

LAWS

521

OF THE

STATE OF DELAWARE,

FROM THE TWENTY-THIRD DAY OF JULY, ONE THOUSAND EIGHT HUNDRED
AND THIRTY-FIVE, TO THE TWENTY-EIGHTH DAY OF FEBRUARY,
ONE THOUSAND EIGHT HUNDRED AND FORTY-THREE.

VOLUME IX.

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1843.

LAWS
OF THE
STATE OF DELAWARE.

CHAPTER I.

AN ACT to incorporate the Camden Lime Company.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met, (two-thirds of each branch of the Legislature concurring therein, and with a reserved power of revocation by the Legislature.)* That a company shall be established, the capital stock whereof shall not exceed five thousand dollars, divided into two hundred and fifty shares, each twenty dollars. Incorporation.
Capital stock.
Shares.

SEC. 2. *And be it enacted,* That Thomas Jackson, William Knotts, Alexander Jackson, James Lord and Nathaniel Coombe, be and they are hereby appointed commissioners, and they or any three of them are authorized to receive subscriptions to the said capital stock, and for that purpose to open books at such time and place in Camden as the said commissioners or any three of them may appoint, of which ten days' notice shall be given, and such books shall continue open at least two days, and afterwards at the discretion of said commissioners or any three of them. Comm'rs.

SEC. 3. *And be it enacted,* That the subscribers to the capital stock aforesaid, their successors and assigns shall and hereby are ordained, constituted and declared to be a body politic or corporate in fact and in law, by the name of the "Camden Lime Company," and by that name shall have succession, and be capable of suing and being sued, plead and be impleaded, in all manner of actions, suits, complaints, matters and causes whatsoever, either in law or equity, and may have a common seal, and make, change and alter the same at their pleasure, and may make and ordain by-laws for their own government not repugnant to the laws and constitution of this State or the United States; but it shall not be lawful for the said company and they shall not have power to discount notes or bills or to loan money on interest, or to exercise any banking powers whatever; and the said company shall have power to purchase, Name.
Powers.
By-laws.
Restriction
as to bank-
ing.

hold and convey any real or personal estate, and do all acts necessary and proper to effect the powers hereby granted or intended. *Provided*, that the real estate so to be holden shall be only such as is necessary and proper to effect such powers, or such as shall have been *bona fide* mortgaged or conveyed to the company for building kilns on, and necessary for burning lime, or by way of security or satisfaction of debts previously contracted in the course of their dealings or purchased at sales under judgments or decrees to secure debts or sales made under any mortgage given to said company.

Proviso.

Directors.

Election.

SEC. 4. *And be it enacted*, That the stock, property, affairs and concerns of the said company shall be managed and conducted by three directors (of whom one shall be president) to be elected by the stockholders, and the first election for said directors shall be held by the commissioners before named, or any three of them, at such time and place as they or any three of them shall determine on, of which and all subsequent elections, there shall be given at least ten days' notice, in five of the most public places in Murderkill and Dover hundreds, in Kent county, and the directors so elected, or elected in manner aforesaid, shall hold their offices for one year, and until others shall be elected to succeed them, and there shall be an election of directors in each year at such time and place as may be fixed on in the by-laws of said company, and the directors so elected shall hold their offices for one year and until others shall be elected to succeed them, and such elections as aforesaid shall be made by such stockholders as shall attend for that purpose, in their proper persons, and all elections shall be by ballot, each share to be entitled to one vote, and the persons who shall have the greatest number of votes at any election shall be the directors; and the directors shall appoint one of their numbers to be their president; and if any vacancy shall happen in said directors by death, resignation or otherwise, the same shall be filled by the other directors or a majority of them for the time being, and the said directors shall have power and authority to call a meeting of the stockholders at any time.

President.

Quorum.

SEC. 5. *And be it enacted*, That a majority of the directors for the time being, shall form a board or quorum for transacting all the business of the said company, and that a failure to elect directors on the day for that purpose to be appointed, shall not dissolve the corporation, but it shall and may be lawful to hold such elections on such other day in manner aforesaid, as shall be prescribed by the by-laws of the corporation.

Directors empowered to call in subscriptions.

SEC. 6. *And be it enacted*, That it shall be lawful for the president and directors of said company to call and demand of the stockholders respectively, all such sum or sums of money as shall be by them subscribed, at such times and in such manner and proportions as they shall deem proper, under forfeiture of their shares and all previous payments thereon to the corporation, provided twenty days' notice of such call and demand be given in five of the most public places in Murderkill and Dover hundreds, in Kent county.

SEC. 7. *And be it enacted*, That no transfer of stock shall be valid or have effect until such transfer shall be entered or registered in the book to be kept by the company for that purpose. Transfers.

SEC. 8. *And be it enacted*, That the dividends to be made of the profits of the company if any, shall be annually, and shall be paid to all the stockholders in proportion to their respective interests therein. Dividends.

SEC. 9. *And be it further enacted*, That this act shall continue in force for and during the term of twenty years from the passing thereof, and no longer, any law, usage or custom to the contrary notwithstanding; *Provided nevertheless*, and it is hereby expressly understood, enacted and declared, that power to revoke or dissolve the said corporation by this act created, is hereby reserved to the Legislature of this State, whenever the said Legislature shall deem such revocation or dissolution necessary or expedient, anything in this act contained to the contrary notwithstanding. Duration of company. Revocation.

Passed at Dover, July 23, 1835.



CHAPTER II.

A SUPPLEMENT to the Act concerning constables.

Dig. 85.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met*, That so much of the act to which this is a supplement, or of any other act of assembly of this State, as provides that no person shall hold the office of constable more than three years in any period of six years shall not be applicable to any person or persons holding, or who may hereafter hold the office of constable in New Castle hundred, in the county of New Castle; and it shall and may be lawful for the Levy Court and Court of Appeal within said county, to appoint any person or persons residing in New Castle hundred to the office of constable for any number of years in succession, any law to the contrary notwithstanding. Repeal and alteration of so much of the act as relates to N. Castle hundred.

SEC. 2. *And be it further enacted*, That it shall and may be lawful for William H. Stayton of New Castle hundred, to accept the office of constable and perform all the duties thereof, and receive the fees and emoluments incident thereto; and also, that it shall be lawful for the Governor of the State to appoint the said William H. Stayton to said office, in the same manner as such appointment is made in cases of vacancy. W. H. Stayton appointed.

Passed at Dover, July 23, 1835.

CHAPTER III.

Dig. 315. A SUPPLEMENT to the act entitled *An act concerning the real estates of intestates.*

Second section amended by inserting, &c.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That the second section of the act to which this is a supplement be amended by inserting after the words "aggregate values of all said parts," these words following—"whenever all the parts shall be assigned on the same day, but when all the parts shall not be assigned on the same day, then to pay to the other parties entitled severally their just and proportionable shares of the excess of the value of the part assigned according to the appraised value thereof, beyond the just share of said assignee of the value of that part only," and the following clause in said second section, beginning with the words "In case of a division or subdivision," and ending with these words "proportionate to the deficiency and no greater," shall have force and effect only, and be applied whenever all the parts shall be assigned on the same day, and the said section shall be read and construed as amended and restricted by this section.

"Tenant by curtesy" entitled to a certain share and may recover by a "scire facias," &c.

SEC. 2. *And be it further enacted,* That whenever a party entitled to a share of an intestate's real estate shall die, leaving a husband entitled to have such a share as "*tenant by the curtesy,*" and such share shall be appraised and assigned or sold, and assigned by order of the Orphans' Court, such husband during his lifetime shall be a party entitled to have and receive the interest which shall be due from the assignee on the appraised value of proceeds of sale of such share, and may recover the same by scire facias on the recognizance of the assignee and his sureties, or by an action of debt for the said interest; and also such husband shall be a party entitled to have, receive and to hold during his lifetime the appraised value or proceeds of sale of such share on entering into a recognizance to the State of Delaware, with sufficient surety or sureties, and in a penal sum to be approved by said court, with condition in substance "that the appraised value or proceeds of sale of such share, or such part thereof as he shall receive, shall upon his death be paid to the parties entitled severally, their just proportions, according to the act to which this is a supplement, or to their executors, administrators or assigns respectively, with interest from the death of such husband," and such husband after entering into such recognizance, may by scire facias or action of debt on the recognizance of the assignee and his sureties, recover said aforesaid value or proceeds of sale of such share, together with such interests as may be due; and when a party entitled to a share of an intestate's real estate shall die leaving a widow entitled to one-third or one moiety or all of such share, for the term of her life, and such share shall be appraised and assigned, or sold and assigned by order of said court, such widow shall for the term of her life, be a party entitled to have

Upon his death shall be distributed, &c.

and receive the interest of such third part, moiety or all of the appraised value or proceeds of sale of such share, which shall be due from the assignee, as the case may be, and may recover the same by scire facias on the recognizance of the assignee and his sureties or by action of debt for the said interest, and also such widow shall be a party entitled to have and receive for the term of her life, the said one-third, moiety or all of the appraised value or proceeds of sale of such share, as the case may be, upon entering into a recognizance as aforesaid, with condition in substance that the said one-third part (or one moiety or all) of the appraised value or proceeds of the sale of such share or such part thereof as she shall receive, shall after her death be paid to the parties entitled severally, according to the act to which this is a supplement, or to his or her executors, administrators or assignees respectively their respective, just and proportionable shares of the said one-third, moiety or all of the appraised value or proceeds of sale of such share (as the case may be) or such part thereof as she shall receive; and such widow, after entering into such recognizance as aforesaid, may by a scire facias or action of debt on the recognizance of the assignee and his or her sureties, recover the said one-third, moiety or all of the appraised value or proceeds of the sale of such share, as the case may be, and also such interest thereon as may be due, and if such widow shall become the wife of another husband before entering into such recognizance as aforesaid, then and in that case, if such last husband shall himself enter into such a recognizance as aforesaid, he shall be entitled to the same rights, privileges, actions and sums of money aforesaid to which his wife would have been entitled by her entering into such recognizance as aforesaid: *Provided nevertheless*, that it shall and may be lawful for the assignee of any such share as aforesaid, at any time before such recognizance as aforesaid shall be entered into, to pay into said court such sum as such husband or widow may be entitled to according to the provisions of this act, and from that time, the interest thereon against him shall cease: *And provided further*, that nothing herein contained shall be construed so as to deprive a defendant of the benefit of the "Act for the limitation of certain personal actions," and of exceptions to accounts in any scire facias or action before mentioned.

Widow may likewise recover.

Condition of recognizance.

Husband of such widow may recover.

Proviso.

SEC. 3. *And be it further enacted*, That when a party who shall stand prior according to the order of preference to a party applying, to accept or choose any appraised premises shall be incapable of accepting or choosing the same, because of infancy, idiocy or other incompetency of mind, the fact shall be made appear to the satisfaction of the court by oath or affirmation, then such prior party or parties shall be passed by, and the party next in order shall be admitted to accept and choose, in the same manner and as fully to all intents and purposes as if such prior party or parties had been of full age and had refused to accept, anything in the act to which this is a supplement to the contrary notwithstanding.

Priority of parties.

Passed at Dover, July 24, 1835.

CHAPTER IV.

A SUPPLEMENT to the act entitled *An act to enable the owners and possessors of the meadow, marsh and cripple lying on both sides of Silver Run fronting the river Delaware, effectually to embank and drain the same, and keep the banks, dams, sluices, canals and drains in repair, and to raise a fund to defray the expenses thereof.*

Private act.

Passed at Dover, July 24, 1835.



CHAPTER V.

AN ACT to confirm the marriage between *Vincent W. Moore and Ann Whitaker, of Kent county and State of Delaware.*

Private act.

Passed at Dover, July 24, 1835.



CHAPTER VI.

AN ACT to authorize *Dr. James N. Sutton to construct a Railroad across a public road in New Castle county.*

Private act.

Passed at Dover, July 24, 1835.



CHAPTER VII.

A SUPPLEMENT to the act entitled *An act authorizing Isaac G. Colesberry, guardian of Elizabeth Reynolds, a minor, to sell and convey the interest of the said minor in certain real estate in New Castle county.*

Private act.

Passed at Dover, July 24, 1835.

CHAPTER VIII.

AN ACT to incorporate the owners of the Beaver Gut Marsh, for the better securing and improving the same.

Private act.

Passed at Dover, July 24, 1835.



CHAPTER IX.

A FURTHER SUPPLEMENT to an act entitled *An act to incorporate the Wilmington and Susquehanna Railroad Company.*

Vol. 8, chap. 110, p. 107, chap. 312, p. 311.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met, (two-thirds of each branch of the Legislature concurring in this act,)* That the president and directors of the Wilmington and Susquehanna Railroad Company, or a majority of them, and the president and directors of the Delaware and Maryland Railroad Company (which said last mentioned company has been incorporated by an act of the Legislature of the State of Maryland) or a majority of them, be and they are hereby authorized and required at any time after the Legislature of Maryland, have ratified and adopted this section as hereinafter provided, to call a meeting of the stockholders of the Wilmington and Susquehanna Railroad Company, and the Delaware and Maryland Railroad Company, first giving at least three weeks notice of the time, place and object of such meeting in one newspaper published in the city of Philadelphia, one in the city of Baltimore, one in Cœcil county, in the State of Maryland, and one in the State of Delaware; and at the said meeting, the holders of the major part in amount of the stock of each of the said railroad companies, attending in person or by proxy, shall be competent to decide whether or not the said railroad companies shall be united and together form one body politic and corporate, upon such terms and stipulations as by them shall be deemed proper and expedient, and if at such meeting it be decided that the said railroad companies shall be united and together form one body politic and corporate, it shall be certified in writing to the recorder of deeds for New Castle county, who is hereby required to record the same, and thereupon and immediately thenceforth, the said Wilmington and Susquehanna Railroad Company and the said Delaware and Maryland Railroad Company shall be, and are hereby created one body politic and corporate in fact and in law, and by the name, style and title of "The Wilmington and Susquehanna Railroad Company," and by and under that corporate name, the holders of the

Meeting of stockholders.

Notice of time and place to be published.

Union of the companies.

To be certified in writing.

Title of company.

Powers. stock of the said railroad companies, so enacted as aforesaid, shall hold, possess and enjoy all the property, rights and privileges, and exercise all the powers granted to and vested in the said railroad companies or either of them, by this or any other law or laws of this State or of the State of Maryland: *Provided*, that the number of directors of the said company created by the said union as aforesaid, shall not be less than nine, nor exceeding fifteen, two-thirds of whom shall always be residents of the States of Delaware and Maryland, and all of them shall be stockholders and citizens of the United States: *And provided further*, that this section shall not go into operation until the Legislature of the State of Maryland shall have ratified and adopted the same.

Proviso as to number of the directors.

Further proviso.

Comm'rs. to estimate damage. *SEC. 2. Be it further enacted by the authority aforesaid, That whenever it shall in the opinion of the directors of the Wilmington and Susquehanna Railroad Company, be necessary for the said company to enter into and upon and occupy for the purpose of making said railroad, any lands or tenements, they shall signify the same to the commissioners hereinafter named, whose duty it shall be under oath or affirmation, fairly to estimate the damage that may be done to said lands and tenements by such entry and occupation, and to examine and survey the said lands and tenements, and to report the same to the prothonotary of the Superior Court for New Castle county; and it shall be the duty of the said commissioners in estimating such damage, to take into consideration the advantages as well as the disadvantages that will be derived by the owner or owners of the said lands from the said railroad; and upon the return of the said report, and the said company paying to such owner or owners the sum in said report specified, the said company shall become seized of the same estate in the said lands which the owner or owners held in the same. If any such owner shall refuse to accept the said sum when legally tendered, or in case any such owner shall be a minor, feme covert, reside out of the State, or be absent from his residence in the State, the said company, shall cause the said sum of money to be deposited to his or her credit in the Farmers' Bank of the State of Delaware, or the Bank of Delaware, in the city of Wilmington, and such deposite shall operate as a payment to such owner to all intents and purposes; and in case of a feme covert, owner of such lands or tenements, such deposite to her credit shall operate as a payment to her and her husband, and thereupon the said company shall have the right to enter upon, use and occupy the lands and tenements, the damage upon which shall have been so estimated and paid for or deposited as aforesaid. But any owner or owners dissatisfied with any such report may apply to the Superior Court of the State of Delaware, in and for said county, at the next term thereof after the coming in of said report, and the said court may direct a writ of *ad quod damnum* to be issued, commanding the sheriff of said county to inquire by twelve impartial men of his bailiwick, under their several oaths or affirmations, what damages will be sustained by such owner or owners, by reason of said railroad so passing through any lands or tenements belonging to him,*

Upon payment made, company to become seized, &c.

Deposite to be made under certain circumstances.

Owners may apply for a writ of ad quod damnum.

her or them, taking into consideration all the advantages to be derived to him, her or them, by reason of said railroad, and thereupon the said sheriff shall inquire according to the command of said writ, and make return of such inquiry and of all his doings by virtue of said writ, and upon such return being made, the said company shall pay over to any such owner or owners the excess, if any there be, over and above the sum so paid or deposited as aforesaid, and upon any appeal being so taken as aforesaid by the owner or owners of any such lands or tenements, the said Wilmington and Susquchan-na Railroad Company shall give such security as the said court shall direct for the payment of the excess, if any, which may be assessed and awarded by the said sheriff and jury. But in no case after such payment or deposite as aforesaid, of the sum found and reported by the said commissioners, shall the works of the said company be delayed by such application for a writ of ad quod damnum; but the right of entry and occupation in the said company, their servants and workmen, of, in and to, all such lands and tenements, whereof an estimate and report of damage shall have been made by said commissioners, shall on such payment or deposite being made as aforesaid, be lawful and perfect. The costs of the assessment of damage shall be paid by said company in all cases, except where any such owner or owners shall have applied for and obtained a writ of ad quod damnum as aforesaid, and the assessment of damage on said writ has not exceeded the sum reported by the said commissioners, but in such excepted case the party applying for said writ of ad quod damnum as aforesaid, shall pay the costs of the said writ, and of the proceedings thereunder. And whenever the sum deposited under an assessment by the commissioners, shall exceed the assessment on a writ of ad quod damnum, the party shall not receive the excess, but shall be concluded by the last assessment of damage, and shall pay all the costs of said writ and of the execution thereof. Notice to a tenant, or notice left on the demised premises, of the time and place of executing a writ of ad quod damnum, shall in all cases be notice to his landlord, and a notice of ten days shall always be sufficient, if left on the lands, whether personally served on the owner or not. The following persons shall be the commissioners to assess damages, that is to say: Richard Mansfield, Jacob Ferris, John Ginn, Daniel Corbit and William Polk, all of New Castle county, and the act of a majority of them shall be as binding and effectual to all intents and purposes as the act of the whole. Each of the said commissioners shall receive for every whole day, by him devoted to the discharge of the duties imposed upon him by this act, the sum of five dollars, to be paid by the said company, and so pro rata for a less period, and in case of any vacancy occasioned by the death, resignation, inability, removal out of the State, refusal to serve or absence of any one or more of said commissioners, such vacancy shall be supplied by the other commissioners, who shall certify the facts to the prothonotary for New Castle county.

Proceedings thereon.

No delay to ensue from the proceedings.

Costs to be paid by the company, except, &c.

Party not to receive any excess.

Notice.

Comm'rs.

Salary.

Vacancy how supplied

Sec. 3. *And be it further enacted,* That so much of the tenth