

127

An act concerning the New Castle and Frenchtown Turnpike and Rail Road Company.

Section 1. Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met that the present route or location of the New Castle and Frenchtown Rail Road, as surveyed and laid out by the Engineers of the New Castle and Frenchtown Turnpike and Rail Road Company, and adopted by the Directors of the said Company, commencing at a point on the River Delaware within the town of New Castle and thence extending to the waters of the Elk River, at or near Frenchtown in the State of Maryland, in a course as direct as the nature of the ground over which it passes, will admit, be and the same is hereby confirmed and established, as the proper route and location of the said Rail Road. And the said New Castle and Frenchtown Turnpike and Rail Road Company, are hereby authorized to construct, possess, hold and use the same, with all the rights, privileges and powers vested in the said Company by this or any other law or laws of this State. And the Directors of the said Company are hereby authorized, to cause as soon as it conveniently may be done, accurate maps of the said Rail Road, as surveyed, laid out and located as aforesaid, to be made by the Engineer in

188

Chief, for the time being, of the said Company or under his immediate superintendance; which said maps besides designating the route and location of the said Rail Road, shall also specify the lands of the several and respective owners and holders, through, over and upon which, the said Rail Road is located and will pass; and the contents of such lands respectively within the boundaries of the said Rail Road. And the said maps shall be verified by the certificate and signatures of the Directors of the said Company, or a majority of them, and the Engineer in Chief, for the time being; and shall be further verified by the oath or affirmation of the said Engineer in Chief, that the said maps accurately represent and designate according to the best of his skill and judgment the route and location of the said New Castle and Frenchtown Rail Road, and the lands of the several and respective owners and holders with the contents thereof, within the boundaries of the said Rail Road: which oath or affirmation shall be administered by any Judge or Justice of the Peace. And the said maps, so verified in manner and form aforesaid, shall be deposited in the form of an atlas in the office for recording of deeds in New Castle County.

139

and an entry shall be made therein and signed by the Recorder of the same being so deposited; and for so doing he shall be paid by the said Company the sum of one dollar. And the said Maps so deposited shall be a matter of record; and the same or an office copy thereof shall be deemed, taken and received as sufficient evidence, in all courts of Law and equity, within this State.

Sec. 2. And be it further enacted, that it is and shall be lawful for the said New Castle and Frenchtown Turnpike and Rail Road Company by their Engineers, artists, Superintendants, Contractors, Workmen and Labourers with their instruments, implements, carts, waggons and other carriages, and beasts of draught or burden, to enter upon and occupy the lands within the boundaries of the said Rail Road, for the purpose of making, constructing and perfecting the same and all the necessary works thereto belonging: Provided always that the said New Castle and Frenchtown Turnpike and Rail Road Company shall be liable to pay to the several and respective owners of lands within the boundaries of the said Rail Road a fair and reasonable compensation (if compensation be demanded) for the damages sustained by reason of taking such lands for the location and use of the

Said Rail Road; such damages to be ascertained or assested in the manner hereinafter mentioned.

Sec. 3. And be it further enacted, That in all cases where the damages (if any) sustained by any owner or owners of lands within the boundaries of the Said Rail Road by reason of taking such lands for the location and use of the said Rail Road, have not been, or because of disagreement cannot be ascertained by private contract between such owner or owners and the New Castle and Frenchtown Turnpike and Rail Road Company; or in case the owner or owners of any such lands, be out of the state; or be under the disability of infancy, coverture or incompetency of minds - or be otherwise incapacitated or unable to make such contract aforesaid, or to convey lands, then and in each and every such case, it shall and may be lawful for the said New Castle and Frenchtown Turnpike and Rail Road Company, or for the owner or owners of any such lands who have ^{made} no such private contract as aforesaid to make application to the Court of Common Pleas for the County of New Castle in term time, or to the Chief Justice of the said Court, in vacation, first giving at least five days notice of making such application to the opposite party: But notice to such party if out of the state, or under any of the disabilities aforesaid shall not be required of the said Company. And the said

191

Court or Chief Justice, is hereby authorized and required to nominate and appoint five fit and impartial freeholders of New Castle County, to view the premises and assess the damages, if any, sustained by the reason aforesaid. And it shall be the duty of the party upon whose application the said freeholders are appointed, to give five days notice to the opposite party, of the time and place of meeting of the said freeholders. And it shall be a sufficient service of such notice upon the said company or of any other notice required by this act, to deliver a copy thereof to the President and Secretary personally - or to leave a copy at the dwelling house of each of them: And such notice from or on behalf of the said company or any other notice required by this act, from or on behalf of the said company may be served by the delivery of a copy thereof to the owner or owners of such lands, or leaving a copy at their respective dwelling houses: But in case such owner or owners are out of the State, or under any of the aforesaid disabilities it shall be a sufficient service of notice of the time and place of meeting of the said freeholders to leave a copy thereof at the dwelling house, or some conspicuous place, on the land, through which the said Rail Road is located. And each of the said freeholders before he proceeds to perform the duties required of him by this act, shall take an oath or affirmation that he will faithfully and impartially, according to the true intent and meaning of this act, and to the best of his

192

skill and judgment, estimate and assess the damages (if any) sustained by such owner or owners of lands within the boundaries of said Rail Roads by reason of taking such lands for the location and use of said Rail Roads, which said oath or affirmation the said freeholders shall severally have authority to administer to each other. And the said freeholders shall proceed to view the premises: and in assessing damages shall take into consideration the advantages derived from the said Rail Roads passing through the lands of such owner or owners; and having estimated and ascertained the damages, shall make a report under their hands and seals, or the hands and seals of a majority of them, describing the lands and stating the amount of damages (if any) which such owner or owners have sustained or will sustain by reason of taking such lands for the location and use of the said Rail Roads and vesting the same in the said Company. Which said report shall be forthwith returned to the office of the Prothonotary of the said County, and judgment of Confirmation shall be entered by the said Court, unless good and sufficient cause be shown to the contrary, in which case the said Court in their discretion may refer the matter back to the same freeholders, ^{or sufficient other Freeholders.} to proceed in manner aforesaid and assess the damages if any be sustained. And when judgment of Confirmation upon any report made as aforesaid pursuant to this act shall be entered by the said Court then the said New

193

Castle and Frenchtown Turnpike and Rail Road Company, paying to such owner or owners aforesaid, the damages ascertained in such report aforesaid, or bringing the same into liquidation for the use of such owner or owners, and paying the costs of the said proceedings, shall have and hold to them and their Successors and assigns forever all and every the lands described in such report as fully and effectually as if the same had been well and sufficiently granted to them by the several and respective owners thereof, by any legal and perfect mode of conveyance or assurance whatsoever. And each freeholder appointed as aforesaid, shall receive for every days attendance in the performance of the duties hereby required of him (if regular return be duly made) the sum of one dollar; and the Prothonotary shall receive such fees as are given to him by law for like services.

Sec. 4. And whereas in many cases the said New Castle and Frenchtown Turnpike and Rail Road Company are entitled by gift, or private contract, to deeds of conveyance for lands through which the said Rail Road is located, and in other cases by the award of arbitrators amicably chosen deeds of conveyance are to be executed to the said Company their Successors ~~and~~ assigns for certain other lands through which the said Rail Road is located. And whereas the drafting, execution, proof, acknowledgment and recording of so many deeds for so many small parcels of land will be attended with great trouble, difficulty, delay and expense. Be it therefore further enacted, that in each and every such case it shall and may be lawful for the said New Castle

194

and Frenchtown Turnpike and Rail Road Company and they are hereby authorized instead of such deed or deeds of conveyance as aforesaid, to obtain from the party so contracting or required by any award to make such deed or deeds, a certificate to be made and executed under the hand and seal of such party in the presence of and attested by the Chancellor or any Judge or Justice of the Peace of this State: which said certificate shall contain an acknowledgment of the receipt from the said Company of the consideration money (if any) or of the damages awarded to such party (if any) and shall also contain a description of the lands of the said party within the boundaries of the said Rail Road, with a declaration that the said party conveys all his or her right and title to the said lands so described unto the said Company and their successors and assigns forever. And the said certificate when so executed shall vest in the said Company and their successors and assigns forever all the estate, right title and interest of the party or parties making it in and to the lands therein described as fully and effectually as if the same were well and sufficiently granted by such party or parties by any perfect and legal mode of conveyance or assurance whatsoever. And it shall be the duty of the Recorder of deeds for New Castle County to record such certificates so executed and attested for which he shall receive such fees as are given to him by law for the like services. And the record of said

certificated or an office copy thereof shall be sufficient evidence in all courts of law and equity within this State. And the said Rail Road so located as aforesaid and all the property, rights, powers, and privileges granted to the said New Castle and Frenchtown Turnpike and Rail Road Company by this or any other law or laws of this State, shall be and are hereby vested in the said Company, their successors and assigns forever.

Sec. 5. And be it further enacted, that if any person or persons shall destroy, break, damage or in any manner injure the rail way, ^{or Rail way or any part thereof of the said Rail Road.} or any of the switches, turnouts or crossings, - or shall aid, abet or counsel the doing of the same; or if any person or persons shall destroy, break, damage or in any manner injure ^{the level} or surface edges or sides of the said Road or any part thereof; - or the embankments, culverts, bridges, booms, drains, ditches fences, hedges or trees or any of them, of or belonging to the said Road; or shall aid abet or counsel the doing of the same; - or if any person or persons shall throw, put or place any obstruction in or upon the said Road or any part thereof or any obstacle or impediment in the way of any car, carriage vehicle, locomotive engine or machine going or being upon the said ^{Rail} Road; or shall aid, abet or counsel the doing of the same; - or if any person or persons shall destroy, break, damage or in any manner injure the cars carriages or other vehicles or any of them, or any locomotive engine or machine of the said Company

196

or the buildings, wharves, landing places, or any of them
or any improvement or improvements whatsoever of the
said Company; or shall aid, abet or counsel the doing
of the same; - all and every such person or persons, so
offending shall be liable to indictment in the Court of
General Quarter Sessions of the Peace and Gaol Delivery within
New Castle County; and on conviction upon such
indictment shall be fined in any sum not exceeding
five thousand dollars, at the discretion of the Court; and
shall be sentenced to pay the fine with all the costs;
and such proceedings shall be had as in all other
cases of indictable offences, shall be liable to the
said New Castle and ^{Frenchtown} Turnpike and Rail Road company
in a civil action for the injury sustained: and the form
of such action shall be trespass vi et armis, in
which treble damages and full costs of suit shall
be recovered. But in no case shall both those reme-
dies be had by the said New Castle and Frenchtown
Turnpike and Rail Road company for one and the same
offence or damage.

Passed at Dover
January 26th 1835

P. Spurgeon
Speaker of the Senate
Joshua Beaton
Speaker of the House of Representatives

32. #
An act concerning
the New Castle ^{and} Frenchtown
Turnpike and Rail-road
Company. —

1-26-1831