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APPROVED, March 2, 1833.

Ante, p. 606.

STATUTE II.

March 2, 1833.

Assent of the United States.

Proviso.

Act of Virginia.

Toll-gates.

Superintendent of road.

Duties.

Toll-collectors.

Accounts of superintendent.

Oath.

Bond.

CHAP. LXXIX.—*An Act declaring the assent of Congress to an act of the General Assembly of the state of Virginia, hereinafter recited. (a)*

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the assent of the United States be, and the same is hereby, given to an act of the General Assembly of Virginia, entitled "An act concerning the Cumberland road," passed February the seventh, one thousand eight hundred and thirty-two; such assent to remain in force during the pleasure of Congress: *Provided,* That this act shall not be construed as preventing the United States from resuming whatever jurisdiction it may now have over the said road, whenever, in its discretion, it shall deem it proper so to do; which act of the said General Assembly is in the words and figures following, to wit:

"Be it enacted by the General Assembly, That whenever the government of the United States shall have surrendered so much of the road, commonly called the Cumberland road, as lies within the limits of this state, the president and directors of the board of public works, shall be, and they are hereby, authorized to take the same under their care in behalf of this state; and to cause a gate or gates, and a toll-house or houses, to be erected on said road: *Provided,* the same shall not exceed two in number.

"Be it further enacted, That a superintendent shall be appointed by the president and directors of the board of public works, removable at pleasure, whose duty it shall be to erect said gate or gates, and toll-house or toll-houses, and to exercise all reasonable vigilance and diligence in the care of said road committed to his charge; to contract for, and direct the application of, the labour, materials, and other things necessary for the repair, improvement, and preservation of said road; and he shall pay for the same out of the fund arising from the tolls; he shall have power to appoint and remove at pleasure, the collectors of tolls, and to take from such collector or collectors, bond with good security, conditioned for his, her, or their faithfully discharging his, her, or their duty, and accounting for, and paying over, to such superintendent or his successors in office, all moneys or tolls by him, her, or them collected or received; and it shall be the duty of the superintendent every six months, before the county or superior court for Ohio county, or before some one by either of said courts appointed for that purpose, to render, under oath, an account of all moneys by him received or expended, particularly setting forth, in such account, the time when, and from whom, he shall have received such money, and the time when, and to whom, and on what account, the same shall have been disbursed or expended. He shall, before he shall have entered on the duties of said office, take, before the county court of Ohio county, or some justice of the peace for said county, an oath, that he will faithfully, justly, and impartially discharge the duties of his said office; and he shall, also, before said court, enter into bond, with two good securities, at least in the penalty of ten thousand dollars, conditioned for his faithfully performing, in all things, the duties of his office of superintendent, to account as is before provided for, and also to pay over to his successor or suc-

(a) See notes to "An act declaring the assent of Congress to an act of the General Assembly of the state of Ohio," hereinafter recited, March 2, 1831, ch. 97.

sors in office, or to such person as the county court of Ohio county may, for this purpose, name and appoint, all tolls by him received, and not expended, by virtue of the provisions of this act. He shall, immediately on the receipt thereof, deposit in the North-western Bank of Virginia, all moneys by him received for tolls or otherwise, and the same, as superintendent, check for, as he may want the same in repairing, improving, or preserving said road. And in case of death, resignation, or removal from office, or from the state, any and all moneys standing to his credit in bank, as superintendent, shall be passed to the credit of his successor in office. If the superintendent shall fail or omit, for two calendar months, to render his accounts as is before required, he shall, for every such failure, forfeit and pay, for the benefit of said road fund, five hundred dollars, to be recovered as is after provided for; or if he shall fail or omit to pay over all moneys in his hands as is before required, it shall be lawful, in the name of the President and directors of the board of public works, to obtain judgment against him, his security or securities, his or their heirs, executors, or administrators, upon motion in the county or superior courts of Ohio county, upon giving ten days' notice to such superintendent, his security or securities, his or their heirs, executors or administrators. In all motions, actions, or bills in chancery against such superintendent, his security or securities, his or their heirs, executors, or administrators, whenever judgment or decree shall be pronounced against the defendant or defendants, for any money by such superintendents wrongfully detained, such judgment shall be for the principal sum due, with interest thereon from the time at which the principal sum shall have been due, together with fifteen per centum damages thereon, to be made and levied in manner provided for by law. The said collectors shall monthly, or oftener if required by the superintendent, under oath, account for, and pay to the superintendent then in office, all moneys or tolls collected by him or them, and which shall remain, after deducting his or their compensation; and if such collector or collectors shall fail herein, it shall be lawful for the superintendent, in the name of the president and directors of the board of public works, to obtain judgment against such collector or collectors, his, her, or their security or securities, his or their heirs, executors, or administrators, by motion in the county or superior court for Ohio county, for the sum he, she, or they may be in arrear, with interest and damages as is above provided for in the case of defaulting superintendents: *Provided*, That such collector or collectors, his, her, or their security or securities, his or their heirs, executors, or administrators, shall [have] had ten days' previous notice of such motion. When the said collector shall have paid over to the superintendent, the superintendent shall give him duplicate receipts therefor, one of which he, the said collector, upon pain of forfeiting fifty dollars for every failure, shall file with the clerk of the county court of Ohio county. The bonds hereby required of superintendents or collectors shall be made payable to the president and directors of the board of public works, and be deposited for safe-keeping, with the clerk of the county court of Ohio county. But all moneys, and all fines and forfeitures recovered of them, or either of them, shall be collected and received by the superintendent, in office, or by such person as the county court of Ohio county may appoint to receive the same. The said superintendent, and the said collector or collectors, shall be allowed by the county court of Ohio county a reasonable compensation for their services; to be by them respectively retained out of said tolls, or the proceeds thereof: *Provided however*, That the compensation to the superintendent shall not exceed three hundred and thirty-three and one-third dollars per annum. And for the better order and management of the said fund, and the preservation of said road, the said superintendent, and collector or collectors, shall observe and conform to such

Deposit for
tolls, &c.

Failure to render
account.

Judgment in
actions for failure.

Accounts of
collectors.

Proviso.

Receipts to
collectors.

Bonds.

Fines and forfeitures.

Compensation
of superintendent and collectors.

Proviso.

Instructions.

instructions as the president and directors of the board of public works may, from time to time, prescribe.

"That, as soon as the said gates and toll-houses shall be erected, it shall be the duty of the said toll collector, or collectors, and they are hereby required to demand and receive, for passing the said gates, the tolls and rates hereafter mentioned: and they may stop any person riding, leading, or driving any horses, cattle, sulky, chair, phaeton, cart, chaise, wagon, sleigh, sled, or other carriage of burden or pleasure, from passing through the said gate or gates, until they shall have respectively paid for passing the same; that is to say: if there be but one gate, for every score of sheep or hogs, six and a quarter cents; for every score of cattle, twelve and a half cents; for every led or drove horse, three cents; for every mule or ass, led or driven, three cents; for every horse and rider, six and a quarter cents; for every sled or sleigh, drawn by one horse, or ox, six and a quarter cents; for every horse or ox in addition, three cents; for every dearborn, sulky, chair, or chaise, with one horse, six and a quarter cents; for every horse in addition, six and a quarter cents; for every chariot, coach, coachee, stage, or phaeton with two horses, twelve and a half cents; for every horse in addition, six and a quarter cents; for every other carriage of pleasure, by whatever name it may be called, the like sum, according to the number of wheels and horses drawing the same; for every cart, or wagon, whose wheels do not exceed two and a half inches in breadth, twelve and a half cents; for each horse or ox drawing the same, four cents; for every cart or wagon, whose wheels shall exceed two and a half inches in breadth, and not exceeding four inches, six and a quarter cents; for every horse or ox drawing the same, three cents; and for every other cart or wagon, whose wheels shall exceed four inches, and not exceeding five in breadth, four cents; for every horse or ox drawing the same, two cents; and all other wagons or carts, whose wheels shall exceed six inches in breadth, shall pass said gates free and clear of all tolls: *Provided, however*, That nothing in this act shall be so construed as to authorize any tolls to be received or collected from any person passing to or from public worship, or to or from a visit to a friend, or other place within the county in which he resides, or to or from any musters, elections, or courts, or to or from his common business on his farm or woodland, or to or from a funeral, or to or from a mill or school, or to or from his common place of trading or marketing within the county in which he resides, including the wagons, carriages, and horses, or oxen drawing the same: *Provided, also*, That no toll shall be received or collected for the passage of any stage or coach conveying the United States' mail, or horses bearing the same, or any wagon or carriage laden with property of the United States, or any cavalry or other troops, army or military stores, belonging to the same, or to any of the states comprising the Union, or any person or persons on duty in military service of the United States, or of the militia of any of the States: *And provided, further*, That the superintendent may commute the rates of tolls with any person or persons by taking of him or them a certain sum, annually, in lieu of the tolls aforesaid: *And provided, further*, If two gates shall be erected on said road, then only one half of the said rates or tolls shall be received or collected at each gate; and that the superintendent and three discreet freeholders of Ohio county, to be appointed for this purpose by the county court of Ohio county, shall determine the number of gates (not exceeding two as aforesaid) and the site or location of such gate or gates; and said superintendent and persons to be appointed by the county court as aforesaid, are duly authorized to purchase, for the purpose of erecting a toll-house or toll-houses on said road, as much ground as they shall deem necessary and advantageous to said road fund; to be paid for out of the tolls aforesaid.

Tolls to be collected.

Rates, if one gate.

Persons exempt from tolls.

United States mail, &c., exempt.

Commutation of tolls.

Rates, if two gates.

Site for gates.

"Be it further enacted, That the moneys so collected, and all fines, pen-
Vol. IV.—83

Application of
the Cumberland
road fund.

alties, and forfeitures, accruing under this act, shall constitute a fund, to be denominated the Cumberland road fund, and shall be applied by the superintendent to be appointed as aforesaid, solely and exclusively to the preservation, repair, and improvement of said road, and the expenses incident thereto, and to no other purpose whatever.

Power of the
Assembly to al-
ter or amend.
Proviso.

"*Be it further enacted*, That the General Assembly reserves to itself at any future session thereof, without the consent of Congress, to change, alter, or amend this act: *Provided*, That the same shall not be so changed, altered, or amended, as to reduce or increase the rates of toll hereby established, below or above a sum necessary to defray the expenses incident to the repair and preservation of said road, to the erection of gates and toll-houses thereon, and for the payment of the fees or salaries of the superintendent, the collector of tolls, and of such other agents as may be necessarily employed in the preservation and repair of the said road, according to the true intent and meaning of this act.

Directors to be
set up on the
road, &c.

"*Be it further enacted*, That directors shall be set up, at proper and convenient situations, to caution all conductors and drivers of carriages or wagons on the road, as aforesaid, that they shall always pass on the left of each other, under the penalty of five dollars for every offence; and there shall also be set up, at some conspicuous place at each gate, a board, on which shall be legibly printed the rates of toll as is provided for in this act; and if any toll collector shall unreasonably delay or hinder any passenger or traveller at any of the gates, or shall demand or receive more toll than is by this act established, he shall, for each and every such offence, forfeit and pay to the party aggrieved, the sum of ten dollars.

Delay of pas-
sengers, &c.

Wilful injuries
to road, &c.

"*Be it further enacted*, That if any person shall purposely and maliciously deface, or otherwise injure any of the milestones, parapet walls, culverts, or bridges, or any masonry whatsoever, or any of the gates or toll-houses of, or belonging to the said Cumberland road, in this state, as the same is now constructed, or may hereafter be constructed, every person so offending, upon conviction thereof, or judgment, information, or presentment in the county or superior court of Ohio county, be fined in a sum not exceeding five hundred dollars, or imprisonment in the jail of the county not exceeding six months, or both, at the discretion of the court; and if any person shall purposely fill, choke, or otherwise obstruct any of the side drains, valleys, gutters, or culverts of said road now made, or hereafter to be made, or shall connect any private road or cartway with said Cumberland road, or if any surveyor of a county road shall connect the same with the said Cumberland road, without making, at the point of connection, a stone culvert or paved valley, or other good and sufficient fixture so as to secure a free passage for the water along such side drain where such private or county road or cartway connects with said Cumberland road, and so as to secure such Cumberland road from injury by reason of such county or private road, or way, being connected with said Cumberland road, every person so offending shall, upon conviction thereof, be, for every such offence, fined in a sum not less than five dollars, nor more than twenty dollars; and if any person shall stand his wagon, and team, or either of them, over night upon the pavement of said road now made, or which may hereafter be made, or shall at any other time stand a wagon and team, or either of them, upon the said pavement for the purpose of feeding, or if he shall, in any other manner, purposely and wilfully obstruct the travel upon said road, or if he shall fast-lock or rough-lock either of the wheels of any wagon, coach, chaise, gig, sulky, carriage, or other two or four wheeled vehicle while travelling upon said road as now made, or as it may hereafter be made, (excepting, however, such parts of said road as may be, at the time of said locking, covered with ice,) every person so offending shall, upon conviction thereof, be fined in a sum not less than two, nor more than twenty dollars.

Penalty.

Obstructing
side drains, &c.

Penalties.

Standing wa-
gons, &c.

Locking wheels.

Penalty.

"*Be it further enacted*, That all fines, penalties, and forfeitures, incurred

under the provisions of this act, may be recovered by presentment or indictment in the county or superior courts of Ohio county, or by information or action of debt in the name of the governor, for the use of said road fund, in the same courts; or, the said fines, penalties, and forfeitures, where the same shall be less than twenty dollars, may be recovered by action of debt in the name and for the use aforesaid, before any justice of the peace for Ohio county; but an appeal may be had, as in other cases, to the next monthly court of Ohio county, from the judgment of any justice of the peace, when the same shall be a greater sum than five dollars, exclusive of costs, and it shall be the duty of the superintendent and collectors of tolls to prosecute all offences against the provisions of this act, and he or they shall not be liable for costs where the person or persons prosecuted shall be acquitted, unless the court or justice will certify that the prosecution is groundless and without good cause.

Recovery of fines, &c.

Appeal.

"Be it further enacted, That if more than one gate be erected upon said road, it shall be lawful for any person, desirous to do so, to pay the whole toll at any one gate, and, thereupon, the collector shall grant him a proper certificate thereof, which certificate shall be a sufficient warrant to procure his passage through the other gate.

Tolls may be paid at one gate.

"Be it further enacted, That this act shall not have any force or effect till the government of the United States shall assent to the same.

"VIRGINIA, *Richmond city to wit* :

"I, George W. Mumford, Clerk of the House of Delegates, and keeper of the rolls of Virginia, do certify that the foregoing is a true copy of an act concerning the Cumberland road, passed February the seventh, eighteen hundred and thirty-two.

"Given under my hand this thirteenth day of February, eighteen hundred and thirty-two."

APPROVED, March 2, 1833.

STATUTE II.

CHAP. LXXX.—*An Act to secure to mechanics and others payment for labour done and materials furnished in the erection of buildings in the District of Columbia.*

March 2, 1833.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That all and every dwelling-house, or other building, hereafter constructed and erected within the city of Washington, in the town of Alexandria, or in Georgetown, in the District of Columbia, shall be subject to the payment of the debts contracted for, or by reason of any work done or materials found and provided by any brickmaker, bricklayer, stonecutter, mason, lime merchant, carpenter, painter and glazier, ironmonger, blacksmith, plasterer, and lumber merchant, or any other person or persons employed in furnishing materials for, or in the erecting and constructing such house or other building, before any other lien which originated subsequent to the commencement of such house or other building. But if such dwelling-house, or other building, or any portion thereof, shall have been constructed under contract or contracts, entered into by the owner thereof, or his or her agent, with any person or persons, no person who may have done work for such contractor or contractors, or furnished materials to him, or on his order or authority, shall have or possess any lien on said house or other building, for work done or materials so furnished, unless the person or persons employed by such contractor to do work on, or furnish materials for, such building, shall, within thirty days after being so employed, give notice in writing, to the owner or owners of such building, or to his or to their agent, that he or they are so employed to work or to furnish materials, and that they claim the benefit of the lien granted by this act. And if such house or other building should not sell for a sum sufficient to pay all the demands for such work and mate-

Buildings subject to debts for work, &c.

If buildings be under contract, no lien to attach for work or materials, unless notice be given.

If sale of building do not satisfy