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LAWS OF NORTH CAROLINA, [Passed at the session of Assembly 1844-45.]

CHAPTER LXXXV.

An Act to provide for the reorganization of the Portsmouth and Roanoke Rail Road Company.

Whereas the Portsmouth and Roanoke Rail Road Company is laboring under the pressure of heavy embarrassments, which greatly injure and impair its public utility, and from which it is represented, that it may be relieved by a new organization, whereby the public interests of the State may be protected and continued, and without injustice to its creditors:

Be it therefore enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That the Governor of the State is hereby authorized to appoint a commissioner on behalf of this State to act with such commissioners as may be appointed by the State of Virginia in that behalf.

II. That said commissioners shall have and they are hereby invested with full power and authority to expose to public sale at such time and place as shall be agreed on by them, the said Portsmouth and Roanoke Rail Road, including the Weldon Bridge, with all property, privileges, rights, franchises and immunities now appertaining or belonging to said company: *provided, however,* that the engines and cars shall be sold separate and apart from said road: *Provided further* that such sale shall not in any manner affect the rights of any person claiming by purchase any part of the said Rail Road as property appertaining thereto, alleged by him or them to have been heretofore acquired.

III. The purchaser of said road, together with such other person or persons whom the State of Virginia may associate with him by any law to be passed before the sale aforesaid, shall be a body corporate under the name and style of the present company, and shall hold said Rail Road for the residue of the time yet unexpired, for which the present charter was granted by this State, with all the franchises, privileges, rights and immunities granted and conferred at any time heretofore by this State and the State of Virginia, subject in all respect and in every thing, to all the duties, regulations and penalties, required, prescribed and imposed by any law or laws now in force respecting the present company.

IV. The State of Virginia may fix the amount of capital stock of the company thus formed and declare the number of shares: *Provided, however,* that said stock shall not exceed six hundred thousand dollars nor be less than three hundred thousand; nor shall any share be less than one hundred dollars, nor more than two hundred dollars; and *provided further,* that there shall be no less than twenty stockholders, no one of whom shall hold more than one half of the stock; and the said State may permit the creditors and stockholders of the present company by any act to be passed before the sale aforesaid, to become stockholders in the new company upon such terms and to such amounts of debt and stock as the said State may prescribe: *provided, however,* that if creditors of the present company shall be permitted to subscribe their debts or any portion thereof as stock, as there shall be no distinction amongst them, or preference of one over another; and if the present stockholders or any of them be permitted to subscribe their stock or any portion thereof as stock, there shall also be no distinction amongst them, or preference of one over another: *Provided further,* that so much of the charter heretofore granted to the Portsmouth and Roanoke Rail Road Company as authorizes the president and directors of the said company, by themselves, their officers, agents or servants, to enter upon any land adjacent to the line of said road, without the consent of the proprietor thereof, and take therefrom wood, stone, gravel or earth, for the repairing and keeping up the said road, shall not be in force by virtue of this act; but such entry and taking of timber, stone, gravel or earth, shall only be allowed to the company hereby created upon the license of the owner for that purpose, first had and obtained by the company.

V. The purchaser of the Road Bridge, &c. before any title shall be made to him, whatever be the price thereof, shall execute bond, with good security, to be approved of by the commissioners aforesaid, payable to the President and Directors of the Literary Fund of North Carolina, for securing the sum due to them, together with interest thereon; and this sum, if the Road Bridge &c. shall bring that amount, shall be deducted from the purchase money, and the residue thereof, with the proceeds of sale of all the other property sold by the said Commissioners, and such additional sums as may be added to the fund, shall be applied in satisfaction and payment of all other debts against the present company, according to such preferences as by law they may be respectively entitled to on the day of sale.

VI. The sale may be made on such credit, not exceeding three years, as may be agreed on by the Commissioners, and bond with good security shall be executed for the purchase money.

VII. Such sale shall not take place unless a majority of the stockholders in value, in general meeting to be called for that purpose, after twenty days' notice in two newspapers, shall assent in writing; and when the sale shall be made, the President and Directors, upon the requirement of the commissioners aforesaid, shall convey and assign all the right, title, and interest of the present company in and to said Rail Road Bridge and franchises to the new company, and all the right, title and interest in and to any other property of the present company which may be sold to the purchasers thereof.

VIII. All suits and actions whatsoever which may be pending, brought and prosecuted either by or against the present company at the time of sale, may be prosecuted to final decision, as though this act had never passed; and all such recoveries as may be effected by the company shall be added, after payment of charges of prosecution, to the fund arising from the sale hereby authorized; and all debts then due said company may be recovered in the name of the present company, and the recoveries which may be effected shall be added in like manner to said fund.

IX. *Be it further enacted,* That at any time after the sale herein provided for, and formation of another company, the Petersburg and Roanoke Rail Road Company shall be permitted to use, with its cars and engines, the Bridge across the Roanoke at Weldon, and such portion of the Portsmouth and Roanoke Rail Road between Garysburg and said Bridge, as they may deem needful, upon such terms as may be settled by three commissioners, or a majority of them, whereof one shall be appointed by the Governor of Virginia, and one by the Governor of the State of North Carolina,

and the third by the two aforesaid.

X. Any person injuring the Rail Road in the State, after the formation of the new company hereby contemplated, shall be subject to the same actions for penalties and damages as are now allowed for injuries to the present road; and the said actions shall be sued and prosecuted in the manner now prescribed; and all such acts as are now offences against the State, when done to any part of the present road in this State, shall be offences when done under the same circumstances to any part of the road after the formation of the company aforesaid, and shall be indictable and punishable in like manner.

XI. This act shall be in force from and after its ratification; and from and after the sale hereby provided to be made, all laws and clauses of laws inconsistent with this act shall be and are hereby repealed.

[Ratified the 8th of January, 1845.]

CHAPTER LXXXVIII.

An Act to amend an act, entitled an act to authorize the laying out and establishing a Turnpike Road from the South Carolina line, at some point near the Block House, in Rutherford county, to Cain Creek Bridge, in Buncombe county.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That hereafter the stockholders in the Turnpike road from the Block House, in the county of Rutherford, to Cain Creek bridge, in the county of Buncombe, authorized by the act of the General Assembly, passed in the year 1835, be, and they, or a majority of them, are hereby authorized to fill all vacancies which have or may occur in the board of commissioners appointed by said act; and the commissioners so appointed shall be governed by the same rules and regulations, as are now prescribed by law: *Provided, however,* that nothing in this act shall be so construed as to prevent the owners of said road, or any of them, from being indicted as the owners of other public roads in this State.

[Ratified the 9th day of January, 1845.]

CHAPTER LXXXIX.

An Act to authorize the making a Turnpike Road in Wilkes County, and to incorporate a company for that purpose.

I. *Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same,* That Dr. L. G. Jones, Alexander Church, William T. McNeill, Alexander Whittington, and John J. Johnson, be, and they are hereby appointed commissioners, with power to open books and receive subscriptions to the amount of three thousand dollars, which sum shall constitute the capital stock of the company hereby incorporated, for the purpose of making and keeping in repair a turnpike road, from the Yadkin river, in Wilkes County, on the stage road leading from Wilkesborough to Tennessee to the top of the Blue Ridge, in Ashe County; and it shall be the duty of said commissioners to open books for the purpose, on or before the first day of May next, and receive subscriptions of said stock of said company.

SEC. II. *Be it further enacted,* That the aforesaid capital stock of three thousand dollars shall be divided into shares of twenty dollars each.

SEC. III. *Be it further enacted,* That as soon as one thousand dollars of the capital stock shall be subscribed, it shall be the duty of the commissioners to notify the stockholders of the same, by suitable advertisement, to require the attendance of the stockholders at such time and place as they may designate, a majority of whom being in attendance, may proceed to appoint a President, Treasurer and five Directors, for the term of one year and until the next general meeting of the stockholders; and the said President and Directors when so appointed, and their successors in office, shall constitute a body corporate and politic in law, by the name of the Yadkin Turnpike Company; and by that name may sue and be sued, plead and be impleaded, in any Court of record, or before any Justice of the Peace in this State; and as such shall have perpetual succession and a common seal, and shall have all other powers and rights incident to a corporate Company, and which may be necessary to carry into effect the objects of this corporation.

SEC. IV. *Be it further enacted,* That the number of votes to which each stockholder shall be entitled shall be according to the number of shares he shall hold in the proportion following, that is to say, for one share and not more than two, one vote; for every two shares above two and not exceeding ten, one vote; for every four shares above ten and not exceeding twenty six, one vote; and for eight shares thereafter, one vote.

SEC. V. *Be it further enacted,* That the owners of a majority of all the shares subscribed, shall have power to appoint all officers, and make all rules and regulations necessary for carrying into effect the objects contemplated by this act of incorporation; and that the President and Directors shall have power to make such bye laws, not inconsistent with the constitution and laws of this State or of the United States, as they may deem proper for the regulation of the affairs of the corporation.

SEC. VI. *Be it further enacted,* That it shall be the duty of the Treasurer to receive all monies due the company, to keep a fair account of the same, and perform all such duties as may from time to time be assigned him by the subscribers.

SEC. VII. *Be it further enacted,* That the stockholders shall, at their first general meeting, fix on the time or times and the proportions in which stock subscribed shall be paid, and shall further have power to declare the stock of delinquent stockholders forfeited.

SEC. VIII. *Be it further enacted,* That when the aforesaid road shall be completed, before the company shall erect a gate or gates on the same, and demand toll, the road shall be reviewed by two commissioners to be appointed by the County Court of Wilkes County, who shall make report to the said Court, that the said road is in good order.

SEC. IX. *Be it further enacted,* That when the said road is completed and approved of as aforesaid, it shall and may

be lawful for the said company to erect toll gates and demand and receive tolls at the following rates: on every four wheeled carriage of pleasure, seventy five cents; on every gig, buggy or sulky, fifty cents; on every six horse wagon, seventy five cents; on every five horse wagon, sixty two and a half cents; on every four horse wagon, fifty cents; on every three and two horse wagon, thirty seven and a half cents; on every one horse wagon or cart, twenty five cents; on each horse without a rider, two and a half cents; on every head of cattle, two cents; on every hog or sheep, one and a half cents; and for every traveller on horse back, ten cents.

SEC. X. *Be it further enacted,* That as soon as said road shall be completed and approved of as before provided, the same shall be considered a public highway and free for the passage of all persons, carriages and animals of every description, on the payment of the tolls imposed by this act; and no higher or other tolls shall be exacted without the consent of the Legislature.

SEC. XI. *Be it further enacted,* That if the President and Directors shall suffer said road to get out of repair, and so remain for one month, the President shall be liable to indictment, and, on conviction, shall be fined at the discretion of the Court; and shall be subject to have the toll gates kept open free for the passage of carriages, persons and animals, free of toll, until the road shall be put in good repair.

SEC. XII. *Be it further enacted,* That all persons now liable to work on said road shall be liable to work six days in every year on said road, under the supervision of the corporation; in consideration of which all the resident citizens of the Counties of Wilkes and Ashe shall pass said road free of tolls.

SEC. XIII. *Be it further enacted,* That this act shall be in force from and after its ratification.

SEC. XIV. *Be it further enacted,* That all the powers hereby granted shall cease and terminate at the expiration of thirty years from and after the completion of said road: *provided,* the General Assembly may at any time hereafter alter or amend said act.

[Ratified the 8th day of January, 1845.]

CHAPTER LXXX.

An Act to revive and continue in force an act, passed in the year 1841, entitled an act to authorize the laying off and establishing a Turnpike road from Laxton Lynche's, in Rutherford County, to the widow Sail's, in Buncombe County.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That an act, entitled an act to authorize the laying off and establishing a Turnpike road, from Laxton Lynche's, in Rutherford County, to the widow Sail's, in Buncombe County, passed in the year one thousand eight hundred and forty one, be, and the same is hereby revived and continued in force, in as full and ample a manner, as if every clause, sentence, paragraph and section therein contained, not inconsistent with the provisions of this act, were herein set forth at full length; and that all the rights, privileges, immunities and advantages therein granted, shall be held, possessed and enjoyed by the company thereby incorporated, in the same manner as if the provision in the eleventh section of said act, requiring said charter to be carried into effect within two years from its passage, had not been contained therein; any law to the contrary notwithstanding, *provided,* said charter is carried into effect within two years from the passage of this act; and *provided,* that the individual stockholders shall execute new bonds as required in the twelfth section of said act.

SEC. II. *Be it further enacted,* That James Toms and James W. Patten be appointed commissioners in the place and stead of Isaac S. Poor and Joseph Gordon, with the same power and authority of the other commissioners named in said act.

SEC. III. *Be it further enacted,* That all that portion of said act of incorporation, which requires the Treasurer to subscribe for fifty shares of the capital stock and appoint a director on the part of the State, be, and the same is hereby repealed; that said Turnpike road shall commence at John W. Harris's in the county of Rutherford, and terminate at James Thom's, in the county of Buncombe; and that whenever five thousand Dollars of said capital stock shall have been subscribed, that the company may organize and go into operation; any thing in said act to the contrary notwithstanding.

SEC. IV. *Be it further enacted,* That this act shall be in force from and after its ratification.

[Ratified the 8th day of January, 1845.]

CHAPTER LXXXI.

An Act to appoint commissioners to view and lay off a road from Frederick Severt's to Daniel Burket's, in the county of Ashe.

I. *Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same,* That Thomas S. Callaway, Rudolph Paw and Jonas Burket, Esquires, be, and they are hereby appointed commissioners to view and lay off a road from Frederick Severt's, by the way of the Walnut Grove and Beaver Creek, to Daniel Burket's.

SEC. II. *And be it further enacted,* That before the said commissioners shall enter upon the duties of their appointment, they shall take an oath before some Justice of the Peace for the county of Ashe, to examine and lay off said

road the best and most convenient way, having regard to private property as well as the public good.

SEC. III. *And be it further enacted,* That said commissioners shall appoint one or more head overseers, and shall allot him or them the hands necessary to open said road.

SEC. IV. *And be it further enacted,* That when said road is opened, it shall be kept up as other highways, and shall be under the jurisdiction of the Superior and County Courts of Ashe.

[Ratified this 6th day of January, 1845.]

CHAPTER LXXXII.

An Act to authorize the Portsmouth and Roanoke Rail Road Company to charge tolls on their bridge over Roanoke river, near the Town of Weldon.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That it shall and may be lawful for the Portsmouth and Roanoke Rail Road Company, as soon as they shall have renewed and repaired the floor of their bridge over Roanoke river near Weldon, so as to render the same safe and convenient for the passage of carriages, wagons and horses thereon, to charge the following rates of toll, viz: For every four wheel pleasure carriage, not exceeding sixty two and a half cents; for every barouche, thirty seven and a half cents; for every carryall, thirty seven and a half cents; for every two wheel pleasure carriage, twenty five cents; for every four horse wagon, fifty cents; for every two horse wagon, thirty seven and a half cents; for every cart, twenty five cents; for every man and horse, twelve and a half cents; for every single horse, six and a quarter cents; for every foot passenger, six and a quarter cents; for every head of cattle, three cents; and for every head of hogs or sheep, two cents.

[Ratified the 2nd January, 1845.]

CHAPTER LXXXIII.

An Act supplemental to an act, passed in the year 1838, entitled "an act supplemental to an act, passed in the year 1834, to lay off and establish a road from Morganton, in Burke County, by Burnsville, Yancy County, to the Tennessee line."

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That for the purpose of carrying said act more effectually into operation, James A. Rush, Alfred Keath and Thomas Baker, Esqs., be, and the same are hereby appointed commissioners to lay off that part of said road lying between Burnsville and the Indian Grove Gap; and that they be required to lay off said road, so that it shall not rise more than one foot in ten.

SEC. II. *Be it further enacted,* That said commissioners shall meet and lay off said road between the passage of this act and the first day of June next; and should either of them refuse or be disabled from acting, the County Court may fill such vacancy, and allow such compensation for services as in their discretion may seem just, to be allowed as other County claims.

SEC. III. *Be it further enacted,* That this act shall be in force from and after its passage, and that all powers conferred by such act, are hereby conferred on the commissioners under this act; and that all laws and clauses of laws coming within the meaning and purview of this act, are hereby repealed.

[Ratified the 6th day of January, 1845.]

CHAPTER LXXXIV.

An Act to establish and regulate a turnpike road in the County of Macon, to be called the Tennessee River Turnpike Road.

I. *Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same,* That Thomas M. Moore and Alfred Hall be, and they are hereby appointed commissioners to view and lay off on the best ground the intervening country will afford, a Turnpike Road from or near the mouth of Tuckasee River to the Tennessee line in Poindexter Gap of the Smoky mountain.

SEC. II. *Be it further enacted,* That the road so laid off shall be vested for twenty years in Thomas Welch, Joab L. Moore, B. W. Bell and Thomas Shepherd, on the following conditions, viz. that the said contracting parties shall open and make said road sixteen feet in width clear of obstructions, except where side cuttings may be necessary, in which the road shall be ten feet wide; 2nd, they shall construct all necessary bridges at least ten feet wide; the declivities of said road shall not exceed one foot perpendicular to eight feet horizontal; and recourse shall be had to this steepness as seldom as possible.

SEC. III. *Be it further enacted,* That upon the persons afore named making it appear to the satisfaction of said commissioners that the said road is fully completed, agreeable to the specifications contained in the second section of this act, then they shall be authorized to erect a gate and receive the following tolls, viz. for a man and horse, twelve and a half cents; for loose horses and mules six and a quarter cents per head; for road wagons, one dollar each; and for four wheeled pleasure carriages, one dollar each; and for carriages and vehicles of every other description, fifty cents each.

SEC. IV. *Be it further enacted,* That should either of the commissioners appointed by this act, die or remove or refuse to act, his or their place shall be filled by the appointment of others, by the Superior Court of Macon County, which commissioner or commissioners thus appointed shall have all the authority and power of the commissioners appointed by this act.

SEC. V. *Be it further enacted,* That it shall be the duty of the commissioners appointed by this act, under the penalty