

1771. within this province, opposite to or joining on that part of the said river, in which such offence shall be committed.

Mill-dams erected in the river Delaware, before the passing this act, not to be thrown down or impaired, &c.

VII. *Provided always, and be it further enacted*, That nothing herein contained shall give any power or authority to the Commissioners herein appointed, or any of them, to remove, throw down, lower, impair, or in any matter to alter a mill-dam erected by Adam Hoops, Esq. in the said river Delaware, between his plantation and an island in the said river, nearly opposite to Trenton; or any mill-dam erected by any other person or persons in the said river, before the passing of this act, nor to obstruct, or in any manner to hinder the said Adam Hoops, or such other person or persons, his or their heirs and assigns, from maintaining, raising or repairing the said dams respectively, or from taking water out of the said river for the use of the said mills and water-works, erected as aforesaid, and none other.

Commissioners to keep minutes of their proceedings, and make report yearly to the Assembly.

VIII. *And be it further enacted*, That the said Commissioners shall keep minutes of their proceedings, in pursuance of the power hereby given to them, fairly entered in a book, and shall, once in every year, make report of their transactions in improving the navigation in the said rivers, to the Assembly of this province for the time being, and shall lay before them a just and faithful account of all sums of money by them received for the aforesaid purposes, and in what manner they shall be expended, that the same may be adjusted and settled.

Passed 9th March, 1771.—Recorded A. vol. V page 401.

## CHAPTER DCXXVII.

*An ACT declaring the river Susquehanna, and other streams therein mentioned, public highways, for improving the navigation of the said river and streams, and preserving the fish in the same. (p).*

WHEREAS it is of importance to the trade and commerce of this province, that such rivers and other streams, as are or may be made navigable, be at all times preserved and kept from all manner of obstructions: And whereas the improving the navigation of the rivers Susquehanna, Juniata, and the streams of Conestogoe, Bald Eagle, Machanoy, Penn's creek, and Swatara, Connedoguinnet and Kiskiminetas, will greatly conduce to the benefit of the inhabitants residing on and near the said rivers, and the province in general, by increasing the trade of the said province: And whereas it has been represented to the Assembly, that many of the inhabitants residing on or near the said rivers and streams, being desirous to promote the public welfare, are willing to contribute considerable sums of money for the purposes aforesaid, if Commissioners are ap-

(p) New commissioners to be appointed to execute the act in the text, chap. 1144.

For the laws respecting the Susquehanna, &c. see the proper title in the

index to this edition, and chap. 469, ante. p. 231.

For the act directing the sale of certain islands in the Susquehanna, see chap. 1649. (*Note to former edition.*)

pointed by law to take, collect and receive the contributions, and to apply and appropriate the same for and towards clearing and making the said rivers and streams more navigable : Therefore, *Be it enacted*, That the said river Susquehanna, as far down as Wright's ferry ;\* the river Juniata, up to Bedford and Frank's-town ; and the several streams known by the names of Bald Eagle, as far up as Spring creek ; Penn's creek, twenty miles up, on the several courses thereof ; Swatara, as far up as Peter Kettle's mill-dam ; Conestogoe, as far up as Matthias Slough's mill-dam ; Connedoguinet, as far up as the cove fording, which leads to the Forty Shilling Gap ; Machanoy and Kiskiminetas, shall be, and they are hereby declared to be, public streams and highways, for the purposes of navigation up and down the same ; and that all obstructions and impediments to the passage of his Majesty's liege subjects up and down the same, erected, or hereafter to be erected, shall be deemed, held and adjudged common nuisances.

II. *And be it further enacted*, That James Wright, George Ross, Thomas Minshall, John Louden, Alexander Lowrey, William M'Clay, Samuel Hunter, the younger, William Patterson, Robert Callender, Charles Steward, Reuben Haines, Thomas Holt, and William Richardson, gentlemen, be, and they are hereby constituted and appointed Commissioners for clearing and making the said rivers Susquehanna, Juniata, Bald-Eagle, Penn's creek, Conestogoe, Connedoguinet, Machanoy, Kiskiminetas and Swatara, navigable ; and that each and every of the said Commissioners shall have full power and authority to take, collect, recover and receive, of and from any person and persons whatsoever, any sum or sums of money which shall be hereafter given, granted or subscribed, for and towards making any of the said respective rivers and streams navigable, and the monies so collected, recovered and received, to lay out, appropriate and employ, for and towards making such of the said rivers and streams navigable, as shall be mentioned or directed by the person or persons giving and granting the same.

III. *And be it further enacted*, That the said Commissioners, or the major part of them, or of the survivors of them, shall have full power and authority, and they are hereby enjoined and required, by themselves, their agents, servants, hirelings and workmen, to remove all obstructions whatsoever now erected, or hereafter to be erected in, and also to scour, enlarge, straiten or deepen the said respective rivers and streams, so as aforesaid committed to their respective care, in any part, place or places thereof, which shall appear to them most convenient for opening, making anew, or improving the channels, and also to cut, blow up, remove or take away all trees, rocks, or beds of gravel, sand or mud, wears, dams, baskets, pounds, stones, or any other impediment or obstruction whatsoever, and to form, make, erect and set up any dams, pens for water-locks, or any other works whatsoever, which they shall think 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 tow-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 rivers and streams ; which said paths shall be free and open

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\* [From the Maryland line upwards, &c. by act of March 31st. 1785 post. chap. 1144.]

Names and bounds of the rivers, &c. declared to be public high-ways, &c.

Commissioners appointed for clearing and making the same navigable, &c.

Commissioners empowered to remove obstructions, and to enlarge, straiten or deepen the said rivers, &c.

1771. 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 or thing in the said rivers and streams, necessary or convenient for making, maintaining, supporting and continuing the navigation in the same.

Penalty on erecting or repairing wears, &c. within the said rivers, &c.

IV. *And be further 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, dam, pound, or other device or obstruction whatsoever, within the said rivers or streams, or any of them; 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 rivers or streams, 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 convicted, by the oath or affirmation of one or more credible witnesses, or by his own confession before any Justice of the Peace of the county where such offence shall be committed (which Justice is hereby authorized and empowered to hear, try and determine the same) shall forfeit and pay the sum of five pounds, lawful money of this government, for every such offence, or suffer three months imprisonment, without bail or mainprize; one moiety of which forfeiture shall be paid to the informer or prosecutor, and the other moiety to the Commissioners for the respective rivers or streams, in which such offence shall be committed, to be applied towards clearing the said respective rivers and streams.

Justices of the Quarter Sessions to issue their warrant to the Supervisors of high-ways for removing wears, &c.

V. *And for the more speedy removal of such wears, racks, baskets, dams, pounds, and other devices and obstructions aforesaid, as are already, or hereafter shall be, made in any part of the said rivers and streams, 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 and streams, 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 their warrants to the Supervisors of the highways of each and every township next adjacent to the wear, rack, dam, basket, pound, or other device or obstruction aforesaid, so erected, enjoining and requiring them, the said Supervisors respectively, forthwith to remove, or cause to be removed, every such wear, rack, basket, 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, 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 Supervisor or Supervisors 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

Penalty on Supervisors neglect or refusal, &c.

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 Commissioners respectively of the rivers or streams, in which any such device or obstruction shall be erected, the sum of ten pounds, to be applied towards clearing said rivers and streams respectively. And if any inhabitant, so 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, dam, basket, pound, or other device or obstruction aforesaid, so erected, built or set up, in such manner as the said Supervisor or Supervisors shall order and direct, he shall forfeit and pay the sum of ten shillings for every such offence, to the said Commissioners respectively, to be applied towards clearing the said rivers and streams respectively, to be recovered and levied as debts under forty shillings are by law directed to be recovered and levied.

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VI. And to prevent any delay that may happen through the default of any of the said Justices, Supervisors 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, dams, racks, baskets, pounds, or other device or obstruction whatsoever, built, erected or set up, or to be built, erected or set up, within the aforesaid rivers and streams (except such devices as shall be erected, built and set up by the Commissioners aforesaid) 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 rivers or streams aforesaid, or any of them, and being thereof legally convicted before any one of the said Justices of the said Courts, shall forfeit and pay, for every such offence to the said respective Commissioners, five pounds lawful money, as aforesaid, one moiety thereof for and towards clearing the respective rivers and streams 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.

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

VII. 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 adjoin to any part of the said rivers and streams, shall, and he is hereby enjoined and required, under the penalty of five pounds, to be recovered and applied in manner last aforesaid, at some time within two weeks before each County Court, carefully and diligently to inspect and view such parts of the said rivers and streams, as shall be adjoining to his respective township, and having any knowledge of any offences against this act, he shall forthwith give information to some Justice of the Peace, who shall immediately issue his warrant to the Supervisors 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

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

1771. 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.

Manner of prosecuting offenders,

VIII. And whereas some doubts may arise, in which of the said counties the offences committed within the said rivers against this act ought to be tried: For removing whereof, *Be it enacted*, That all and every such offence and offences, which shall be committed within the said rivers, or streams or either of them, shall be laid to be committed in any or either of the said counties joining on that part of the said rivers, where such offence shall be committed.

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

IX. *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, pens for water-locks, or other works or devices, in the said rivers or streams, 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 Supervisor or Supervisors of the highways, or any other person whatsoever, to pull down, destroy or amove such dams and other devices, as the said Commissioners shall erect or set up in pursuance of this act; but all and every such dams and other devices aforesaid, the said Supervisors, 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.

X. *Provided always*, That no dam, water-lock, or other device, so made, constructed or erected by the said commissioners, shall at any time or times be appropriated to the private use or benefit of any person or persons whatsoever.

Waters not to be drawn from their natural channels, &c.

XI. *And be it further enacted*, That no person or persons whatsoever shall presume to divert, lead or draw out, at any time or times, by any race or other device whatsoever, any water, or any part of the said rivers or streams, or any of them, from their natural course or channel, for any use or purpose whatsoever.

XII. *Provided also*, That nothing in this act contained shall be deemed or construed to enable the said commissioners to clear the said river Susquehanna of and from the natural obstructions in the same, to the southward of Wright's ferry.

Commissioners to make report yearly to the assembly.

XIII. *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 rivers and streams, 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 rivers and streams, and in what manner the same shall be expended and laid out, that the same may be adjusted, settled and allowed.

Part of a former law repealed.

XIV. *And be it enacted*, That so much of the act of Assembly, passed in the first year of his present Majesty's reign, entitled *An act for the preservation of the fish in the rivers Delaware, Susque-*

*hanna and Lehigh, commonly called the Western Branch of Delaware, 1771.*  
 as relates to the obstructions in the river Susquehanna, above  
 Wright's ferry, shall be, and is hereby, repealed and made void.

Ante. chap.  
463.

Passed 9th March, 1771.—Recorded A. vol. V. page 412.

## CHAPTER DCXXVIII.

*An ACT for vacating a part of a road in the township of Passyunk, and for confirming a new road, laid out and made instead thereof.*

**WHEREAS**, in pursuance of an order of the County Court of Quarter Sessions for the county of Philadelphia, a public road was laid out in the township of Passyunk, from the end of Joseph Sims's lane to the river Schuylkill: And whereas a part of the said road, running on the side of Sepicken creek, down the several courses thereof, from the place of beginning of the road herein after mentioned to the river Schuylkill, and also a private road leading from the same, over the dam across said creek, are found not only injurious to the estate of Henry Elwes, through whose ground the same are laid out, but inconvenient to the public: And whereas the said Henry Elwes, desirous to accommodate the public, hath, by his deed, duly executed by his lawful agents and attornies, conveyed to certain persons, in trust, and for the use of the public, a certain road and piece of ground, containing in breadth fifty-two feet, and extending from the fast land near the side of Sepicken creek; running thence south seventy degrees west fifty-five perches, or thereabout, to a small creek; thence south thirty-three degrees west, to the low water mark of the river Schuylkill, opposite to the wharf lately erected on the Province Island; and therefore it is but reasonable and just that the part of the said road, so laid out by order of the Quarter Sessions, should be vacated, and restored to the said Henry Elwes, and that the said road, so as aforesaid granted for the public use, should be confirmed to them: *Be it therefore enacted*, That so much of the said road, so as aforesaid laid out by order of the said court, as extends on the said several courses and distances along the side of Sepicken creek, and the private road aforesaid, shall be, and the same is hereby, declared to be made null and void; and that instead thereof the said road, so as aforesaid granted by the said Henry Elwes, on the several courses and distances herein before described, shall be for ever hereafter a public road, of the width of fifty-two feet, and maintained and supported as public roads are by law directed to be maintained and supported.

Part of the  
road laid  
out by order  
of Court vacated.

New road confirmed.

**II.** And whereas, in pursuance of the said order of the Quarter Sessions, a private road was also laid out, for the convenience of divers of the inhabitants in the said township of Passyunk, between the lands of Daniel Roberdeau and the said Henry Elwes, into the said road so as aforesaid vacated, and it is necessary that the said private road should be continued, until it shall intersect the said road hereby confirmed: *Be it therefore enacted*, That the said private road shall be continued on the same course on which it was

Private road continued.