

thirty-eight cents, to be paid out of the original appropriation, agreeably to the provisions of said section.

WILLIAM F. PACKER,
Speaker of the House of Representatives.

GEORGE DARSIE,
Speaker of the Senate.

APPROVED—The twenty-third day of January, one thousand eight hundred and forty-nine.

WM. F. JOHNSTON.

No. 13.

AN ACT

Regulating turnpike and plank road companies.

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 whenever a special act of the general assembly shall be passed, authorizing the incorporation of a company for the construction of a turnpike road, or for the construction of a plank road, within this commonwealth, the commissioners named in such act, or any five of them, shall have power to open books for receiving subscriptions to the capital stock of such company, at such time or times, and such place or places as they may deem expedient, after having given at least twenty days' previous notice in one or more newspapers published, or having circulation within the county where books of subscription are to be opened; at which times and places two or more of the said commissioners shall attend, and permit and suffer all persons of lawful age, who shall offer to subscribe in such books, in their own names, or in the names of any other person who shall duly authorize the same, for any number of shares of stock; and the said books shall be kept open, respectively, for the purpose aforesaid, at least six hours in every juridical day, for the space of five days, or until the said books shall have the whole number of shares authorized by such special act, therein subscribed; and if, at the expiration of the said five days, the books aforesaid shall not have the said number of shares authorized as aforesaid therein subscribed, the commissioners respectively may adjourn from time to time, and transfer the books from place to place, until the whole number of shares shall be subscribed; of which adjournment and transfer, the commissioners aforesaid shall give such public notice as the occasion may require, and when the whole number of shares subscribed, shall amount to the number authorized as aforesaid, the same shall be closed: *Provided always,* That every person offering to subscribe in such books, in his own or any other name, shall at the time of subscribing, pay to the attending commissioners any sum not less than one dollar, nor more than five dollars, (as shall be fixed and determined by said commissioners, previ-

Powers.

Who may subscribe.

Proviso.

ously to the opening of books) for every share to be subscribed, out of which shall be defrayed such incidental charges and expenses, as may be necessary for taking such subscription, and the remainder shall be paid to the treasurer of the corporation, as soon as the same shall be organized, and the officers chosen as hereinafter mentioned.

SECTION 2. When twenty persons, or more, shall have subscribed ten per centum on the capital stock provided for by such special act of assembly, the said commissioners respectively may, or when the whole number of shares authorized as aforesaid shall be subscribed, they shall certify under their hands and seals the names of the subscribers, and the number of shares subscribed by each, to the governor of this commonwealth, whereupon it shall and may be lawful for the governor, by letters patent under his hand and seal of state, to create and erect the subscribers; and if the subscription be not full at the time, then those who shall afterwards subscribe to the number aforesaid, into one body politic and corporate, in deed and in law, by the name, style and title designated by such special act; and by such name the said subscribers shall have perpetual succession, and all privileges and franchises incident to a corporation, and shall be capable of taking and holding the capital stock, and the increase and profits thereof, and of enlarging the same by new subscription, in such manner and form as they shall think proper, if such enlargement shall be found necessary to fulfil the intent of such special act; and of purchasing, taking and holding to them and their successors and assigns, and of selling, transferring and conveying, in fee simple, or for any less estate, all such lands, tenements and hereditaments and estate, real and personal, as shall be necessary to them in the prosecution of their works; and of suing and being sued, and of doing all and every other matter and thing which a corporation or body politic may lawfully do. Letters patent.
Privileges.

SECTION 3. That the commissioners aforesaid, as soon as conveniently may be after the said letters shall be sealed and obtained, shall give notice in the manner provided for in the first section of this act, of the time and place by them appointed; at which time and place the said subscribers shall proceed to organize such corporation, and shall choose, by a majority of votes of the subscribers by ballot, to be delivered in person, or by proxy duly authorized, one president, five managers and one treasurer, and such other officers as may be necessary to conduct the business of such company, until the first Monday of November next ensuing, and until such other officers shall be chosen; and shall and may make such by-laws, orders and regulations, not inconsistent with the constitution and laws of the United States and of this commonwealth, as shall be necessary for the proper management of the affairs of such company: *Provided always*, That each stockholder shall be entitled to one vote for each share of stock not exceeding ten; and one vote for every five shares exceeding that number: *And provided also*, That no stockholder, whether the original subscriber or assignee, shall be entitled to vote at any election or meeting of said company, unless the whole sum due and payable on the share or shares by him or her held at the time of such election, shall have been fully paid and discharged. Organization.
Officers.
Proviso.

SECTION 4. The stockholders of such company shall meet on the first Monday of November in every year, at such place as shall be fixed by their by-laws, for the purpose of choosing officers as aforesaid for the ensuing year, and at such other times as they shall be summoned 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 a majority of votes, all such Annual election.

by-laws, rules, orders and regulations made as aforesaid, and to do and perform any corporate act.

Certificates of stock. SECTION 5. That the president and directors of such company, first chosen, shall procure certificates or evidences of stock, for all the shares of the said company, and shall deliver one or more certificates or evidences, signed by the president, countersigned by the treasurer, and sealed with the common seal of the corporation, to each person or party entitled to receive the same, according to the number of shares by him, her or them respectively subscribed or held; which certificates or evidences of stock, shall be transferable at the pleasure of the holder, in a suitable book or books, to be kept by the company for that purpose, in person or by attorney duly authorized, in the presence of the president or treasurer, subject, however, to all payments due, or to become due thereon; and the assignee or party to whom the same shall have been so transferred, shall be a member of said corporation, and have and enjoy all the immunities, privileges and franchises, and be subject to all the liabilities, conditions and penalties incident thereto, in the same manner as the original subscriber would have been: *Provided*, That no certificate shall be transferred, so long as the holder thereof is indebted to said company, unless the board of directors shall consent thereto.

Transferable.

Proviso.

Enter upon lands, &c. SECTION 6. It shall be lawful for the said president and managers, their superintendents, surveyors, engineers, artists and chain bearers, to enter in and upon all and every the lands, tenements and enclosures in, through and over which such intended turnpike road or plank road may be thought proper to pass, and for that purpose to examine the ground and quarries of stone and gravel, and other materials that may be necessary in making and constructing such road, and to cut or open such drains through the same, as they shall judge necessary to drain the water from the turnpike road, or plank road, with the same rights and under the same penalties as the supervisors of highways; and the said road shall be constructed between the points named in the special act incorporating such company.

Quorum. SECTION 7. The president and managers of such corporation, three of whom shall, for that purpose, be a quorum, shall keep minutes of all their proceedings, fairly entered in a book to be kept for that purpose, and shall have full power and authority to appoint, agree and contract with such engineers, superintendents, artists, laborers and other persons as they may think necessary to make and construct such road, and collect the tolls hereinafter authorized, and fix their compensation, to ascertain the times, manner and proportions in which the stockholders shall pay the amount of their respective shares in order to carry on their work, to draw orders on the treasurer for all debts contracted by them, which orders shall be signed by the president, or in his absence by a majority of the managers, and attested by their secretary, and to do and transact all other acts, matters or things, as by the by-laws, orders and regulations of such company shall be entrusted to them.

Unpaid instalments, how settled. SECTION 8. If any stockholder, whether original subscriber or assignee, after twenty days' notice as aforesaid, of the time and place appointed for the payment of any instalment or proportion of the capital stock, shall neglect to pay such proportion at the place appointed, for the space of thirty days after the time appointed for the payment thereof, any such stockholder shall, in addition to the instalment so called for, pay at the rate of one per centum per month, for every delay of such payment; and if the same and additional penalty shall become equal to the sum before paid in part on account of such share, the same may be forfeited by and to the said company, and may be sold by them for

such price as may be obtained therefor; or in default of payment of any stockholders of such instalments as aforesaid, for the space of sixty days aforesaid, 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 the recovery of the same, together with the penalties aforesaid.

SECTION 9. It may be lawful for the president and managers of such company, incorporated as aforesaid, by and with their superintendents, engineers, artists, workmen, laborers, 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 or constructed, first giving notice of their intentions to the occupiers thereof, and doing as little damage thereto as possible, and making amends for damages upon a reasonable and equitable agreement by the parties; or if they cannot agree thereupon, a just and equitable assessment to be made upon oath or affirmation by three disinterested freeholders, or any two of them, two of whom shall be mutually chosen by the parties, and said two thus chosen, shall choose a third; 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 of the county wherein the land lies, who shall not be interested therein, and upon the tender of the assessed value, to dig and carry away any timber, stone, sand, earth, or other materials necessary or suitable for making said road: *Provided*, That no part of this act shall authorize the taking of any property by such company, unless the same be previously paid for, or adequate security given to the owners for the payment thereof. Damages, how assessed, &c.

SECTION 10. The president and managers of every such company, incorporated as aforesaid, shall keep fair and just accounts, as well of all moneys received by them, as 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 such company is not sufficient to complete their road, according to the true intent and meaning of this act, it shall and may be lawful for the president and managers, at a stated or special meeting, convened according to the provisions of this act or their own 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 the original subscriptions. Accounts.

SECTION 11. The president and managers of such company shall have power to erect good and sufficient bridges over all the streams of water crossed by their road, whenever the same shall be found necessary; and shall cause a road, if a turnpike, to be laid out not exceeding fifty feet in width, and cause at least eighteen feet of said width to be made an artificial road of wood, stone, gravel, or other proper and convenient materials, such as the nature of the ground may require and will afford, to be constructed in such manner as will admit an even surface, and so nearly level in its progress, that it shall in no place raise or fall more than will form an angle of four degrees from a horizontal line; and, if a plank road, the same shall be opened of any width, not exceeding forty feet, and shall be graded in such manner as may be necessary for either a single or double track, as may be determined upon by the president and managers of the said company, each track being not less than eight feet in width, and so nearly level in its progress, that it shall in no place raise or fall more than will form an angle of three degrees with a horizontal line: *Provided*, That if any part of the Bridges.

Provido.

ground on the route of said road shall be so hard and compact, as to make a good road without any covering of wood, gravel, stone, slate or other hard substance, the said president and managers are hereby authorized to construct such part of said road without any such covering, and shall forever maintain and keep the same in good repair : *Provided*, That in all deep cuts the said road need not be of greater width on the surface than thirty feet: *And provided*. That said bridges shall not be constructed so as to obstruct the navigation of any stream declared a public highway.

Governor to appoint viewers.

SECTION 12. Whenever such company shall have finished five miles or more of road, the president thereof may give notice to the Governor, who shall appoint forthwith three skillful, judicious and disinterested persons to view and examine the same, and report, on oath or affirmation, to him, 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 be in the affirmative, then the governor shall, by license under his hand and the seal of the state, permit and suffer said company to erect and fix such and so many gates upon and across the said road, as will be necessary and sufficient to collect from all persons otherwise than on foot, the same tolls as hereinafter authorized and granted.

License to collect toll.

Toll gatherers.

SECTION 13. When such company is licensed in manner aforesaid, it shall and may be lawful for them to appoint such and so many toll-gatherers as they shall think proper, to collect and receive, of and from all and every person or persons using the said road, the toll and rates hereinafter mentioned ; and to stop any person riding, leading, or driving any horses, cattle, hogs, sheep, coach, coaches, sulkey, chair, chaise, phaeton, cart, wagon, wain, sleigh, sled, or any other carriage of burden or pleasure, from passing through the said gate until they shall respectively have paid the same : that is to say, for every five miles in length of the said road completed and licensed as aforesaid, the following sums of money, and so in proportion for any lesser distance, or for any greater or lesser number of sheep, hogs, or cattle, to wit:—For every score of hogs five cents ; for every score of sheep five cents ; for every score of cattle ten cents ; for every horse and his rider, or led horse, three cents ; for every sulkey, chair or chaise, with one horse and two wheels, six cents ; with two horses nine cents ; for every chariot, coach, phaeton or dearborn, with one horse and four wheels, ten cents ; for every coach, phaeton or chaise, with two horses and four wheels, twelve cents ; for either of the carriages last mentioned, with four horses, twenty cents ; for every other carriage of pleasure, under whatever name it may go, the like sums, according to the number of wheels and horses drawing the same ; for every stage wagon with two horses twelve cents ; for every such wagon with four horses twenty cents ; for every sleigh, three cents for each horse drawing the same ; and for every sled, two cents for each horse drawing the same ; for every cart or wagon, whose wheels shall be less than four inches, four cents for each horse drawing the same ; and for every cart or wagon, whose wheels shall be four inches, and not exceeding seven inches, two cents for every horse drawing the same ; for every cart or wagon, the breadth of whose wheels shall be more than seven inches, one cent for every horse drawing the same ; and if any person or persons shall represent to the 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 said road, with intent to defraud said company of its toll, or any part thereof, such person or persons shall, for every such offence, forfeit and pay to the use of said company the sum of five dollars ; and if any

Frauds, how punished.

toll-gatherer shall 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 plank 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 five dollars for every such offence, to the supervisors of the township in which the forfeiture is incurred, to be expended in repairing township roads, and for the payment of which the said company shall be responsible; and all such penalties and forfeitures shall be recoverable, with costs of suit, before any justice of the peace of the county in which the offence is committed: *Provided*, That no toll shall be demanded from any person or persons passing and repassing from one part of his, her, or their farm to any other part of the same; and all persons with their vehicles or horses, going to or from funerals, or places of public worship, or of military trainings or elections, shall be exempt from the payment of toll, when traveling on such turnpike road.

Proviso.

SECTION 14. If such company shall neglect or refuse to keep their road in good traveling order and repair for the space of thirty days, and information thereof shall be given under oath or affirmation to any justice of the peace of the neighborhood and county, designating particularly where and in what respect said road is defective, such justice shall issue a precept to any constable of the county, requiring him to notify the gate-keeper nearest whose gate the part or parts of the road complained of is situate, that on a certain day and at a certain hour therein mentioned, not less than three nor more than six days thereafter, three freeholders will be chosen at his office to hold an inquest to inquire into the truth of the matters specified in said information, an attested copy of which shall be furnished by said justice to said gate-keeper, at the time of serving said notice.

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

SECTION 15. The three freeholders mentioned in the preceding section shall be chosen as follows:—If the gate-keeper, or any other officer or agent of the company, and the informant, shall attend at the time and place of choosing, they shall commence with the complainant, and nominate alternately to the justice a list of nine freeholders of the neighborhood, from which list the complainant and the officer or agent of the company, shall alternately strike out a name until three names are left, which three shall be the persons chosen to hold said inquest. Should either party be unrepresented at the time of choosing said freeholders, the justice shall act for him or them, and should both parties be absent, the justice shall appoint three disinterested freeholders to form said inquest.

Freeholders, how chosen.

SECTION 16. The inquest thus chosen shall, after having been duly sworn or affirmed, proceed to view the parts of the road complained of, and shall report to the said justice, in writing, under their hands and seals, or the hands and seals of a majority of them, within five days after said view, whether the said road be out of order and repair, contrary to the true intent and meaning of this act, and if so found, the said justice shall adjudge the said company to pay a fine of not less than twenty-five nor more than fifty dollars, at his discretion; one-half thereof for the use of supervisors of the roads in the township in which the portion of the road so found defective is situate: *Provided*, That the said company shall have the right of appealing, within twenty days after judgment, to the court of common pleas of the proper county, from the finding of said inquest, and the judgment of the justice thereon, as in other cases: *And provided further*, That no proceedings shall be commenced or prosecuted under the last three sections of this act, unless the informant, or some other person shall have given twenty days' previous

Inquest. Duties, &c.

notice, in writing to the gate keeper nearest to whose gate the part or parts of the road complained of is situate, specifying particularly the part or parts of the road alleged to be out of repair, and the nature of the defect alleged, and notifying him that unless the proper repairs be made in thirty days after the service of the notice, proceedings will be commenced before a justice and three freeholders.

SECTION 17. Should the said company not appeal from the finding of the said inquest, and the judgment of the justice thereon, and continue to neglect and refuse to repair the part or parts of the road thus found out of repair, new proceedings may be commenced and prosecuted against said company for such neglect or refusal; and should said parts of said road continue out of repair until the holding of the next general court of quarter sessions for the proper county, it shall be the duty of the said justice to certify and send copies of the finding of the said inquests, and the judgments thereon, to the judges of the said court; and the said judges shall thereupon cause process to issue, and bring in the body or bodies of the person or persons entrusted by the company with the care and superintendence of such part of the said road as shall be so found defective, and shall proceed thereon as in cases of supervisors of highways for neglect of their duty; and if the persons entrusted by the said company as aforesaid, shall be convicted of the offence by the said inquisition charged, the said court shall give judgment according to the nature and aggravation of the neglect, as according to right and justice would be proper in the case of supervisors of the highways neglecting their duties; and the fines and penalties so to be imposed, shall be recovered in the said court, and shall be paid to the supervisors of the highways of the township wherein the offence was committed, to be applied to repairing the public roads within such township; and like proceedings may be instituted from time to time, until the said road is put into proper repair.

SECTION 18. In all cases of complaint made, or suit instituted, under the provisions of this act, against any corporation, if the complainant shall fail to sustain his complaint, or the plaintiff to sustain his suit, as the case may be, the corporation shall be entitled to recover costs as in other cases, from the complainant or plaintiff, as the case may be; and in all cases when any corporation which may have been chartered under and subject to the provisions of this act, shall be adjudged to pay any penalty, or the costs of any proceedings authorized by this act, the party, plaintiff or complainant, shall have all the remedies for recovering of the same, with costs, against the said corporation, that are provided for the recovery of debts or judgments of like amount in other cases; and if the said corporation shall fail to make payment in any case within twenty days after final adjudication, the court of common pleas of the proper county, on application of the plaintiff, or some other person on his behalf, shall direct sequestration, and appoint a sequestrator, who shall have like powers, and be subject to all the regulations and requirements provided in the seventy-third and seventy-fourth sections of an act of the general assembly of this commonwealth, entitled "An Act relating to executions," passed June 16, 1836: *Provided*, That where the judgment is final before the justice, or is not appealed from as provided in this act, the complainant, before proceeding to sequestration, shall file in the court of common pleas of the proper county, a transcript of the proceedings and judgment before the justice, which transcript shall be entered of record in the said court, as under existing laws for the filing and entering of transcripts of judgments in other cases; and from such filing and entering, shall have the effect of a judgment originally entered in the said court.

New proceedings may be commenced.

When corporation entitled to costs.

Proviso.

SECTION 19. If any person or persons whosoever, owning, riding in, or driving any sulkey, chair, chaise, phaeton, cart, wagon, sleigh, sled, or other carriage of burden or pleasure, riding or leading any horse, mule or gelding, or driving any hogs, sheep, or other cattle, shall therewith pass through any private gates or bars, or along or over any private passage way or other ground near to, or adjoining any 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 Frauds upon the company, how punished. with such intent, take off, or cause to be taken off, any horse, mare or gelding, or other cattle from any sulkey, chair, chaise, 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 and every, or any of the ways or manners offending, shall, for every such offence, respectfully forfeit and pay to the president and managers of such turnpike road, or plank road, as the case may be, any sum not exceeding ten 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.

SECTION 20. That the legislature shall have power to alter the rate of toll fixed by this act; and the managers of any such company may lessen the same whenever they shall believe it necessary for the well Rates of toll may be altered by the legislature. being of the company or the community at large.

SECTION 21. That the legislature hereby reserve the right to alter, amend, or repeal the charter and privileges granted by special act, as aforesaid, whenever in their opinion the same may be injurious to the citizens of this Commonwealth; in such manner, however, that no injustice shall be done to the corporators. Reservation.

WILLIAM F. PACKER,
Speaker of the House of Representatives.

GEORGE DARSIE,
Speaker of the Senate.

APPROVED—The twenty-sixth day of January, one thousand eight hundred and forty-nine.

WM. F. JOHNSTON.