

Nicholson, Moffett, John S. Spence, Riley, Pigman, Douglass, Bowles, Gabby, Kershner, Weyer, Hoffman —81. Determined in the negative.

The house adjourns until 6 o'clock, P. M.

6 O'CLOCK P. M.

A sufficient number of members to form a quorum not appearing, the members present adjourn until to-morrow morning 9 o'clock.

TUESDAY, FEBRUARY 19, 1822.

The house met: Present the same members as on yesterday. The proceedings of yesterday were read.

On motion by Mr Bowles, ORDERED, That the committee of claims close the journal of accounts including Sunday the 24th instant.

Mr Allen delivers the following report:

The committee to whom was re committed the bill relating to the wing dam, at the head of the Susquehannah canal, beg leave to report, instead thereof, the following resolutions, the adoption of which they recommend, viz:

Resolved by the General Assembly of Maryland, That the Susquehannah river, from its sources to the Chesapeake bay, so far as the same may be navigable, is a public high-way, free for the use of the citizens of this state and of the United States; and that the bed thereof is, and of right ought to be, forever free to be worked upon and improved, for the purposes of navigation, by individuals and corporations.

Resolved, That the several additional sections of the wing dam, at the head of the Susquehannah canal, erected since the 1st of January, 1818, do unlawfully and unnecessarily obstruct the navigation of the Susquehannah river.

Resolved, That the governor and council be, and they are hereby authorised and required to take the necessary measures proper in their discretion to be adopted, to have removed, so much of the wing-dam as above declared unlawfully and unnecessarily to obstruct the navigation of the Susquehannah river.

Resolved, That the governor and council be, and they are hereby required to direct the attorney general of this state, to use all necessary vigilance in the prosecution of all and every person or persons who have been, or who may hereafter be charged in any of the courts of this state, with unlawfully and unnecessarily obstructing the navigation of the Susquehannah river, or any part thereof from the Maryland line to the Chesapeake bay; and that they shall be, and are hereby authorised, if they shall deem it expedient so to do, to employ other auxiliary counsel in such prosecution, and the same to compensate as may be reasonable and just.

In support of the foregoing resolutions, the committee beg leave to offer the following considerations:

1st. The Susquehannah, like all navigable streams, is a high way, belonging in common to all citizens of this state, and of the United States, interested in its commerce and navigation; nor has the legislature of Maryland, or any other state, the right to authorise any structure on the bed of the river, or any part thereof, that may hinder or impede the navigation.

2nd. The legislature of this state, in the act of January 20th, 1798, has solemnly declared, "that the bed of the river Susquehannah, from the Maryland line to the tide water, shall be considered a public high-way, free for any person or persons who ever to work thereon, in clearing the obstructions to its navigation."

And again, in the act of January 27th, 1814, it is as solemnly repeated, "that the bed of the river Susquehannah, from the Maryland line to the bay of the Chesapeake, is, and shall forever hereafter be a public high way, and that individuals or bodies corporate may at all times remove obstructions to its navigation."

3d. These declarations of the legislature, independent of the paramount authority of national law, which in this respect applies to all navigable waters passing through or contiguous to a plurality of jurisdictions, ought to have a particular and special obligation on this state, uttered and published as they were in the last case, as a part of a public compact with the state of Pennsylvania, and expressly in consideration of that state having previously undertaken "to direct the clearing of obstructions in the river Susquehannah down to the Maryland line;" and in the doing of which she has actually expended large sums of money, under the direction of the most reputable engineers of this country. The committee conceive that it would not be compatible with common justice, much less comport with the dignity and honor of this state, to depart in the smallest degree from its engagement with the state of Pennsylvania, now that the munificence of that state, in the improvement of the Susquehannah down to the Maryland line, has the tendency to throw into its markets, a commerce worth at this time, more than a million and a half of dollars annually.

4th. That there exists an equitable contract between the state of Maryland and the proprietors of the Susquehannah canal, that they shall not molest or obstruct the navigation of the bed of the Susquehannah river, from the Maryland line to tide; which will be fully ascertained from a reference to the acts of assembly 1799, chap 17, and 1803, chap. 102. Not regarding sufficiently the paramount right of every citizen, to navigate without charge, the bed of the Susquehannah, the legislature, by the first of the acts last recited, granted to the proprietors of the canal, authority to enlarge the number of the original shares in their capital stock, and actually loaned them the sum of thirty thousand dollars, requiring that they should expend, on opening and clearing the bed of the river within the Maryland line, the sum of five thousand dollars; at the same time allowing them upon the expenditure of the same and completing the navigation of the bed of the river aforesaid, the right to half tolls, that is to say, to one half the sum payable on navigating the canal.

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