

A PHENOMENAL REGION.

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that it has not been made a part of his duty to do so. The power to make such an examination carries with the power to send for persons and subpoena witnesses and administer oaths, and these powers have not been conferred on him...

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RAILROADS.

Reply of the Attorney-General to Letters of the Governor.

AT TORNAY GENERAL'S OFFICE, RALEIGH, December 9, 1881.

Your letters of a recent date addressed to me upon the management of railroads operating in this State presents a subject of importance, and I have given it such consideration as I could in view of the other pressing duties of this department.

I will first call attention to acts of Assembly incorporating railroad companies, but will cite only extracts of such parts of their provisions as undertake to prescribe rates of charges for fare and freight.

The acts prescribing rates for railroads now in operation are as follows: Raleigh and Gaston—Act of 1850-51, chapter 123, section 9, and Act of 1852-53 prescribes a charge for transportation, not exceeding 6 cents a mile for passenger and 8 cents per ton per mile for freight.

Wilmington and Weldon—Act of 1833, sec. 26, page 344 of second volume of Revised Statutes. Not exceeding 6 cents a mile for passenger, and 9 cents a mile per ton of 2,000 pounds of freight.

Atlantic, Tennessee and Ohio (Charlotte and Statesville), Act of 1854-55, ch. 227, sec. 16. Not exceeding 5 cents a mile for passenger, and 35 cents per 100 pounds on heavy articles and 10 cents per cubic foot on articles of measurement for every one hundred miles.

Charlottesville, Columbia and Augusta, (Charlotte and South Carolina) Act of 1846-47, ch. 82, sec. 29. Not exceeding 6 cents a mile for passenger, and 50 cents per 100 pounds for each 100 miles on heavy articles, and 15 cents per cubic foot on articles of measurement.

North Carolina Railroad—Act of 1848-49, ch. 82, sec. 18. Charges for fare and freight regulated by majority of board of directors. And the same provision is made for the following companies, to wit: Carolina Central (W. C. and R.), Act 1854-55, ch. 225, sec. 17; Western North Carolina, Act 1854-55, ch. 223, sec. 25; Raleigh and Augusta (Chatham), Act 1854-55, ch. 230, sec. 18; North Western (Salem), Ordinance of convention 1868, ch. 17, sec. 11; Oxford and Henderson, Act 1870-71, ch. 150, sec. 1; Norfolk and Elizabeth City, Act 1869-70, ch. 18, sec. 8; University Road, Act 1868-69, ch. 22, and Act 1870, ch. 100; Atlantic and North Carolina, Act 1852-53, ch. 136, sec. 17; Midland, Act 1872-73, ch. 54, sec. 17; Chester and Lenoir, Act 1872-73, ch. 35, and Act 1871-72, ch. 130.

It is stated in your Excellency's letter "that it is of importance to the people that the railroads in the State be subject to such laws as the General Assembly shall choose in its wisdom to pass for their control," and in this connection it may not be inappropriate to refer to statutes now in force bearing upon this subject.

The Act of 1874-75, ch. 140, to prevent discrimination in freight tariffs, provides in substance as follows: 1. That it shall be unlawful to charge for transportation of freight over a railroad a greater amount of toll than shall be charged for an equal quantity of the same class of freight, transported in the same direction, over any portion of same road of equal distance, and any company violating this section shall forfeit two hundred dollars for each offense to any person suing for the same.

2. Or to allow freight to remain unshipped for more than five days after receipt of same, unless otherwise agreed upon, and the company violating this section shall forfeit twenty-five dollars for each day the freight remains unshipped as aforesaid, to any person suing for the same.

a penalty of \$50 for refusing to receive freight, and makes it the duty of every transportation company to keep posted at depots a list of its charges for freight, such charges not to be increased without giving fifteen days notice, under a penalty for violation of not less than \$50 nor more than \$100.

The Act of 1874-75, ch. 202, amended by Act of 1879, ch. 281, provides that the chief officer of railroads or other works of internal improvements in which the State owns an interest, shall make an annual report to the board of internal improvements to be submitted to the Legislature; person failing to report guilty of misdemeanor; suit to be brought against persons so failing, on application of board of internal improvements, to whom authority is also given to have the affairs of any such road investigated by a member of the board, who shall have power to send for persons and papers, administer oaths, etc.; sheriff to execute summons as in other cases; refusal to obey summons a misdemeanor.

From these statutes it appears that the remedy for a violation of their provisions is given to the party aggrieved, and also by indictment in the Superior Court. A case arose under section 2, chapter 240, of the Acts of 1874-75, where a railroad company was sued for the penalty incurred in allowing freight to remain unshipped more than five days after receiving it, and the court held the act to be constitutional and the plaintiff entitled to recover.

The Act of 1866-67, chapter 105, empowers directors of railroads in the State to enter into agreements with each other to secure through freight and travel, without expense of transfer of freight or breaking bulk, and in section 2 authorizes the directors of the Western North Carolina Railroad to connect with the roads from Tennessee and Georgia, but in making such connections no discrimination shall be made against railroads or seaports of this State, and that the terms upon which said connections are made shall be approved by the Legislature.

And under a resolution, ratified on the 14th of December 1865, (Acts 1865-66, page 11), it is provided that in the event of any contract having been entered into by any railroad company in this State with any person or company, whereby preferences or exclusive rights of transportation, either in priority or arrangements, are given to such person or company, suit may be brought against the company for a forfeiture of its charter.

In the contract of lease of the North Carolina Railroad, entered into on the 11th day of September, 1871, to be found in the legislative documents of 1871-72, Doc. No. 27, the lessees covenant to pay \$260,000 annual rent, to deposit bonds to secure the same, in the First National Bank of Charlotte, or in such other bank as may be approved by the directors of the North Carolina road, and on failure to comply with the above, possession of the road may be resumed by the lessors on notice required by the contract; also to keep the road in good repair, with bond for faithful performance of the same, and not to establish local fare or freight at higher average price from station to station than the average rate for same as established by the North Carolina road on September 1, 1869.

General order No. 88, referred to in your letter, I am informed by your Excellency was revoked, and did not go into practical operation. It is provided by the general statutes that a suit may be brought against a corporation to vacate the charter and annul its existence, whenever it shall exercise a franchise or privilege not conferred by law. Bat. Rev., ch. 17, sec. 362 et seq.; ch. 26, sec. 39; Revised Code, ch. 26, sec. 5 and 25. And upon a judgment of dissolution the corporate body is continued only to enable the company to settle its affairs, and not to carry on the business for which it may have been established. After collecting debts owing to it, selling its property, and paying its creditors, it is provided that the surplus be distributed among the stockholders or persons entitled thereto. Where the franchise and property of a corporation are sold under an execution at the instance of creditors, the corporation in the hands of the purchaser retains the same powers, &c., as before such sale. Revised Code, ch. 26, sec. 9 and 13.—Gooch vs. McGehee, 83 N. C. 59.

By the Act of 1874-75, ch. 198, the Legislature directed suit to be brought to dissolve the Roanoke Navigation Company. After providing for the appointment of a receiver, a sale, &c., it makes the purchaser a new corporation under any name mentioned in the deed of conveyance, and specially provides that the corporation thus created shall succeed to the rights of the old. By direction of this act a suit was brought and a judgment of dissolution obtained. See Attorney-General vs. Roanoke Navigation Company, 84 N. C., 705.

There is also a provision in section fourteen of the act incorporating the Raleigh and Gaston road, to the effect that whenever the Legislature may be of opinion that the charter shall have been forfeited, it may by joint resolution direct a writ to issue, returnable before the Supreme Court, calling upon the company to show cause why the charter shall not be forfeited. (I suppose, however, that now the remedy would be the same as in like cases under the general law.)

I have collated these statutes from time to time, as other duties permitted, to show what the Legislature has done in respect to this subject, and the result of these different modes of procedure against corporations.

allegations must be established by proof. I take it that this particularly is required perhaps on account of the consequences which result from a judgment dissolving a corporation, as referred to above. When the facts necessary to meet these requirements of the law shall have been furnished, I shall deem it my duty to give the same a fair consideration, and to institute suit in cases affecting the public interest. To extend the investigation to obtain the facts of any particular case, and proof to sustain them, would impose upon me a labor so great as to seriously interfere with the proper discharge of the duties of this department.

It will be observed by reference to the Act of 1875, above cited, that the board of internal improvements are clothed with certain powers in investigating the affairs of any road in which the State owns an interest.

Whether these powers should be extended so as to include all railroads in the State, or whether authority should be given to any other person or commission to send for persons and papers to make a preliminary examination into their management upon complaint made, are questions for legislative consideration.

While I think the beneficial character of railroads is universally recognized, and that investments in these and other enterprises ought to be encouraged, yet at the same time it is important that such regulations for their management should be matured as will prevent their being operated to the injury of the people of the State; and that the same should be reasonable in themselves, and subservient to the public good.

Additional legislation, if any should be thought necessary, framed upon this basis, might conduce to the welfare of the public, and work an injury to no class of business, whether conducted by individuals or corporations; but its particular character, I cannot anticipate, nor is it a proper subject for me to enter upon. Of that, the Legislature, after receiving the recommendations and suggestions of your Excellency, will be the judge.

Very respectfully, &c., THOS. S. KENAN, Attorney-General.

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