

or water-work ; it imposed a penalty on any person, who should erect any dam, &c. to impede the navigation, or who should destroy the works erected by the Commissioners ; it declared that offences committed in the rivers against the act, should be tried in the adjoining county ; it tolerated, all previously erected mill-dams in the river Delaware ; and it directed the Commissioners to keep a record of their proceedings, and report the same annually to the Legislature.

By chap. 627, post, the river Susquehanna, as far as Wright's ferry ; the river Juniata, up to Bedford and Frankstown ; the following streams, to wit, Bald-Eagle, as far up as Spring-creek ; Penn's-creek, twenty miles up ; Swatara, as far up as Kettle's mill-dam ; Conestogoe, as far up as Matthias Slough's mill-dam ; Conedogwinet, as far up as the Cove fording, which leads to Forty Shilling Gap ; Machanoy and Kiskiminetas, are all declared to be highways ; Commissioners are appointed to clear the same, and various regulations are established, for preserving the navigation and fisheries thereof. So much of the act in the text, as relates to the obstructions in the river Susquehanna, above Wright's ferry, is also repealed and supplied. But see chapter 1144. [New Commissioners appointed, &c.]

For the act providing for clearing obstructions in the river Susquehanna, down to the Maryland line and joining the river Delaware and Chesapeake bay by a canal, see chap. 2175.

By an act the 25th September, 1786, (chap. 1234,) provision is made for distributing and annexing the State jurisdiction upon the river Delaware, and certain islands therein.

For general laws for improving the navigation of rivers and streams, see chap. 1558, 1634, 1683, and the title *Roads and Rivers*, in the index to this edition. (Note to former edition.)

All such parts of this act as relates to the rivers *Delaware* and *Lehigh*, are repealed by an act passed March 9th, 1771, (post. chap. 638.)

March 30th, 1784, (chap. 1081,) a

new act was passed to regulate the fisheries in the river Delaware and Lehigh, and for the preservation of the fish in the said rivers.

By a supplement passed April 7th, 1786, the second section was rescinded, so far as it relates to the Delaware below the head of the falls of Trenton, and the sixth section was entirely repealed, and some further regulations with respect to the fisheries were introduced, (chap. 1211.)

February 8th, 1804, (chap. 2414,) "an act to regulate the fisheries in the river Delaware and its branches, and for other purposes," was passed, which repeals all former laws and parts of laws on the same subject, thereby altered ; but the river Schuylkill is excepted from the regulations thereof—and the operation of the act is suspended, until a similar law should be passed in the state of *New Jersey*.

Such act was passed in the state of New Jersey, with certain amendments and additions, which were adopted by the state of Pennsylvania by an act passed February 23d, 1809, which repeals such parts of the act of 1804, as is thereby altered, and all other parts of the said act of 1804 are declared to be in full force and effect.

(To this act is annexed the act of New Jersey.)

The state of New Jersey passed a supplement to their act, in November, 1809, which was ratified and confirmed by Pennsylvania, by act of March 19th, 1810, to which latter act, the supplement of New Jersey is also annexed.

With respect to the Susquehanna, April 8th, 1799, (chap. 2052), an act was passed to prevent the erection of fish dams and baskets, in the rivers Schuylkill, Susquehanna and Juniata, and the branches thereof. And, another act was passed March 16th, 1807, (chap. 2773,) "to regulate the fisheries in the river Susquehanna and its branches.

See title *Conestogoe*, in the general index to this edition—and the general act, authorizing mill dams on navigable streams, passed March 23d, 1803, (chap. 2342.)

## CHAPTER CCCCLXV.

An ACT for making the river Schuylkill navigable, and for the preservation of the fish in the said river.

WHEREAS the river Schuylkill is navigable for rafts, boats, and other small craft, in times of high freshes only, occasioned by

1761. the obstruction of rocks, and bars of sand and gravel, in divers parts of the same: And whereas the improving the navigation of the said river, so as to make it passable at all times, will be very advantageous to the poor, greatly conducive to the promotion of industry, and beneficial to the inhabitants residing on or near said river, by enabling them to bring the produce of the country to the market of the city of Philadelphia, and thereby encrease the trade and commerce of the province: And whereas divers of the inhabitants of this province, desirous to promote the welfare of the public, have subscribed large sums of money for the purposes aforesaid, and, by petition to the Assembly, have requested that commissioners may be appointed by law to take, receive and collect the said subscriptions, and such others as shall hereafter be given or subscribed, and to apply and appropriate the same for and towards the clearing, scouring and rendering the said river navigable, as aforesaid: *Be it therefore enacted*, That Joseph Fox, John Hughes, Samuel Rhoads, John Potts, William Palmer, David Davis, Mordecai Moore, Henry Pawling, James Coultas, Jonathan Coates, Joseph Millard, William Bird, Francis Parvin, Benjamin Lightfoot, and Isaac Levan, or a majority of them, shall be, and are hereby, constituted and appointed commissioners for clearing, scouring and making the said river Schuylkill navigable; who, or a majority of them, as aforesaid, shall have full power and authority, by virtue hereof, to take, collect, recover and receive, of and from any person or persons whatsoever, any sum or sums of money, which are or shall hereafter be given, granted or subscribed, for and towards making the said river Schuylkill navigable; and the monies so collected, recovered and received by them, to lay out, appropriate and employ, for and towards making the said river navigable, and passable for boats, flats, rafts, canoes, and other small vessels, from the ridge of mountains, commonly called the Blue Mountains, to the river Delaware.

Commissioners appointed for clearing the river, &c. see chap. 650, sect. 3.

Commissioners to have full power to enlarge, straighten, or deepen the said river, &c. v. 4, &c.

II. *And be it further enacted*, That the said commissioners, or the major part of them, shall have full power and authority, by themselves, their agents, servants, hirelings and workmen, to clear, scour, open, enlarge, straiten or deepen the said river, in any part, place or places thereof, which shall appear to them most convenient for opening, making anew, or improving the channel, and also to cut, blow up, remove, or take away all trees, rocks, beds of gravel, sand or mud, wears, fishing-dams, baskets, pounds, stones, or any other impediment or obstruction whatsoever, which may or can in any manner hinder, impede or obstruct the navigation of the said river; and to form, make, erect, and set up in the said river any dams, pennis for water-locks, or any other works whatsoever, which they shall think most fit and convenient to answer the purpose aforesaid, and to alter, repair or amend the same, as often as it shall be necessary or convenient; and also to appoint, set out and make towing-paths, or ways for towing, hauling or drawing of boats, vessels, or other small craft, and rafts of any kind whatsoever, in, upon or through the said river; which said paths shall be free and open to all persons whatsoever, having occasion to use the same; and from time to time, and at all times hereafter, to do, execute and perform all and every other matter and thing in the said river, necessary or

convenient for making, maintaining, supporting and continuing the navigation thereof. 1751.

III. *And be it enacted*, That if any person or persons whatsoever, from and after the publication of this act, shall erect, build, set up, repair or maintain, or shall be aiding, assisting or abetting, in erecting, building, setting up, repairing or maintaining any wear, rack, basket, fishing-dam, pound, or other device or obstruction whatsoever, within the said river, or that shall fix or fasten any net or nets across the same, or any part thereof, whereby the fish may be obstructed from going up the said river, or that shall take, destroy or spoil any spawn, fry or brood of fish, or any kind of fish whatsoever, in any such wear, rack, dam, basket, pound or other device aforesaid, every such person so offending, being thereof legally convicted, by the oath or affirmation of one or more credible witnesses, or by his own confession, shall forfeit and pay the sum of twenty pounds, lawful money of this government, for every such offence, or suffer six months imprisonment, without bail or main-prize: one moiety of which forfeiture shall be paid to the informer or prosecutor, and the other moiety to the Overseers of the poor of the township where such offender shall reside, for the use of the poor of the said township.

Penalty on setting up or repairing wears, &c.

IV. And for the more speedy removal of such wears, racks, baskets, fishing-dams, pounds, and other devices and obstructions aforesaid, as are already or hereafter shall be made in any part of the said river, *Be it enacted*, That the Justices of the County Court of Quarter Sessions of the several counties within this province, bounded on and adjoining to any part of the said river, at their next Court of Quarter Sessions after the publication of this act, and as often after as there shall be occasion, and that any of the said Justices of the Peace out of Sessions, shall, and they are hereby enjoined and required to issue forth their warrants to the Overseers of the highways of each and every township next adjacent to the wear, rack, fishing-dam, basket, pound, or other device or obstruction aforesaid, so erected, enjoining and requiring them, the said Overseers respectively, forthwith to remove, or cause to be removed, every such wear, rack, basket, fishing-dam, pound, or other device or obstruction aforesaid; and for that purpose to summon the inhabitants of their respective townships, giving them three days notice, to repair to, throw down, remove and destroy such wear, rack, basket, fishing-dam, pound, or other device or obstruction aforesaid, so erected, built or set up, and to make return of such their proceedings to the said Justices, at their next Court of Quarter Sessions, by whom such warrants shall be respectively issued. And if any such Overseer or Overseers of the highways, to whom such warrant shall be directed, shall refuse or neglect to discharge and perform the duty thereby enjoined and required of him or them, he or they so offending, and being thereof legally convicted by a jury of the county, or by his or their own confession before the said Justices, in their said Court of Quarter Sessions, shall, for every such offence, forfeit and pay to the Overseers of the poor of the township, where such offender or offenders shall reside, the sum of ten pounds, for the use of the poor of the said township. And if any inhabitant so

Justices of the Quarter Sessions to issue their warrants to the Overseers of highways for removing wears, &c.

1761. summoned shall refuse or neglect to attend in person or to send another able person in his room, to assist in throwing down, removing and destroying such wear, rack, fishing-dam, basket, pound, or other device or obstruction aforesaid, so erected, built or set up, in such manner as the said Overseer or Overseers shall order and direct, he shall forfeit and pay the sum of ten shillings, for every such offence, to the Overseers of the poor of the township, whose inhabitants are so summoned, for the use of the said poor, to be recovered and levied as debts under forty shillings are by law directed to be recovered and levied.

Penalty on persons obstructing the removing of wears, &c.

V. And to prevent any delay that may happen, through the default of any of the said Justices, Overseers of the highways, or persons so summoned, *Be it enacted*, That it shall and may be lawful to and for any person or persons whatsoever to break, throw down, remove and destroy all or any such wear or wears, fishing-dams, racks, baskets, pounds, or other device or obstruction whatsoever, built, erected, set up, or to be built, erected or set up, within the aforesaid river ; and that every person or persons, who shall assault, hinder or obstruct any person in pulling down, breaking, removing or destroying any of the aforesaid devices or obstructions, in any part of the river aforesaid, and being thereof legally convicted, before any one of the said Justices of the said courts, shall forfeit and pay, for every such offence, five pounds, lawful money as aforesaid ; one moiety thereof to the use of the poor as aforesaid, and the other moiety to the person or persons assaulted or obstructed in removing or destroying any of the aforesaid devices or obstructions, to be recovered by a warrant from any of the said Justices, as debts of five pounds, or under, are recoverable by the laws of this province.

Constable to inspect, and give information of offences against this act, &c.

VI. And for the more effectual detecting and punishing offenders against this act, *Be it enacted*, That the constable of each respective township, which shall be bounded by or adjoined to any part of the said river, shall, and he is hereby enjoined and required, under the penalty of five pounds, to be recovered and applied in manner last aforesaid, carefully and diligently to inspect and view, once at least in every fourteen days, from the first day of August to the first day of December, in every year, such parts of the said river as shall be adjoining to his respective township ; and having any knowledge of any offences against this act, he shall forthwith give information thereof to some Justice of the Peace, who shall immediately issue his warrant to the Overseers of the highways aforesaid, for the purposes aforesaid ; and the said constable shall also present, on oath or affirmation, every such offence to the Justices of the Court of Quarter Sessions of their respective counties, together with the name and names of such offender or offenders, that he or they may be tried according to the directions of this act ; which oath or affirmation the said Justices are hereby required duly and carefully to administer.

VII. And whereas part of the said river Schuylkill divides the counties of Philadelphia and Chester, some doubts have arisen in which of the said counties the offences committed within the said river shall be tried ; for removing of which doubts, *Be it enacted*,

That it shall and may be lawful for the person or persons informing, prosecuting or complaining of any of the aforesaid offences, committed within the said river, to lay the same to be committed within the said river in the county of Philadelphia or Chester, and the same shall be heard, tried and determined in either of the said counties, joining on that part of the river where the offence is committed; at his election.

1761.

Manner of prosecuting offenders.

VIII. *Provided always nevertheless,* That nothing herein contained shall be held, deemed, taken or construed, to prevent, prohibit or obstruct the said commissioners from making, erecting, or setting up any dams, pennis for water-locks, or other works or devices in the said river, which they shall think necessary to aid, assist or improve the navigation of the same, or by any means whatsoever to lessen, diminish or destroy the powers and authorities herein before given and invested in them, or to compel or oblige, authorize or empower, any Justice or Justices, either in or out of their sessions as aforesaid, or any Overseer or Overseers of the highways, or any other person whatsoever, to pull down, destroy, or amove such parts of the said dams, and other devices aforesaid, as shall be deemed and adjudged by the said commissioners necessary and convenient to promote or improve the navigation aforesaid: but all and every such part of the said dams, and other devices aforesaid, the said Overseers, and all other persons whatsoever, are hereby enjoined and required to suffer the same to remain unmoved, any thing herein before to the contrary in any wise notwithstanding.

Dams, &c. erected by the Commissioners for improving the navigation, not to be moved, &c.

IX. *And be it enacted,* That the said commissioners shall, once in every year, make report of their transactions, in clearing, scouring and rendering navigable the said river, to the Assembly of this province for the time being, and shall lay before them a faithful and just account of all and every sum and sums of money by them had and received for the clearing the said river, and in what manner the same shall be expended and laid out, that the same may be adjusted, settled and allowed.

Commissioners to make report yearly to the Assembly.

X. *And be it enacted,* That an act passed in the third year of the reign of King George the second, entitled *An Act to prevent the erecting wears, dams, &c. within the river Schuylkill,*\* and the act passed in the eighth year of the same reign, entitled *An Act the more effectually to prevent the erecting of wears, dams, &c. within the river Schuylkill,*† and all and every article, clause and thing, in the said acts contained, shall be, and is hereby declared to be, repealed, null and void, to all intents and purposes whatsoever.

Former acts relative to wears, &c. repealed. \* Chap. 318.

† Chap. 315.

Passed 14th March, 1761.—Recorded A. vol. IV. page 224. (c)

(c) See the note to the preceding act, chap. 463. A supplement was passed to the act in the text, February 26th, 1773, (chap. 680,) appointing new commissioners, and prescribing certain regulations respecting Bull's mill dam, at Barbadoes Island, (Norristown.)

A further supplement was passed March 24th, 1781, (chap. 919,) and other commissioners appointed, and new regulations prescribed respecting

the fisheries. And see the act to regulate the fishery in the river Schuylkill, passed March 9th, 1771, (chap. 621,) revised, and continued in force, and extended as low down as Province Island, March 14th, 1777. (chap. 736.)

By a supplement passed March 15th, 1784, (chap. 1067,) the act in the text, and the two former supplements, so far as not altered by this act (1067,) are declared to be in force. By this latter

1761.

act other commissioners are appointed, and the river divided into districts, for the carrying into effect the former acts. An act to regulate the fishery in the river Schuylkill, was passed March 23th, 1785, (chap. 1135,) and a supplement to this last act, March 9th, 1786, (chap. 1200,) and a further supplement, April 11th, 1793, (chap. 1681,) and, April 8th, 1799, an act passed to prevent the erec-

tion of fish dams and baskets in the river Schuylkill, (chap. 2052.)

See the act for regulating the city of Philadelphia, and preserving the navigation of the river Schuylkill, passed March 25th, 1805, (chap. 2569.)

For bridges, and other matters relating to the river *Schuylkill*, and its branches, see title *Schuylkill*, in the index to this edition.

## CHAPTER CCCCLXXII.

Amended by  
act of April  
15th, 1782,  
(post. chap.  
969.)

An ACT to enable the owners and possessors of Schuylkill-point meadow land, in the county of Philadelphia, to keep the banks, dams, sluices and flood-gates in repair, and to raise a fund, to defray the expense thereof.

Passed 26th September, 1761.—Private Act.—Recorded A. vol. IV. page 243.

[The subject of this act is fully explained in the title.]