

CHAPTER DXXV.

AN ACT TO ENABLE THE OWNERS AND POSSESSORS OF A CERTAIN PIECE OF MARSH OR MEADOW GROUND HEREINAFTER DESCRIBED, SITUATE IN KINGSESSING, IN THE COUNTY OF PHILADELPHIA, TO EMBANK AND DRAIN THE SAME, TO MAKE AND KEEP THE OUTSIDE BANKS AND DAMS IN GOOD REPAIR FOREVER, AND TO RAISE A FUND TO DEFRAY THE YEARLY EXPENSES ARISING THEREON.

Whereas there is a certain piece or parcel of undrained marsh or meadow ground situate in the township of Kingsessing, in the county of Philadelphia, comprehended within the bounds and limits following: That is to say, beginning at the shore or fast land of John Hunt, at the north end of a certain dam now in use over Kingsessing creek, commonly called or known by the name of Boon's dam, thence extending along the said dam to the south end thereof; thence by the north side of the road now used to Knowles's and Blakley's island to a post by the side of a piece of fast land belonging to the said Knowles, thence round by the side of the said fast land to the road aforesaid at the bank or passage leading on to the island aforesaid, thence extending along the said bank or passage one hundred and two perches to a corner near a mulberry tree; thence south forty-three degrees east thirty-three perches to the side of a certain creek called Three creek, dividing the island aforesaid from Boon's island; thence crossing the said creek where a dam is intended hereafter to be made to the north side thereof; thence down the said creek to Kingsessing creek aforesaid, sometimes called Mingo creek; thence up the said Kingsessing or Mingo creek about sixty perches to a certain place where a dam is intended hereafter to be erected; thence crossing the said [creek to] John Hunt's bank, three perches westerly from a certain creek dividing the land of the said John Hunt from the land of William Jones; thence westerly along the said John Hunt's bank as it now is to the shore or fast land; thence along the side of the fast land to the place of beginning, named and hence-

forth to be called The Eastern Division of Boon's Island, all which piece or parcel of land is subject to the overflowing of the tide, the several owners whereof propose by dams, banks, sluices and floodgates near the outside thereof the whole completely to embank and drain; but forasmuch as such improvements are, from their own nature and situation, subject to many casualties and without constant care and expense not only liable to decay, but the defect of one part is often destructive and ruinous to several, and amongst a number of owners such frequent disputes arise concerning repairs and the means of defraying the necessary expense thereof that sometimes from little neglects great damages ensue and the heavy charge of several owners may be rendered ineffectual through the default of a few. To prevent which damages and inconveniences and for the security and encouragement of the said owners and undertakers of this improvement [they pray]:

[Section I.] That it may be enacted by the Honorable John Penn, Esquire, Lieutenant-Governor under the Honorable Thomas Penn and Richard Penn, Esquires, true and absolute Proprietaries of the Province of Pennsylvania and counties of Newcastle, Kent and Sussex upon Delaware, by and with the advice and consent of the representatives of the freemen of the said Province in General Assembly met, and by the authority of the same, That all and every the owner or owners, possessor or possessors of the marsh or meadow land lying within the bounds aforesaid or so many of them as shall think fit, may meet and assemble on the first Monday in March next at the house of William Boon, in Kingsessing aforesaid, and then and there by a majority of those met shall choose by tickets in writing two fit persons, owners or possessors of land within the limits aforesaid, to be the managers and one fit person to be treasurer for the year then next ensuing.

And in order speedily and the more effectually to raise the money necessary for making the banks, dams, sluices and floodgates to inclose and drain the piece or parcel of marsh aforesaid:

[Section II.] Be it enacted by the authority aforesaid, That the said managers shall lay a rate or assessment not exceeding one pound ten shillings per acre at one time and so from time to

time as they shall see occasion on all and every the owners and possessors of the said marsh or meadow land for what they shall respectively hold and possess within the limits hereafter to be inclosed within the banks, which rate or rates from time to time the said owners shall, within ten days after demand made, pay to or deposit in the hands of the said treasurer, there to remain subject to the drafts and orders of the said managers for the purposes aforesaid; and that the said managers, as soon as may be after a sufficient sum of money shall be paid as aforesaid into the treasury, shall employ a proper number of workmen and laborers to embank all the meadow lands in the said division by erecting, making and laying a sufficient number of dams, banks, sluices and floodgates wherever the same may be necessary for the effectual stopping out the waters from the same.

[Section III.] And be it further enacted by the authority aforesaid, That James Coultas, Esquire, and George Gray and John Smith, gentlemen, or any two of them, are hereby nominated, authorized and appointed, within six months after the banks and dams are made as aforesaid, to divide the banks which surround and include all that the said piece or parcel of marsh and meadow land aforesaid, and allot and appoint how many perches of the said bank each owner or possessor of the said piece or parcel shall make, repair, maintain and support in proportion to the number of acres of meadow he holds therein, having an equitable regard to the quality, situation and circumstances of the ground or part so to be allotted. All which said allotments and divisions so made and signified by an instrument in writing under the hands and seals of any two of them shall be the proper shares, parts, proportions and quantities of bank and dams aforesaid for the several owners or possessors of the said meadow to make, repair and support at their own proper expense and charge.

[Section IV.] And be it further enacted by the authority aforesaid, That the owners, occupiers and possessors of the said piece of meadow land respectively whose allotments, shares or parts of the bank are in any wise defective shall, within three months from the making the said banks and dams, cause them to be put in good and substantial repair, and make up, or cause

their respective parts of the banks so as aforesaid allotted to be made up level on the top and sufficiently strong and secure to defend the said meadows from all inundations, for which end the said banks shall always be kept at least nine inches above all tides by each and all of the said owners, possessors or occupiers on their and each of their parts so as aforesaid to them respectively allotted under the penalty of ten shillings for every perch out of repair, to be paid to the said company's treasurer by the persons so neglecting or refusing, to be levied by the manager for the said division hereafter to be chosen, if he see cause, and added to the common stock.

[Section V.] And be it further enacted by the authority aforesaid, That the costs and charges of making, maintaining and amending the dams, sluices or floodgates hereafter to be made shall be paid by all the owners, occupiers or possessors of the land in the said division, according to the number of acres that they and each of them shall hold, possess and occupy, the same to be made, supported and amended in such manner as the manager for the said division hereafter to be chosen shall direct.

[Section VI.] And be it further enacted by the authority aforesaid, That it shall and may be lawful for the owners of the said Eastern Division of Boon's Island, or as many of them as shall think fit, to meet together on the first Monday in March yearly and every year at the school house in Kingsessing aforesaid, near the end of John Hunt's lane, or such other convenient place as shall hereafter be appointed by the manager to be chosen by virtue of this act, and then and there, by a majority of those met, shall choose by ticket in writing one fit person, owner or possessor of land in said division, to be manager, and one fit person to be treasurer for the said Eastern Division Company for the year then next ensuing.

[Section VII.] And be it further enacted by the authority aforesaid, That if any owner or possessor elected manager as aforesaid, on due notice given in writing of his election by some of the company present at the said election, shall refuse or afterwards neglect to do the duty required of him by this act, he, for so refusing or neglecting his duty, shall forfeit and pay to the treasurer for the time being the sum of forty shillings, to be

added to the common stock of the division, unless he shall have served four years [successively] in the said office, which fine shall be recovered in the manner hereinafter directed for the recovery of other money payable to the treasurer of the said division and the said owners shall proceed to choose another of the said company to be a manager in the place of him so refusing or neglecting. And if the person so elected treasurer shall refuse or neglect to take upon him the duties or to give the securities required by this act, or shall misbehave himself or by death or otherwise be rendered incapable to execute the said office, in any of these cases the manager for the time being shall choose another fit person to be the treasurer for that year.

[Section VIII.] And be it further enacted by the authority aforesaid, That every treasurer hereafter to be chosen shall, before he takes upon him the execution of his office, enter into an obligation with at least one sufficient surety in double the value of the money that doth or may probably come into his hands during the continuance of his office, as near as can be estimated by the manager, conditioned that he will once in every three months or oftener if required, render his accounts to the said manager and well and truly account, adjust and settle with him when required for and concerning all moneys that are or shall come to his hands by virtue of this act or that belong to the owners of the land in the said division, and shall well and truly pay the balance that shall appear on such settlement to be in his hands to such persons and to such services as the manager for the time being shall order and appoint and not otherwise, and that he will, at the expiration of his office, well and truly pay, or cause to be paid and delivered, all the money then remaining in his hands, together with the books of accounts concerning the same and all other papers and writings in his keeping belonging to the owners of the lands of the said Eastern Division unto his successor in the said office and that he will do and execute all other matters and things as treasurer to the said owners according to the true sense and meaning of this act.

[Section IX.] And be it further enacted by the authority aforesaid, That it shall and may be lawful for the said manager,

as often as he shall see occasion, to lay such assessments and taxes on every acre of land in the said division as he shall judge to be necessary for the benefit and security of the same.

And the said manager for the time being in every year is hereby empowered, authorized and required to enter upon and inspect at least four times in each year the condition of all the said banks, dams, sluices, floodgates and other conveniences necessary for stopping out the tides or draining the water from the said meadows; and if any part shall appear unfinished, damaged, decayed or destroyed, or more liable by its situation, nature of the soil or other circumstances to be washed away or destroyed than other parts or shall be in any manner insufficient for the purposes aforesaid, he, the said manager, shall consider and determine by what methods such part or parts may be made good and secure, by stone or other firm and durable materials, and on such inspection and determination the said manager shall give notice to and require the said owners or possessors, or their guardians (if minors and within the county of Philadelphia), forthwith to amend their and each of their parts or allotments in such manner as he shall direct, all of which banks shall be of sufficient breadth and at least nine inches above any tide that hath been known, and if such extraordinary work shall be directed by the manager to be done for the mending and supporting of any such parts of the banks as are or have been allotted as aforesaid so to be made, mended or supported by any of the particular owners or possessors, then the expense and costs of such extraordinary work shall not be put on the person to whom that allotment was made, but shall be allowed to him and paid out of the common stock, he contributing his proportionable share and part thereto.

[Section X.] And be it further enacted by the authority aforesaid, That if by any general overflowing of the water hereafter the banks, dams or sluices belonging to owners of any one allotment shall be damaged or destroyed by the force of the water from within which had been admitted by defects in the banks belonging to the owners of other allotments, in all such cases the delinquent owners shall pay all the costs of repairs, unless the manager for the time being shall from any circumstances

consider it as an act of Providence, in which case they may repair it at the general expense of all the owners of the said Eastern Division and order the treasurer to pay the charge thereof.

[Section XI.] And be it further enacted by the authority aforesaid, That if any of the said owners or occupiers of the land in the said division, or any guardian of a minor owner thereof, so warned by the said manager, shall refuse or neglect after such warning to amend and repair their respective parts agreeable to the direction of the said manager, or if any of the said owners or guardians are not known or readily to be found within the said county at the time aforesaid, that then and as often as it shall so happen, it shall and may be lawful to and for the said manager, together with such workmen, horses, carts, barrows and tools as he shall think necessary, to enter into and upon the lands of him, her or them where such breach or defect shall happen to be, and then and there to dig and carry earth or purchase suitable materials to make, amend and repair the said banks, dams, sluices, floodgates and all other conveniences necessary for stopping out the tide or for draining the waters off the meadows in such manner and by such ways and means as he shall think fit and reasonable, any law of this province, usage or custom to the contrary in any wise notwithstanding.

And he, the said manager, shall adjust and settle the expense thereof with those to whom such parts or shares of the banks so amended and repaired were before allotted as he shall think reasonable, except, as is before mentioned, in case of any extraordinary expense arising from its situation, nature of the soil or other circumstances; in all which cases the extraordinary charge beyond what other allotments are subject to shall be paid out of the common stock, and shall also deliver to the said owners, guardians or possessors of the said meadow land on whose allotment such repairs shall be made or to as many of them as shall be found, their respective bills of the charge of repairing the said part of the bank to them before allotted, and shall order payment accordingly; and in case of their or any of their refusal or delay of payment he shall order the treasurer for the time being to advance and pay so much out of the public

stock as shall be sufficient to satisfy the said charge until it can be obtained of those who ought to pay the same.

And in order to establish a fund to defray sundry contingent and yearly expenses and [to] prevent any delay hereafter for want of money in case of inundations or extraordinary accidents:

[Section XII.] Be it enacted by the authority aforesaid, That every owner or possessor of land in the aforesaid Eastern Division shall, on or before the second Monday in June next after the banks, dams and sluices are made as aforesaid, pay or cause to be paid or deposited in the hands of the treasurer aforesaid the sum of two shillings current money of Pennsylvania for each and every acre they respectively have, hold, occupy or possess in the said division, exclusive of flats, creeks, or waste lands. And all and every person or persons, whether owners or renters, who shall on the second Monday in June in every year hereafter be owner, occupier or possessor of meadow land in the said division shall, in like manner, pay or deposit or cause to be paid or deposited into the hands of the treasurer for the time being such sum or sums of money as the manager for the time being shall find necessary to assess and order, which sum, if paid by the aforesaid renter, he, the said renter, shall and is hereby empowered to deduct out of his rent.

So always and provided, That the sum of six pounds shall in the beginning of every year be in the treasurer's hands, ready to be applied in the premises as occasion may require, of all which sums of money and all other money coming to his hands by virtue of this act and of all disbursements and payments thereof from time to time made, the said treasurer shall in books to be provided for that purpose keep a just and true account, and shall pay and deliver the same according to the directions and orders of the manager for the time being and not otherwise.

[Section XIII.] And be it further enacted by the authority aforesaid, That the manager for the time being shall, before the day hereinbefore appointed for the payment of the yearly quotas, deposit money or assessment, cause a true list of the names of all and every of the said owners or possessors with a true account of all and every acre of meadow in the aforesaid

division which they respectively have, hold, occupy and possess, exclusive of flats and creeks, according to the best information he can obtain, noting from time to time the several changes, alterations, transfers and alienations of right in the several parts and parcels thereof as they shall come to his knowledge and shall furnish the treasurer with a true copy thereof, together with the sum per acre of the general assessment for the current year when any alteration shall be of the aforesaid deposit of two shillings, according to which list or account the treasurer for the time being shall receive and take the several sums of their and each of their deposit money and assessment respectively in every year raised or assessed by this act, and shall cause public notice of the said rate or assessment per acre to be given at least ten days before the day of payment in every year hereafter. And in case any of the said owners, occupiers or possessors aforesaid shall refuse or neglect to pay or cause to be paid to the treasurer aforesaid on the days and times aforesaid the several sums of money which they respectively ought to pay or deposit according to the true intent and meaning of this act, they and each of them so neglecting and refusing shall forfeit and pay to the said treasurer the additional sum of two pence for every shilling unpaid which they respectively ought to have paid by the direction of this act, and afterwards shall, for every three months neglect or refusal in like manner forfeit and pay to the treasurer for the time being the like sum of two pence for every shilling which he, she or they failed of paying on the day or time appointed, when they respectively ought to pay by the direction of this act.

[Section XIV.] And be it further enacted by the authority aforesaid, That if any of the said owners, possessors or occupiers shall neglect or refuse as aforesaid to pay the several sums of money hereinbefore directed to be raised and paid, together with the forfeitures arising and hereby imposed which they respectively ought to pay at any time or times hereafter for the space of three months after any of the days or times in which it ought to be paid or shall have neglected or refused to make, amend or repair his, her or their part or share of the banks so as aforesaid to them allotted, or shall have neglected or refused to

reimburse the treasurer for the time being the necessary expense thereof, agreeable to the direction of this act, that then and so often it shall and may be lawful to and for the said treasurer by direction of the said manager in his own name to sue all and every such person or persons so refusing or neglecting for the respective sum or sums of money which he, she or they ought to have paid by virtue hereof by action of debt, if five pounds or under before any justice of the peace of the county, or if above five pounds in any court of record where the same may be cognizable, and give this act and the said assessment or the said account as the case may require in evidence; and the said justice of the peace and the said court are hereby empowered and directed to give judgment and grant execution for the same, with costs of suit accordingly, to be levied on the piece or parcel of marsh or meadow land belonging as aforesaid to such owner or owners so neglecting or refusing and delivered unto the manager for the time being, who is hereby empowered and authorized to let out on rent any part of the said meadow belonging to any of the said owners who shall so neglect or refuse or who shall not be found in the county as aforesaid from year to year for so long time as until the rent or rents arising therefrom shall, as nearly as may be computed, pay all such sum or sums of money so assessed or so charged, together with all costs and forfeitures arising thereon, for his or their neglect or refusal to pay the same as aforesaid and no longer.

Provided always, That in letting out the said meadow the said managers do publicly notify the leasing thereof and let the same to the highest bidder at private sale or bargain.

[Section XV.] And be it further enacted by the authority aforesaid, That no process, suit or proceedings whatsoever which at any time hereafter shall be commenced, sued or brought before any of the justices of the peace or judges or justices of the common pleas or Supreme Court or before any magistrate of this province in the name of any treasurer of the said company of the Eastern Division of Boon's Island by direction of the said manager shall be discontinued or put without day by reason of the death, disability or removal of such treasurer,

but shall stand good and effectual in law to all intents and purposes notwithstanding such death, disability or removal.

[Section XVI.] And it is hereby further enacted by the authority aforesaid, That the manager for the time being shall have the power of disposing of all moneys paid to the treasurer by virtue of this act, and of hiring and appointing, at the expense of the said company, any person or persons from time to time to inspect the condition of all the banks, dams, sluices or floodgates belonging to the owners of the said meadow land, and to inform the respective owners or the said manager when any repairs are wanting; and may displace such person or persons and appoint others as often as he shall think fit, and the said manager shall have power to offer and pay such rewards as he may think necessary out of the common stock for the destruction of such vermin as usually damage the said banks and dams as well as for other general services of the said division.

[Section XVII.] And be it further enacted by the authority aforesaid, That the said manager for the time being is hereby authorized and empowered in behalf of the said owners to settle accounts with the treasurer from time to time and shall do and execute all other matters and things pertaining to the general good and benefit of the said owners.

Provided nevertheless, That if any owner or owners shall think him, her or themselves aggrieved by any order, account or proceeding of the said manager, such owner or owners shall, if he or they think proper, choose two fit and disinterested persons and the said manager shall choose two other fit and disinterested persons who, or any three of them, shall finally settle the same and all other matters and things in dispute that shall be referred to them by the said parties.

[Section XVIII.] And be it further enacted by the authority aforesaid, That the orders of the manager on the treasurer for the time being shall be complied with by the said treasurer and shall be good vouchers to indemnify him for the payment and delivery of the money and effects committed to his care by virtue of this act; and that all bonds, mortgages, deeds and conveyances in trust for the use of the said owners shall be taken in the name of the treasurer of the Eastern Division of Boon's

Island and be payable to him and his successors and shall be mentioned to be for the use of the owners thereof, and with or without assignment shall be good and available in law to his successor or successors in the said trust for the use of the owners as aforesaid, and shall be recoverable in any court of record in this province where the same may be cognizable as fully and effectually to all intents and purposes as if the same were private property and duly assigned in all the forms of law. And the receipts and discharges of such succeeding treasurer or treasurers for any such sum or sums of money paid to him or them shall be effectual in law.

And whereas the well draining, preserving and keeping open the drains of the said meadow land is of great importance to the said owners:

[Section XIX.] Be it enacted by the authority aforesaid, That all and every of the said owners shall be allowed, permitted and suffered to discharge all or any of the waters off their respective lands through their natural channels or by a direct course across the land of any other of the said owners as shall by the manager for the time being be judged convenient, into the main channel, creek or sluice best suiting to discharge the same into the main creek, and shall be allowed to open, scour and cleanse the same when and as often as they or the said manager shall think convenient or necessary, any law, usage or custom to the contrary in any wise notwithstanding.

Provided always, That such owner so requiring a passage for water shall first pay all the damages sustained or that shall be sustained by such neighbor through whose land the water is to be discharged and also all such damages as shall be done to the banks within the said neighbor's allotment in such manner and proportion as shall be settled by the said manager.

And the better to procure a constant supply of fresh water in the said Eastern Division and also on that part of the island aforesaid now within bank belonging to John Knowles and the other lands of John Hunt and William Boon for the use of their horses and cattle:

[Section XX.] Be it enacted by the authority aforesaid, That at all times after the draining the said piece or parcel of meadow

land there shall be in the lid or door of each sluice hereafter to be placed at or near the two dams intended to be made across the two creeks aforesaid a hole or passage for the admission of water of such size and dimensions as on trial and experience shall be found effectual and convenient for the [use] aforesaid or for any other useful and beneficial purpose, anything hereinbefore contained to the contrary thereof notwithstanding.

[Section XXI.] And be it further enacted by the authority aforesaid, That the said John Knowles, his heirs and assigns, shall at all convenient times hereafter have the [free] liberty of a road or passage from the road now used to his and Blakeley's island, beginning at the southeast end of a dam over a branch of Three creek, thence by the side of the same and by Three creek aforesaid across the land of the said John Blakeley to the dam hereafter to be made on the same creek for the convenience of taking and carrying his or their hay, wood, rails, posts and other commodities to and from the said dam, either to be exported from thence or imported there by water, the same road being used with as little injury as may be to the said John Blakeley, his heirs and assigns.

[Section XXII.] And be it further enacted by the authority aforesaid, That if any person or persons shall wickedly and maliciously cut through and break down or endamage any of the said banks, dams, sluices or floodgates, either [their] own or others, or shall let in any creek or water to annoy, injure or overflow any of their neighbors' lands and shall thereof be convicted before the justices of the court of quarter sessions of the said county of Philadelphia, in all such cases the persons so offending shall be fined treble the value of [all] the damages, to be assessed by two or more indifferent persons to be appointed by the said court to value the same, which fine shall be added to the common stock for the general use and benefit of the said division.

Passed February 15, 1765. Referred for consideration by the King in Council, February 10, 1766, and allowed to become a law by lapse of time in accordance with the proprietary charter. See Appendix XXIV, Section VIII, and the Acts of Assembly passed March 10, 1788, Chapter 1337; April 15, 1834, P. L. 466; April 22, 1841, P. L. 269; March 31, 1843, P. L. 122; April 3, 1851, P. L. 338.