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ACTS

OF THE

General Assembly

OF THE

1825-26

COMMONWEALTH

OF

PENNSYLVANIA,

PASSED AT A SESSION WHICH WAS BEGUN AND HELD

AT THE

Borough of Harrisburg

ON

TUESDAY, THE SIXTH DAY OF DECEMBER,

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND TWENTY-FIVE

AND OF THE

INDEPENDENCE

OF THE

UNITED STATES OF AMERICA

THE FIFTIETH.

PUBLISHED BY AUTHORITY.

HARRISBURG:

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1826.



CHAPTER LXX

AN ACT

To try the validity of the charter of the Harrisburg Canal, Fire Insurance and Water Company.

WHEREAS, it appears to the legislature that letters patent have been obtained from the Governor, incorporating the subscribers to the stock of "The Harrisburg Canal, Fire Insurance and Water Company," without a full compliance with the provisions of the act of Assembly, of the twenty seventh of March, one thousand eight hundred and twenty three, giving to the Governor authority to issue such letters patent. And it is alleged, that since granting the said letters patent, the said company have misused and abused the chartered privileges by carrying a survey and location to be made for a canal beyond a point to which they are limited by the charter, thereby obstructing the route of the Pennsylvania canal, and preventing the improvement of this commonwealth. *And whereas*, by the twenty-fifth section of the aforesaid act, the power is reserved to the legislature of resuming the corporate rights, privileges and franchises granted to the said company, in case of such misuser, but it is thought better that the determination of the question of forfeiture should be judicially decided. *And whereas*, it is the desire of the legislature, that the borough of Harrisburg shall be supplied with water, for the use of the inhabitants thereof, and also for the purpose of propelling machinery without injury to the Pennsylvania canal, and without postponing the construction thereof.

Therefore,

SECT. 1. *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 the supreme court of the middle district of this commonwealth, shall at their next, or any subsequent term, have cognizance and authority to try the validity of the charter of "The Harrisburg Canal, Fire Insurance and Water Company," issued in pursuance of the act, entitled "An act to enable the Governor to incorporate a company for making a canal and lock navigation on the waters of the river Susquehanna, near the borough of Harrisburg, with power to the said company to supply the said borough with water, and to insure against fire," and further to try and determine whether the said corporation have misused and abused any of the chartered privileges granted in pursuance of the said act; and for the purpose of determining the said questions, it shall be the duty of the attorney general of this commonwealth, to issue and cause to be issued, on or before the first day of June next, a writ in the nature of a scire facias at

Preamble,

Supreme court authorized to try the validity of the charter.

Duty of attorney general.

the suit of the commonwealth of Pennsylvania against the said company, to show cause why the letters patent issued by the Governor in pursuance of the act herein before recited, should not be revoked and annulled, and why the same letters patent should not be surrendered up to this commonwealth, and further to inquire whether the said company have not misused and abused the chartered privileges granted in pursuance of the act authorising the incorporation of the said company, and the said writ shall be served on the president of the said company by the sheriff of Northumberland county, at least ten days before the return thereof: *Provided*, That if the canal commissioners shall make an arrangement with the president and managers of the Harrisburg Canal, Fire Insurance and Water Company, in pursuance of the eleventh section of the act to construct the Pennsylvania canal on or before the first day of June next, then all proceedings under this act shall be stayed; and the said canal commissioners are hereby authorised and fully empowered to make an arrangement with the said company to supply the borough of Harrisburg with water, and to furnish the said company with water to propel machinery, and for these purposes to locate and construct the Pennsylvania canal in such a way as will accommodate the said company, if it shall be ascertained to be practicable to construct and locate the said canal for the purposes aforesaid, without injury to the navigation thereof.

Proviso.

Court to form the issue or issues.
Sheriff to summon a jury.

Evidence that may be given by the commonwealth.

SECT. 2. *And be it further enacted by the authority aforesaid*, That for the purpose of hearing and deciding on the questions aforesaid, and the facts relating thereto, the said court are hereby authorised and empowered to direct and form the issue or issues on the said writ, and to award and issue to the said sheriff a special venire facias, directing the said sheriff to bring before the said judges a jury of disinterested persons, inhabitants of the counties of Northumberland, Columbia and Union, not less than twenty nor more than thirty, at the court house in Sunbury, at such time as the said court shall order and direct, and twelve of the jurors so summoned shall be impanelled, balloted for, sworn and affirmed, well and truly to try, and a true verdict to give between the commonwealth of Pennsylvania and the said company; at which trial under the direction of the said court, it shall be competent for the commonwealth to give evidence of the illegal manner in which the said letters patent were obtained, and of the non-compliance of the commissioners named in the said act with the provisions thereof, and the said commonwealth for that purpose may lawfully examine as witnesses all or any of the said commissioners and the stockholders and officers of the said company, and may further for the purpose of showing the misuse and abuse of the chartered privileges of the said company, give evidence of the acts of the said company in attempting to extend their canal

beyond the point or points authorised by law, and such other evidence as the said court shall adjudge to be legal and pertinent to the issues formed and trying.

SECT. 3. *And be it further enacted by the authority aforesaid,* That it shall not be lawful for "the Harrisburg Canal, Fire Insurance and Water Company," to proceed with the objects of their incorporation until the said suit shall be tried and determined by the said court; and all the powers and authorities of the president and managers of "The Harrisburg Canal, Fire Insurance and Water Company," now elected and in office, or who shall hereafter be elected and in office, "to cause a navigable canal, with such locks and works as shall be necessary, and a road on each side thereof to be made, commencing at the east side of the river Susquehanna, at some place between the house of the late John Carson, Esquire, and the end of the second Kittatiny mountain; from thence along or through the east side of the borough of Harrisburg to the said river, at the mouth of the Paxton creek, or at some point between the same and Mulberry street, in the town of Harrisburg," are hereby suspended until the determination of the suit herein before directed.

SECT. 4. *And be it further enacted by the authority aforesaid,* That if the said issue or issues are found for the commonwealth, and judgment shall be rendered by the said court thereon, then the commonwealth shall recover her costs and damages of the said company; and from thenceforth the letters patent granted to the said company shall be null and void, and all and singular the rights, liberties, privileges and franchises granted to the said company, are resumed and re-vested in the commonwealth of Pennsylvania; but should the said issues be determined in favor of the said company, and the judgment of the said court given for the defendants, then and in that event the said company shall recover their costs and damages of the commonwealth, and their letters patent shall be legal and valid.

SECT. 5. *And be it further enacted by the authority aforesaid,* That in case judgment should be rendered as aforesaid for the defendant, and it should so happen that the commonwealth should have occupied any of the ground within the chartered privileges of the said company, by their officers, in pursuance of the act entitled "An act to provide for the commencement of a canal to be constructed at the expense of the state and to be styled "The Pennsylvania Canal," and the said company should consider themselves aggrieved thereby, then and in that event it shall not be lawful for the said company to interfere with the said canal in any manner, but the said company shall have power to institute a special action on the case against the commonwealth for damages, in the court of common pleas of the county of Cumberland, and to serve their summons on the attorney general, who is hereby directed to appear to the said suit, to be prosecuted

Company not to proceed, &c.

Powers and authorities of the president and managers suspended.

In what case damages shall be recovered from the company and their charter be annulled.

In what case the company shall recover costs and damages.

In what event the company may institute a special action on the case against the commonwealth for damages.

Damages
how to be
paid.

to final judgment in the usual manner of suits between individuals, and the state treasurer shall pay the damages and costs which shall be adjudged against the commonwealth, on warrant drawn by the governor in favor of the president and managers of the said company, in the usual manner.

Auditor gen-
eral to em-
ploy coun-
sel.

SECT. 6. *And be it further enacted by the authority aforesaid,* That the auditor general is hereby authorized and directed to select and appoint a counsel learned in the law, to assist the attorney general at the said trials on the part of this commonwealth.

JOSEPH RITNER, *Speaker*

of the House of Representatives.

ALEXANDER MAHON,

Speaker of the Senate.

APPROVED—the fifth day of April, one thousand eight hundred and twenty-six.

J. ANDW. SHULZE.

CHAPTER LXXI.

AN ACT

To incorporate the Columbia, Lancaster and Philadelphia, Rail Road Company.

Commission-
ers appoint-
ed to receive
subscriptions
of stock.

SECT. 1. *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 Richard Peters, junior, Samuel Archer, Simon Gratz, and Levi Ellmaker, of the city of Philadelphia; George B. Porter, James Buchanan, Amos Ellmaker, and Samuel Dale, Esquires, of Lancaster; Jacob Strickler, John Barber, James Givin, and James Clyde, Esquire, of Columbia; and Joshua Hunt, Richard Thomas, junior, and David Townsend, of Chester county, or any three of them, 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 day of July next procure six books, one of which shall be opened at some convenient place in the borough of Columbia, the borough of York, the city of Lancaster, the

When and
where books
shall be
opened.