

No. 213.

## A N A C T

Authorizing the governor to incorporate the Philadelphia and West Chester turnpike road company.

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 Adam C. Eckfeldt, Abraham L. Pennock, William Rhoads, David Lyons, Garrett Williamson, Joseph B. Leedom, William H. Wilson, Reece W. Flowers, John Sellers, Doctor George Smith, William V. Black, George P. Snyder, John Kirk, Nathan Lukins, Thomas Steel, Jacob R. Eckfeldt, George P. Dickinson, Joseph Esray, Edward Garrett, Samuel Leedom, David S. Bunting, Jackson Lyons, Abraham Powell, John Hawkins, John H. Speakman, of Delaware county, and Isaac Hesten, Jesse George, Frederick Sorber, Joseph L. Hancock, John Miller, David George, William Worrell, Daniel Rhoads, John M. George, Richard S. Butterfield, Jacob Hoffman, Nathan Suplere, Thomas J. Watson, Anthony W. Olwine, Joseph Oat, G. W. Colladay, of Philadelphia county, be and they are hereby appointed commissioners to do and perform the duties herein mentioned, that is to say: They shall, on or before the first Monday 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 Philadelphia and West Chester turnpike road company, the sum of twenty-five dollars for every share of stock set opposite to our respective names, in such manner and proportions, and at such times and places as shall be determined on by the said president and managers, in pursuance of an act, entitled 'An Act authorizing the governor to incorporate the Philadelphia and West Chester turnpike road company.' Witness our hands the                      day of                      , Anno Domini one thousand eight hundred and forty                      ;" and shall give at least twenty days' notice, in two newspapers published in Philadelphia and one in Delaware county, of the time and place, when and where the said books shall be opened to receive subscriptions to the stock of the said company, at which time and place, one or more of the said commissioners shall attend and receive subscriptions from all persons of lawful age, who in person or by attorney shall offer to subscribe in said books, which shall be kept open for the purpose aforesaid, at least six hours in each juridical day, for the space of three days, or until the books shall have therein subscribed twelve hundred shares; and if at the expiration of the said three days, the books aforesaid, or either of them, shall not have the respective number of shares aforesaid therein subscribed, the said commissioners, or a majority of them, may adjourn from time to time, and transfer the said books from place to place, until the whole number of shares shall be subscribed, of which adjournment and transfer the said commissioners shall give such notice as they may deem necessary; and when the whole number of shares subscribed shall amount to twelve hundred, the said books shall be closed: *Provided always,* That every person offering to subscribe in the said books, in his own name, or in the name of any other person,

Commissioners.

Form of subscription.

Books.

Number of shares

Provido.

shall previously pay to the attending commissioners, five dollars for every share to be subscribed, out of which shall be paid the expense attending the taking such subscriptions, and other incidental charges, 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 provided.

**SECTION 2.** That when twenty or more persons shall have subscribed four hundred shares or more of the said stock, the said commissioners, or a majority of them, shall certify under their hands and seals, the names of the subscribers, and the number of shares subscribed by each, to the governor; and thereupon it shall and may be lawful for the governor, by letters patent, under his hand and the seal of the state, to create and erect the subscribers, and those who may afterwards subscribe, into one body politic and corporate, in deed and in law, by the name, style and title of "the Philadelphia and West Chester turnpike road company;" and by the said name the said subscribers and their assignees shall have perpetual succession, and all the privileges and franchises incident to a corporation, and shall be capable of taking and holding their 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 may think proper, if such enlargement shall be found necessary to fulfil the intent of this act, and of purchasing, taking and holding to them and their successors and assigns, and of selling, transferring, conveying in fee simple, or for any lesser estate, all such lands, tenements, hereditaments and estate, real and personal, as shall be necessary to them in the prosecution of their work, and of suing and being sued, and of doing every other matter or thing which a corporation or body politic may lawfully do.

**SECTION 3.** That the subscribers, as soon as conveniently may be after the said letters patent shall be sealed and obtained, shall give notice in one or more newspapers printed in the city of Philadelphia, and one in Delaware county, of the time and place by them appointed, not less than twenty days from the publication of the first 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 ballot, to be delivered in person or by proxy, duly authorized, one president, twelve managers and one treasurer, all of whom shall be stockholders, and such other officers as they shall deem necessary to conduct the business of the said company for one year, and until such other officers shall be chosen, who shall and may make such by-laws, rules, orders and regulations, not inconsistent with the constitution and laws of the United States, or of this state, as shall be necessary for the well ordering the affairs of the said company; they may make and have one common seal, and the same may alter or renew at their pleasure; and in case of the death, removal or resignation of the president, or any manager or other officer of the company, the board of managers may and shall choose another to fill the vacancy, until the next annual election of said company: *Provided always*, That each stockholder shall be entitled to one vote for every share of stock by him or her held, not exceeding ten shares, and one vote for every ten shares above ten: *Provided also*, That no stockholder, whether original subscriber or assignee, shall be entitled to vote at any election or meeting of said company, unless the instalments due and payable on the shares by him or her held, at the time of such election or meeting, shall have been fully paid and discharged.

**SECTION 4.** That if any treasurer, elected by virtue of this act, shall die, resign or refuse to act, or neglect to give such security for the faith-

Governor to grant letters patent.

Style.

Privileges.

Organization.

Officers.

By-laws.

Seal.

Proviso.

Votes.

Proviso.

Treasurer.

ful discharge of the duties of his office as the board of managers may direct and require, or having given the security required, shall neglect or refuse to take upon him and perform all the duties of said office, it shall be the duty of the managers, for the time being, to appoint some suitable person treasurer in his place, who shall hold the office until the next annual election, on his giving the requisite security, and until a successor shall be duly elected and give the security required.

SECTION 5. The stockholders of the company shall meet on the first Monday in January of every year, at such place as shall be fixed by the by-laws, for the purpose of choosing officers for the ensuing year, in the manner aforesaid, and at such other times as they shall be notified by the managers, in such manner as shall be prescribed by the by-laws, at which annual and special meetings they shall have full power and authority to make, alter or repeal such by-laws, rules, orders and regulations as may be necessary for managing the affairs of the company, and to do and perform any other corporate act.

Annual meeting.

Powers.

SECTION 6. The president and managers shall procure certificates, to be written or printed, and upon the payment of the instalments due thereon, shall deliver one certificate, signed by the president and countersigned by the treasurer, and attested by the seal of the corporation, to each stockholder, for the number of shares held by him or her; which certificate shall be transferable at his or her or their pleasure, in person, or by attorney duly authorized, in the presence of the president or treasurer, on the book or books of the company, subject however to the payment of all instalments due and to become due thereon; and such transferee thenceforth shall be a member of the corporation.

Certificates of stock.

Transferable.

SECTION 7. That the said president and managers shall meet at such times and places as shall be ordained by their by-laws, and when met five members shall form a quorum, and who, in the absence of the president, shall choose a president pro tem., and shall keep minutes of all their transactions fairly entered in a book; and a quorum being formed, they shall have full power and authority to make contracts, appoint surveyors, superintendents, artists and officers, as they may judge necessary to carry on the intended work, and to fix their salaries and wages, to ascertain the times when and in what manner and proportion the said stockholders shall pay the moneys due on their respective shares, to draw on the treasurer for all moneys as shall have been so as aforesaid deposited, necessary to pay the salaries or wages of persons by them employed, and for materials: *Provided*, That all such drafts shall be signed by the president, or in his absence by a majority of the quorum so met, and attested by their secretary, and to do and transact all other acts, matters or things, as by this act and the by-laws, orders, rules and regulations of the said company, shall be entrusted to them.

Quorum.

Duties of board.

Proviso.

SECTION 8. It shall be lawful for the said president and managers, by their agents, engineers and workmen, with their tools and instruments, carts, wagons and other carriages and beasts of draught or burden, to enter in and upon the lands contiguous and near to which the said road shall be made, first giving notice of their intention to the occupiers or owners thereof, and doing as little damage thereto as possible, and making amends for damages upon an equitable agreement by the parties; or if they cannot agree, then a just assessment to be made upon oath or affirmation, by three disinterested citizens, or any two of them, to be mutually chosen, or if either party, upon due notice, shall neglect or refuse to join in the choice, then to be chosen by a justice of the peace who shall not be interested therein, and upon the tender of the assessed value, to dig and carry away any timber, stone, gravel, sand, earth or other materials necessary or suitable for making the road,

Enter in and upon lands.

Damages to be assessed.

**Proviso.** *Provided*, That no part of this act shall authorize the taking of any property by said company, unless the same be previously paid for, or adequate and satisfactory security given to the owners for the payment thereof: *And provided also*, That the said managers, or their workmen under their supervision, shall have full power to enter upon any lands lying near to or adjoining said road, to cut or open such drains through the same as they shall deem requisite to drain the water from the turnpike road, with the same rights and under the same penalties as the supervisors of highways.

**Location.** SECTION 9. The said road shall be made in, over and upon the bed of the West Chester road, beginning at a point in said road where the western boundary line of the borough of West Philadelphia crosses the same, and following the line of said road to and terminating at the eleven mile stone, or Beaumont's tavern, on said road: *Provided*

**Proviso.** *always*, That no surveyor, superintendent, artist or other person or persons employed by said company to construct the said road, shall enter upon or go through any land belonging to any person or persons, without first obtaining permission of the owner thereof, excepting it may be necessary for the widening said road to the full width of sixty feet: *And provided also*, That the buildings erected near the present line of said road, shall not be injured by the widening of the same.

**Width.** SECTION 10. The president, managers and company shall cause at least twenty feet in width of said road to be made an artificial road, bedded with wood, stone or gravel, or any other hard substance well compacted together, and of sufficient depth to secure a solid foundation to the same; and the said road shall be faced with gravel, or stone

**Materials.** pounded, or other small hard substance, in such manner as to secure a firm, and as near as the materials will admit of an even surface, and so nearly level in its progress as that it shall in no place rise or fall more than will form an angle of five degrees with a horizontal line, and shall forever after maintain and keep the same in good and perfect order from the eastern termination thereof, westward so far as the number of shares subscribed will enable the company to finish the same; and the said president, managers and company shall have power to erect permanent bridges over all the waters crossing the said road, and to build culverts or drains when the same may be necessary, and to use any bridge or bridges now constructed over any stream crossed by said road: *Provided*, That if said road be faced with stone, the stones shall none of them be larger in size than will pass through a circular ring of two inches diameter.

**Construction.** SECTION 11. As soon as the company shall have perfected said road from the eastern termination to the distance of two miles, and so from time to time, when any distance not less than two miles shall be completed, they shall give notice thereof to the court of quarter sessions of the city and county of Philadelphia, who shall thereupon forthwith nominate and appoint three skillful, judicious and disinterested persons to view and examine the same, and report in writing to the president judge of said county, whether the said road is so far executed in a competent and workmanlike manner, according to the true intent and meaning of this act; and if their report shall in either case be in the affirmative, then the said president judge shall by license under his hand and the seal of the court, permit and suffer the said president, managers and company to erect such and so many gates or turnpikes upon and across said road, as will be necessary and sufficient to collect the toll and duties, hereinafter granted to the said company, from all persons traveling on the same with horses, carts, wagons and other carriages; and it shall be lawful for the said company to erect within the limits of

**Proviso.** Court of quarter sessions of Philadelphia county to appoint viewers.

**License to take toll.**

their road, at each of their gates or turnpikes, a toll house or dwelling house for the use and accommodation of the toll collector at such gate: *Provided*, That no toll shall be demanded from any person or persons passing or re-passing from one part of his, her or their farm or farms to any other part of the same; and all persons with their horses and vehicles, going directly to or from funerals or places of worship, and all cattle, sheep and swine shall all be exempt from the payment of tolls when traveling the said road.

Proviso.

Exemption.

SECTION 12 That when the said road, or any part thereof, is completed from time to time, and approved as aforesaid, it shall and may be lawful for the company to appoint such and so many toll-gatherers as they shall think proper, to collect and receive of and from all and every person and persons using said road, the tolls and duties herein-after mentioned, and to stop any person riding, leading or driving any horse or horses, coach, coaches, sulkey, chair, chaise, cart, wagon, train, sleigh, sled or any other carriage of burden or pleasure, from passing the said turnpikes or gates until they shall have paid the said tolls; that is to say, for every mile in length of said road, completed and licensed as aforesaid, the following sums of money, and so in proportion for any greater or lesser distance, to wit: for every horse and his rider, or led horse, one cent; for every sulkey, chair, chaise, coach, coachee, cart, wagon, train, sleigh, sled or any carriage of pleasure or burden under whatever name it may go, one cent per mile for each horse drawing the same; for every cart, wagon or stage coach whose wheels shall not measure four inches in width, and drawn by three or more horses, one and a-half cent per mile for each horse drawing the same; all such carriages drawn in part or the whole by oxen, two oxen shall be estimated as equal to one horse in charging all the aforesaid tolls, and every mule as equal to one horse; and for all fractional parts of toll, not equal in value to any denomination of coin in circulation, the said company may take and receive the next highest circulating denomination; and if any person or persons shall represent to said company, or any of their officers, that he, she or they have traveled a less distance than he, she or they have actually traveled along the said road, with intent to defraud said company of its tolls, or any part thereof, such person or persons shall, for every such offence, forfeit and pay to the use of the said company, the sum of five dollars; and if any toll-gatherer shall knowingly demand and receive toll for a greater distance than the person, of whom such toll is demanded, shall have traveled along said turnpike road, or shall demand and receive greater toll from any person or persons than such toll-gatherer is authorized to demand and receive by virtue of this act, such toll-gatherer shall forfeit and pay the sum of ten dollars for every such offence, to the use of the poor of the township in which the forfeiture is incurred, and for the payment of which the said company shall be responsible.

Toll-gatherers.

Tolls.

Frauds punished.

SECTION 13. That if the said company shall neglect to keep the said road in good order and repair, for the space of thirty days, and information thereof shall be given to any justice of the peace of the neighborhood, within the county where the repair ought to be made, such justice shall issue his precept, to be directed to any constable, commanding him to summon three disinterested freeholders, to meet at a certain time in said precept to be mentioned, at the place in said county which shall be complained of, of which meeting notice shall be given to the keeper of the gate or turnpike nearest thereto, within the said county; and said justice shall, at such time and place, on the oaths or affirmations of the said freeholders, inquire whether said road, or any part thereof, is in such good and perfect order and repair as aforesaid, and

Proceedings in case the road is neglected to be kept in good order and repair.

shall cause an inquisition to be made, under the hands of himself and a majority of said freeholders; and if the said road shall be found by the said inquisition to be out of order and repair, contrary to the true intent and meaning of this act, the said justice shall certify and send one copy of said inquisition to each of the keepers of the turnpikes or gates, between which such defective place shall be, and from thenceforth the tolls hereby granted to be collected at such turnpikes or gates, shall cease to be demanded, paid or collected, until the said defective part or parts of said road shall be put in good and perfect order and repair as aforesaid.

**Fraudulent practices punished.**

**SECTION 14.** That any person or persons whosoever, owning, riding in or driving any sulkey, chair or chaise, phaeton, cart, wagon, wain, sleigh, sled or other carriage of burden or pleasure, riding or leading any horse, mule, mare or gelding, shall therewith pass through any private gates or bars, or along or over any private lane, passage-way, or other ground or road, near to or adjoining any turnpike or gate erected, or which shall be erected in pursuance of this act, with an intent to defraud the company and avoid the payment of the toll or duty for passing through any such gate or turnpike; or if any person or person shall take off, or cause to be taken off, any horse, mule, mare or gelding or other cattle, from any sulkey, chair, phaeton, cart, wagon, sleigh, sled or other carriage of burden or pleasure, or practice any other fraudulent means or device, with the intent that the payment of any such toll or duty may be evaded or lessened, all and every person or persons, in all or every or any of the ways or manners aforesaid offending, shall, for every such offence, respectively forfeit and pay to the president and managers of the aforesaid turnpike road company, any sum not exceeding twenty dollars, to be sued for and recovered with costs of suit, before any justice of the peace, in like manner and subject to the same rules and regulations as debts of a similar amount are by law sued for and recovered: *Provided*, That if any person shall be prosecuted under this section of this act, and the said prosecution shall not be sustained on the part of the prosecutors, then and in that case the person or persons prosecuted as aforesaid, shall receive from the company the sum of ten dollars, in lieu of damages arising from delay and vexatious prosecution, recoverable as other fines under this act.

**Proviso.**

**Injuries to fixtures, punished.**

**SECTION 15.** That if any person or persons shall wilfully injure, deface or destroy any gates, posts, buildings or other fixtures of the company, or shall, without permission from the acting superintendent, throw out upon the road, or within the limits thereof, any wood, stone, dirt or rubbish of any kind, and shall suffer the same to remain for the space of one day, after notice thereof shall have been given to the person or persons so offending, shall for each and every such offence, on conviction thereof, by the evidence of one or more creditable witnesses, before any justice of the peace of the county in which the offence shall have been committed, pay a fine not exceeding five dollars, with costs, to be recovered as debts of like amount are recoverable, for the use of the said company.

**Traveling regulated.**

**SECTION 16.** All drivers and conductors of carts, wagons and carriages of all kinds, using said road, shall, except when passing by a vehicle of slower draft, keep their horses and carriages on the right hand side of the road, in the passing direction, leaving the other side of the road free and clear for other carriages to pass and repass; and if any driver shall offend against this provision, he shall forfeit and pay any sum not exceeding five dollars, to any person who shall be obstructed in his passage, who will sue for the same, to be recovered with costs, in the usual manner; and no driver of a carriage of any kind, shall pass

any other vehicle, going in the same direction, at a faster gait than a trot, at a rate not exceeding eight miles per hour, under a penalty of twenty dollars for each offence, recoverable before any justice of the peace, one half to the use of the said company, and the other half to the use of the informant.

SECTION 17. No suit or action shall be brought or prosecuted for any penalty incurred under this act, unless such suit shall be commenced within three months after the offence shall have been committed; and the defendant in such suit may plead the general issue, and give this act and the special matter in evidence, and that the same was done in pursuance and by authority of this act. **Suits.**

SECTION 18. That if any stockholder, whether original subscriber or assignee, after twenty days' notice in two newspapers, published in the city of Philadelphia, and one in Delaware county, of the time and place appointed for the payment of any proportion or instalment of the said capital stock, shall neglect to pay such proportion at the time and place appointed, and for the space of thirty days after the time appointed for the payment thereof, every such stockholder shall, in addition to the instalment so called for, pay at the rate of five per centum per month, for every delay of such payment after the expiration of the said thirty days; and if the same and the additional penalty shall remain unpaid, for such space of time as that the accumulated penalty shall become equal to the sums before paid, in part and on account of such share, the same shall be forfeited by and to the said company, and may be sold by them to any person or persons willing to purchase for such price as can be obtained therefor, or in default of payment by any stockholder or his assignee, of said instalments as aforesaid, for the space of thirty days, the president and managers may, at their election, cause suit to be brought in the same manner as debts of a like amount are now recoverable for recovery of the same, together with the penalty aforesaid: *Provided*, That the serving of personal notice on the stockholders shall always supercede the necessity of publishing the same in the newspapers. **Penalty for neglect to pay instalments.**

SECTION 19. That the president and managers of said company shall keep fair and just accounts of all moneys received by them, and of those paid out and expended in the prosecution of the work, and shall at least once in every year submit their books and accounts to a general meeting of the stockholders; and whenever it shall be ascertained that the capital stock of the company is not sufficient to complete said road, according to the true intent and meaning of this act, it shall be lawful for the president and managers, at a stated or special meeting convened according to the provisions of this act or their by laws, to increase the number of shares to such an extent as they shall deem sufficient to accomplish the work, and to demand and receive the moneys subscribed for such additional shares, in like manner and under like penalties as are provided by this act in the case of original subscriptions. **Proviso.**

SECTION 20. The president, managers and company shall also keep a just and true account of all and every of the moneys received by their several and respective collectors of tolls, at the several and respective gates or turnpikes on said road, from the beginning to the end thereof, and shall proceed to examine and ascertain the income of the company, and after deducting all contingent costs and charges incurred by the same, shall, out of the net profits, if any there be, declare a dividend to and among the stockholders, and shall, on the first Mondays in January and July of every year, publish the half yearly dividends, made of the clear profits, among the stockholders, and of the time and place, when and where the same will be paid, and shall cause the same to be paid **Accounts.**

**Proviso.**

accordingly: *Provided*, That if it shall be ascertained that the profits of the company will not produce a dividend on the capital stock of six per centum per annum, then it shall be lawful for the president and managers to add to the tolls herein authorized by this act, so as to produce that per centage; and if the tolls shall at any time produce a net income exceeding ten per centum per annum, then the tolls shall be reduced so that the net income shall not exceed that amount.

**Road vested in company.**

SECTION 21. That so soon as the company shall commence operations on said road, the first two miles, from the eastern termination thereof, shall vest in the said company, and the township through which it passes shall be released repairing the same, and the county of Philadelphia from the repair of the bridges; and in like manner the remainder of the road shall be vested in said company from time to time, as they commence operations on each succeeding two miles, and the townships and counties shall be released from repairing the road and bridges thereof.

**Power of road commissioners and supervisors.**

SECTION 22. The road commissioners, or supervisors of the highways of the townships through which the said turnpike road shall pass, shall, in addition to the powers vested in them by the act of assembly, approved April fifth, Anno Domini one thousand eight hundred and forty-two, authorizing subscriptions to turnpike roads on behalf of townships through which said roads may pass, be authorized and empowered to borrow money to pay the instalments on the stock so subscribed, and to issue certificates for the same, bearing an interest not exceeding six per centum per annum, and payable at any time not exceeding ten years, which certificates shall be binding on the said townships.

**Commissioners of Delaware county may subscribe to stock.**

SECTION 23. It may be lawful for the county commissioners of the county of Delaware, in view of the advantages which the said county will derive from the said turnpike road, to subscribe for as many shares of stock of the said company as the said commissioners may respectively deem proper for said county; and that any person residing in the aforesaid county, shall have the right of paying his county taxes, for a period of three years, in certificates of stock of the said turnpike road company, and when the tax in any one year does not amount to one share, or exceeds one or more shares, then to pay in certificates of stock of said company any excess over and above the actual tax for the current year; for which excess he shall have credit on the tax book of said county for the ensuing year.

**Commencement and completion of road.**

SECTION 24. That if the said company shall not proceed to carry on said work within three years from the passage of this act, or shall not within five years thereafter, complete at least five miles of said road, according to the true intent and meaning of this act, then, and in either of those cases, all and singular the rights, liberties, privileges and franchises hereby granted to the company, shall revert to this commonwealth.

**Reservation.**

SECTION 25. That the legislature reserves the right to alter and regulate the rates of toll fixed by this act, and to alter, revoke or annul the same whenever in their opinion it may be injurious to the citizens of the commonwealth; in such manner, however, that no injustice shall be done to the corporators.

WILLIAM F. PACKER,

*Speaker of the House of Representatives.*

WM. WILLIAMSON,

*Speaker of the Senate.*

APPROVED—The twenty-fifth day of March, one thousand eight hundred and forty-eight.

FRS. R. SHUNK.