

CHAPTER MMCCCLIII.

AN ACT TO AUTHORIZE ANY PERSON OR PERSONS OWNING LANDS ADJOINING NAVIGABLE STREAMS OF WATER, DECLARED PUBLIC HIGHWAYS, TO ERECT DAMS UPON SUCH STREAMS, FOR MILLS AND OTHER WATER WORKS.

Section I. (Section I, P. L.) 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 all and every person or persons owning lands adjoining any navigable stream of water, declared by law a public highway, except the rivers Delaware, Lehigh and Schuylkill, be, and they or either of them are hereby authorized to erect a dam or dams, for a mill or mills or other water works upon any such stream of water, adjoining their own lands, and to keep the same in good repair; and also to lead off thereby on his or their own land, so much of the water of such stream as may be necessary for his or their mill, or mills, or other water works. Provided, that the said person or persons, his or their heirs or assigns in erecting the said dam or dams, or keeping them in repair, shall not obstruct or impede the navigation of such stream, or prevent the fish from passing up the same. And provided also, that the person or persons so erecting said dam or dams shall not infringe on or injure the rights and privileges of the owner or possessor of any private property on such stream.

Section II. (Section II, P. L.) And be it further enacted by the authority aforesaid, That on complaint made to the judges of the court of quarter sessions of any county of this commonwealth, that any such dam obstructs the navigation or impedes the passage of fish, they shall appoint three commissioners, who shall view such dam and compare it with the provisions of this act, and report to them at their next sessions, the state thereof; and if it shall appear to the said court that an offence has been committed against this act, the court shall direct a bill of indictment to be sent to the

grand jury, and upon prosecution to conviction of such offence, the person or persons so convicted shall be liable to pay a fine not exceeding one hundred dollars, one moiety thereof to the prosecutor, and the other to be applied to the repairing of the roads or highways in the adjoining township or townships; and shall also pay such damages to the person or persons complaining as shall be found by the jury under the direction of the court; and the court shall direct the supervisors of the highway of the adjoining township, forthwith to remove every such artificial obstruction in such manner as to bring the same within the limitations and provisions of this act at the cost of the person so convicted.

Section III. (Section III, P. L.) And be it further enacted by the authority aforesaid, That if the owner or owners of any raft, boat or other vessel, or other person having the charge thereof, shall be obstructed or suffer damage, or shall be delayed in his or their passage on any stream within the jurisdiction of this commonwealth, that now is, or hereafter may be declared a public highway, by any dam or dams as aforesaid, or fish dam or any other device whatsoever, made or erected in any stream, which was declared by law to be a public stream or highway, within the jurisdiction of this commonwealth, before the time the damage or obstruction actually happened, it shall be the duty of any justice of the peace of the county in which such dam or dams as aforesaid, or fish dam or other device is or are erected, on application of the owner or owners of the raft, boat or other vessel, or of the person having the charge thereof, to cause the owner of such dam or dams or other device, forthwith to appear before him the said justice; and if on the appearance of the said owner, the parties cannot agree in respect to the damage alleged to be done, or in the choice of referees to determine the same, it shall be the duty of the said justice, forthwith to appoint three disinterested persons, whose duty it shall be to view the injury so sustained, and inquire into the loss occasioned by delay, and make an estimate thereof on oath or affirmation, if such oath or affirmation is required by either of the parties; and it shall be the duty of such justice of the

peace, forthwith to award judgment and issue execution in a summary manner, for the amount, with costs of suit. Provided however, that the said damages so to be recovered do not in the whole exceed the sum of fifty dollars; but if damages shall be alleged to a greater amount than fifty dollars, the same may be sued for and recovered in the court of common pleas of the county wherein the said damages shall have been sustained. And provided also, that appeals shall be allowed from the judgment of the justice of the peace, given for damages as aforesaid, to the court of common pleas as in other cases.

Passed, notwithstanding Governor's veto, March 23, 1803. Recorded in L. B. No. 9, p. 19.

I DO hereby certify, that the bill, entitled "An act to authorise any person or persons owning lands adjoining navigable streams of water, declared public highways, to erect dams upon such streams for mills and other water-works," which has been disapproved by the governor, and returned with his objections to the senate, in which it originated, has been approved of by two-thirds of the senate, agreeably to the directions of the constitution in such case made and provided, and that the foregoing is the act so approved by the senate.

ROBERT WHITEHILL, Speaker
of the Senate.

Attest.

GEORGE BRYAN, C. S.

I DO hereby certify, that the bill, entitled "An act to authorise any person or persons owning lands adjoining navigable streams of water, declared public highways, to erect dams upon such streams for mills and other water-works," which has been disapproved by the governor, and returned with his objections to the senate in which it originated, has been approved of by two thirds of the house of representatives, agreeably to the directions of the constitution in such case made and provided, and that the foregoing is the act so approved by the house of representatives.

SIMON SYNDER, Speaker
of the House of Representatives.

Attest, MATTHEW HUSTON, C. H. R.