

No. 364.

A N A C T

To authorize the Baltimore and Ohio railroad company to construct a railroad through Pennsylvania, in a direction from Baltimore to the Ohio river, at the city of Pittsburg.

SECTION 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 assent of this commonwealth be and the same is hereby given and granted to the Baltimore and Ohio railroad company, incorporated by an act of the legislature of the state of Maryland, passed on the twenty-eighth of February, Anno Domini, one thousand eight hundred and twenty-seven, entitled "An Act to incorporate the Baltimore and Ohio railroad company," to locate, and construct and maintain a continuation of the railroad of the said company from the town of Cumberland, in the state of Maryland, to the city of Pittsburg, under and subject to the provisions, conditions and restrictions hereinafter enacted: *Provided,* That within six months after the completion of said railroad to Pittsburg, and semi-annually thereafter, the proper officers or agents of the said Baltimore and Ohio railroad company, shall make out, under oath or affirmation, and transmit to the treasurer of this state, a statement, exhibiting the amount of tonnage, of whatsoever kind or description, and the number of passengers that may have passed over the entire length of said road, between Pittsburg and Cumberland, during the preceding six months; and that they shall also, at the same time, pay into the treasury of this commonwealth, a tax or duty, on all tonnage, of whatsoever kind or description, except the ordinary baggage of passengers, that may have passed over the entire length of said road, between Cumberland and Pittsburg, during the last preceding six months, at such rate as the legislature may hereafter direct, not exceeding three mills per ton, of two thousand pounds, per mile; and for shorter distances, exceeding twenty miles, at the same rate and in proportion thereto; and also pay into the treasury aforesaid, at the same time, a tax or duty, on all passengers that may have passed one hundred miles or more of said road, between the aforesaid points, during the last preceding six months, at such rates as the legislature may hereafter direct, not exceeding fifty cents for each passenger, until a railroad shall be constructed, connecting the Columbia railroad with the said Baltimore and Ohio railroad, by means of the Cumberland Valley or any other railroad; and when such connecting road shall be constructed, the said tax or duty, on passengers, shall not exceed twenty-five cents for each passenger; and the legislature hereby reserves the right to adopt such additional measures, to secure a faithful compliance with the conditions of this proviso, as may hereafter be deemed necessary and right: *And provided also,* That if it shall be deemed necessary, the governor of this commonwealth may appoint a state agent or agents, not exceeding one for each train of cars, who shall have the right to travel at all times on said road, between Cumberland and Pittsburg, in the cars or other vehicles of said company, as shall or may be used for the transportation of passengers, free of any charge; and who shall have free access, at

Assent of the commonwealth given to the company to continue their road to Pittsburg.

Proviso.

Semi-annual statement of tonnage, &c., to transmit to state treasurer.

Tax.

Proviso.

Governor may appoint state agents.

all times, to examine and inspect the books, accounts, way-bills of freight, permits, manifests, and all such other books and papers of the said company as may be necessary and proper, to enable the said agent or agents to ascertain and keep a true and just account of all the goods, wares, merchandize and tonnage, of every kind and description, that shall or may be carried or transported on or over said road, between Cumberland and Pittsburg, and the number of passengers traveled on the same: *And provided also*, That if a greater number of agents on said road shall be required by any act of the legislature of Pennsylvania, the governor may appoint an additional number, who shall have a right to pass free of charge as aforesaid: *And provided also*, That this act shall not go into effect before the thirtieth day of July, eighteen hundred and forty-seven; and if the legislature, during its present session, should pass an act incorporating a company, with authority to construct a railroad from Harrisburg to Pittsburg, within the limits of this state, and three millions of dollars should be *bona fide* subscribed to the stock of said company, and ten per cent. on each share be actually paid in, and letters patent be issued by the governor, in conformity to the provisions of said act, within one year from the passage thereof; and if thirty miles or more of said railroad should be put under contract for construction, and satisfactory evidence thereof be furnished to the governor, on or before the said thirtieth day of July, eighteen hundred and forty-seven, then in that case the governor shall issue his proclamation, setting forth that fact; and thereupon this act, granting the right of way to the Baltimore and Ohio railroad company, to extend their road through this state to the Ohio river, at Pittsburg, shall be null and void, otherwise to remain in full force and virtue: *Provided however*, That the preceding proviso shall be of no force or effect, unless the stockholders of the said Pennsylvania railroad company shall pay into the treasury of said company, one million of dollars, on account of stock subscribed, on or before the thirtieth day of July, one thousand eight hundred and forty-seven: *And provided further*, That at least one-half of the portion of the railroad of the said company, which is hereinbefore required to be put under contract for construction, before the said thirtieth day of July, one thousand eight hundred and forty-seven, shall be at the western terminus thereof, commencing at the city of Pittsburg, and extending eastwardly.

Proviso.

How and when this act shall go into effect.

SECTION 2. That the said railroad shall enter this state by way of Location. Wills' creek, in the county of Bedford, and leaving said stream at such point as may be deemed most suitable, proceeding in a direction westward, and shall be located north and east of the Monongahela river, by such route as the said company may deem expedient; and the said company proceed to construct the said road, upon the like principles and plans, and under and subject to the same regulations, powers, immunities, privileges, conditions and restrictions, as are given, granted, enjoined and provided in the said act of the state of Maryland, so far as the same, or any clause or part thereof, may not be inconsistent with this act: *Provided*, That the track of said railroad shall correspond in width with the Philadelphia and Columbia railroad, so as to admit the cars thereof, to pass over said Baltimore and Ohio railroad from the place of connection hereafter provided for: *Provided*, That no lateral road, exceeding one mile in length, shall be made or caused to be made, purchased or caused to be purchased, leased or rented by said company, within the state of Pennsylvania, without the consent of the legislature thereof: *And provided further*, That no sum or sums of money shall be borrowed by said company, for which a certificate for a less amount than fifty dollars shall be issued; and that the said company shall not,

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Proviso.

either in the state of Maryland, Virginia or Pennsylvania, make, issue, or utter, or cause to be made, issued or uttered, any certificate or note of any amount whatsoever, calculated for, or intended as a circulating medium : *Provided also*, That the said company shall not construct, or cause to be constructed, any lateral railroad, having for its object, a connection with the Ohio river below the city of Pittsburg, without the consent of Pennsylvania : *And provided*, That nothing herein contained, shall be construed to prevent the said company from constructing a branch of their road, from some point thereon, between Connellsville and Virgin run, to the national road, at or near the borough of Browns-ville, in this state.

Reservation. SECTION 3. That full right and privilege is hereby reserved to this commonwealth, to the Franklin railroad company, or any company or companies which now are, or may hereafter be incorporated by the legislature of this commonwealth, to connect with and intersect the said railroad by any other railroad or railroads, canal or canals, or other works, at any point or points, either in the said commonwealth, or in the states of Maryland or Virginia ; and the acceptance of this act by the said Baltimore and Ohio railroad company, shall be deemed and taken as the assent of the said company to such connection and intersection : *Provided*, That the said Baltimore and Ohio railroad company shall not be entitled to any of the privileges, or enjoy any of the benefits conferred by this act, until the state of Maryland shall, by law, extend the rights and privileges granted by the sixth section of the act of the state of Maryland, passed April first, one thousand eight hundred and thirty-six, entitled "A supplement to an act, entitled 'An Act to incorporate the Susquehanna and Patapsco canal company,' passed December session, one thousand eight hundred and twenty-five," to the state of Pennsylvania, or such person or persons or company, as may be appointed by the state of Pennsylvania, so as to give the said state of Pennsylvania, person or persons, or company, like powers and privileges, as are conferred by the said sixth section of the act to construct, use, control, repair and preserve a railroad from the Pennsylvania state line, or from Hagerstown, through such portions of the state of Maryland, not further west than Hancock, or further east than Williamsport, as may be selected by said state of Pennsylvania, or such person or persons, or company, authorized by the said state of Pennsylvania so to do, as most eligible and convenient to form a connection with the Baltimore and Ohio railroad ; nor shall the said company transport any produce or merchandize, on any part of their road within this commonwealth, except the baggage of passengers, until the right shall be secured to the state of Pennsylvania, or to any company which shall be incorporated for that purpose, by the said state, to construct a railroad with one or more tracks, through the state of Maryland, and to connect with the said Baltimore and Ohio railroad, at any point in the state of Maryland or Virginia, not farther east than Williamsport and Martinsburg, nor farther west than Hancock, without any other restrictions than such as are contained in the said sixth section of the act, entitled "A supplement to an act, entitled 'An Act to incorporate the Susquehanna and Patapsco canal company,' passed December session, one thousand eight hundred and twenty-five;" and with the privilege of erecting the necessary buildings and depots in the state of Virginia, at the point of intersection, for the accommodation of the business of the connecting road : *Provided*, That if a railroad shall be constructed, connecting the Cumberland Valley railroad with the said Baltimore and Ohio railroad, within the territory of Pennsylvania, then the foregoing

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proviso, or so much thereof as prohibits the transportation of produce and merchandize, shall be void and of no effect.

SECTION 4. That the cars which may be used on any connecting railroad that may be constructed under the provisions of this act, together with their contents, shall be permitted to pass over the said Baltimore and Ohio railroad, or any part of it, to, from, and upon such connecting road; and the said Baltimore and Ohio railroad company, shall furnish sufficient motive power, for the transportation thereof, at convenient and stated hours, in the same manner and under the same regulations adopted for the transportation of their own cars, with their contents of like character, between Baltimore and Pittsburg, so that no transhipment of passengers or tonnage, or the baggage of passengers, shall be required at the place where such road may connect with the said Baltimore and Ohio railroad, or between such place and the city of Pittsburg, and so that there shall be no unreasonable or unnecessary detention in transporting the same, to or from such connecting road: *Provided*, That the said company shall, at no time, charge a higher rate of toll on or for the transportation of cars, persons or property, of any kind, from Pittsburg to such connecting road, or from such connecting road to Pittsburg, any higher rate per mile, than shall at the same time be charged on cars, persons or property, of the same kind, transported over the whole length of the said Baltimore and Ohio railroad, between Baltimore and Pittsburg. Permission to pass cars.

SECTION 5. That the said company may sue and be sued, in like manner as other corporate bodies within this commonwealth, sue and are sued, and in all matters and things which may in any way relate to or concern the exercise or abuse of the rights, privileges, powers and franchises hereby granted; and also, in all things which may relate to, or concern a compliance with, or a breach of the conditions and provisions of this act, the said company shall be subject to, and under the control of the authorities of Pennsylvania, as if the said company had been created by a law of this commonwealth; and in any suit, action or proceeding at law against the said company, the process may be served within the proper county or district, upon any officer or agent of the said company. Powers and privileges.

SECTION 6. That it shall be the duty of the president and managers of said company, so soon as said railroad is completed from Cumberland to Pittsburg, to prepare a full and accurate account of the costs of said railroad from Pittsburg to the Maryland line, authenticated by the oath or affirmation of the president and secretary of said company, and communicate the same to the auditor general of this commonwealth, who shall file the statement in his office. A statement of cost of construction, to be filed in auditor general's office.

SECTION 7. That the stock of said company, to an amount equal to the cost of the construction of that part of their road situated in Pennsylvania, shall be subject to taxation, by this commonwealth, in the same manner, and at the same rate as other similar property is or may be subject; and it shall be the duty of the said company to cause their treasurer, upon the declaration of any dividend, after the road shall have been completed to Pittsburg, to retain out of said dividend, and pay into the treasury of this state, any tax to which said proportion of stock is liable; and said company shall annually, in the month of January, make a statement to the legislature, under the oath or affirmation of the president thereof, of its affairs, and the business done upon said road during the previous year; said statement to contain a full and accurate account of the number of passengers, amount and weight of produce, merchandize, lumber, coal and minerals transported on said road east of Pittsburg and west of Cumberland. Stock subject to taxation.

Proceedings to ascertain damages.

SECTION 8. That the mode of ascertaining damages which may be sustained by persons in consequence of the said railroad passing through their lands, or by the taking of materials to construct or repair the same, shall be the same in Pennsylvania as is provided for in the fifteenth section of the act of Maryland, aforesaid, for like damages done in that state; and the provisions of the sixteenth and seventeenth sections of the said act of Maryland, shall also be extended to that part of the said road which may be in Pennsylvania, excepting the word "timber," in the said fifteenth section, which material shall be obtained of the owner only by agreement or purchase; and in all cases of assessed damages, where the title to the land is in dispute, or where the parties are dissatisfied with the finding of the jury, or the owner, his agent or attorney, duly authorized to receive the amount of damages, cannot be found for the space of three months after the assessment, the said amount shall be paid into the court of the proper county, by the said company, on the expiration of the said term of three months, for the use of the person or persons who may be lawfully entitled thereto: *Provided*, That the owners of the said real estate and materials, or the company, if dissatisfied with the report of the jury, shall have a right to appeal from the award of the said jury within twenty days after the confirmation of the same, by the court, on complying with the provisions of the act of assembly of the sixteenth June, one thousand eight hundred and thirty-six, entitled, "An Act relating to reference and arbitration;" and said appeal shall afterwards be tried by a jury, as in other causes, whenever appeals have been entered; but in case the said company be the appellant, the appeal shall be entered under the provisions of the act of assembly of this commonwealth, passed twenty-second March, one thousand eight hundred and seventeen, entitled, "An Act relative to suits brought by or against corporations:" *Provided*, That nothing herein contained shall authorize the said company to enter upon any lands, or take any property, without making compensation to the owners of said property, or giving adequate security therefor.

Proviso.

Proviso.

Penalty for injuring works.

SECTION 9. That if any person or persons shall wilfully injure, impair or destroy, or cause to be injured, impaired or destroyed, any part of the said railroad, or any of the property of the said company in this commonwealth, such person or persons so offending, shall each of them, for every such offence, forfeit and pay to the said company, a sum not exceeding five hundred dollars, which may be recovered in the name of the said company, by action of debt, in the court of common pleas of the county wherein the offence shall have been committed; and shall also be subject to indictment in the court of quarter sessions of such county; and upon conviction of such offence, shall be punished by fine and imprisonment, in the discretion of the court.

Reservation.

SECTION 10. That if the said company misuse or abuse the privileges hereby granted, the legislature reserve the right to repeal this act; and for the purpose of ascertaining whether the provisions of this act have been misused or abused, it shall be lawful for the legislature to direct, or the governor to order a *scire facias* to be issued out of the supreme court of Pennsylvania, of the western district, (which shall be executed by the sheriff of any county of this commonwealth, upon the president, or any officer or agent of said corporation, at least twenty days before the commencement of the term of said court,) calling on the said corporation to show cause wherefore the act hereby granted shall not be declared null and void; and the said court shall have power to summon a jury from the body of any county within the commonwealth, to try all questions of fact which may arise in the hearing upon such writ of *scire facias*, and a full copy of the proceedings, judgment and

opinion of the said court, shall be certified to the governor, to be by him communicated to the next succeeding legislature.

SECTION 11. That the supplement to an act to authorize the Baltimore and Ohio railroad company to construct a railroad through Pennsylvania, in a direction from Baltimore to the Ohio river, approved twentieth June, one thousand eight hundred and thirty-nine, and the act to which it was a supplement, be and the same are hereby repealed.

SECTION 12. That if the railroad by this act authorized to be constructed by the said Baltimore and Ohio railroad company, be not commenced within two years from and after the thirtieth July, eighteen hundred and forty-seven, and finished within twelve years from the date of this act, then this act shall be null and void; the legislature hereby reserves the right to alter, revoke or annul the privileges herein conferred, whenever, in their opinion, the interests of the commonwealth may require it; in such manner, however, that no injustice shall be done to the Baltimore and Ohio railroad company.

FINDLEY PATTERSON,
Speaker of the House of Representatives.

DANIEL L. SHERWOOD,
Speaker of the Senate.

APPROVED—The twenty-first day of April, one thousand eight hundred and forty-six.

FRS. R. SHUNK.

No. 365.

AN ACT

To annul the marriage contract of Tobias Bilger and Caroline, his wife.

SECTION 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 marriage contract entered into between Tobias Bilger of Juniata county, and Caroline, his wife, late Caroline Page, be and the same is hereby annulled and made void, and the parties released and discharged from all duties and obligations arising therefrom, as fully, and effectually, and absolutely, as if they never had been joined in marriage.

FINDLEY PATTERSON,
Speaker of the House of Representatives.

DANIEL L. SHERWOOD,
Speaker of the Senate.

APPROVED—The seventeenth day of April, one thousand eight hundred and forty-six.

FRS. R. SHUNK.