, the jury who shall inquire of the damages to be sustained, in manner hereinbefore directed, shall find and ascertain whether a passage across the same shall be admitted and maintained by a bridge, and on such finding, the said president and managers shall cause a bridge, fit for the passage of carts, wagons and other carriages, to be built and forever after maintained and kept in repair at all and every the places so ascertained by the said jury, at the costs 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 a height above the water as shall be usual in the bridges erected by the company, and provided that such foot or other bridges so to be erected by the owners of such land shall not interfere with any of the locks or buildings, or other works of the said company.

[Section XIII.] (Section XIII, P. L.) And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for the said president and managers, so soon as the said canal and navigation shall be perfected, and, by and with the authority and permission of the legislature of the state of Delaware, extended into the tide waters of the river Delaware, to appoint such and so many collectors of tolls for the passage of boats, vessels and rafts in, through and along the same, and in such places as they shall think proper, and that it shall and may be lawful for such toll collectors and their deputies to demand and receive of and from the persons having charge of all boats, vessels and rafts passing through the said canals 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 at the said canal:

Provided, that the amount of the said tolls shall not in the whole exceed the rate of six cents per mile for every ton of the burden of such vessel, and for every hundred feet cubic measure of timber and twelve hundred feet board measure of boards, plank or scantling.

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

Provided always, that if any of the said boats shall have been marked on any other canal, the said collectors shall admit the same as the true rate of tonnage, unless they shall have cause to suspect that the same is not correct, in which case the same proceedings shall be had as are hereinbefore

directed, and a new mark may be painted without defacing the old mark.

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

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

[Section XVII.] (Section XVII, 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, and on what account the same was expended, and shall, at least once in every year, submit such account to a general meeting of the stockholders, until the work shall be completed, and until all the costs, charges and expenses of effecting the same shall be fully paid and discharged

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

[Section XVIII.] (Section XVIII, P. L.) And be it further enacted by the authority aforesaid, That the president and managers shall keep a just and true account of all and every the moneys received by their several and respective collectors of tolls on the said canal navigation, and of the moneys expended, and shall make and declare a dividend of the clear profits and income thereof (all contingent costs and charges being first deducted) among all the stockholders, respectively, and shall on every first Monday of July and January in every year publish the half yearly dividend to be made of the said clear profits to and among 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 XIX.] (Section XIX, 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 account showing the whole amount of the capital expended in erecting and establishing the said canal navigation and the whole income and profits arising from the same, together with the exact amount

of the contingent expenses of supporting, maintaining and keeping the same in repair for and during the said periods, to the end that the clear annual profits may be known, and if at the expiration of two years after the said canal 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, it shall and may be lawful to and for the said president, managers and company to increase the rate of tolls hereinbefore allowed to them, so as to raise the dividend up to six per centum per annum, and if at any time it shall appear, by such abstract so rendered, that the clear profits and income of the said company will bear a dividend of more than twenty-five per centum per annum, then and in such case the rates of the said tolls shall be reduced, so that the clear profits and income shall not exceed twenty-five per centum per annum.

[Section XX.] (Section XX, P. L.) And be it further enacted by the authority aforesaid, That whenever the profits of the said company shall amount to a clear annual dividend of fifteen per centum per annum on the whole amount of their capital stock expended, there shall then be reserved one per centum per annum out of the same, which shall be applied, under the direction of the legislature, for the establishment of schools and the encouragement of the arts and sciences.

[Section XXI.] (Section XXI, P. L.) And be it further enacted by the authority aforesaid, That nothing in this act shall be deemed or taken to authorize or empower the governor to incorporate any persons subscribing as aforesaid, or shall give any power or authority to such subscribers to do any act, matter or thing herein mentioned, until such time as the legislature of the state of Delaware shall by law vest the like power and authority in such subscribers, to extend the said canal navigation from the place where the same shall intersect the line dividing this state from the state of Delaware, in and through the same state, into the tide waters of the river Delaware, with as full and ample powers, privileges, franchises and emoluments as to the said subscribers are herein given, as far

as the said canal navigation may extend within the limits of this state, and the said subscribers having such authority, shall be incorporated, as aforesaid, and shall proceed in the said work with all convenient speed; and if the said company shall not proceed to carry on the said work within the space of two years after they shall have been incorporated, or shall not, within the space of seven years from the passing of this act, complete the said canal navigation, the water in the same being of the depth of three feet and of the width of twenty feet at the least, 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.

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

Passed April 10, 1793. Recorded L. B. No. —, p. —. (not given).

Supplement passed March 19, 1794; Chapter 1720. Further supplement passed February 21, 1795; Chapter 1799.

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## CHAPTER MDCLXXXV.

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AN ACT TO AUTHORIZE ANDREW PIERCE, OF ALLEGHENY COUNTY, TO KEEP IN REPAIR A MILL-DAM ACROSS A PART OF MONONGAHELA RIVER.

Whereas it has been represented to the general assembly, that it would be very beneficial to a number of the inhabitants of Washington and Allegheny counties, that a mill-dam erected across a part of Monongahela river by Andrew Pierce, of Allegheny county, which dam was begun prior to the said river