

# American Legal History – Russell

## **"An act to incorporate the Bordentown and Columbus Turnpike Company," Laws New Jersey (1856)**

### CHAPTER CLVIII.

1. Be it enacted *by the Senate and General Assembly of the State of New Jersey*, That the subscription books of the capital stock of the Bordentown and Columbus Turnpike Company shall be opened by George B. Wills, Charles P. Aaronson, Joseph E. Troth, Benjamin Gibbs, Samuel Hand, junior, Charles Mickle, Daniel P. Mershon, junior, George Black and William Steele, or a majority of them, who are hereby appointed to receive subscriptions to said stock, at such times and places as they, or a majority of them, may direct, giving notice thereof at least twenty days prior to the opening of said books, by publishing the same in at least one of the newspapers published in the county of Burlington.

2. *And be it enacted*, That the capital stock of said company shall be fifteen thousand dollars, with liberty to increase the same to twenty-five thousand dollars, and shall be divided into shares of twenty-five dollars each; and that when two hundred shares be subscribed for and taken, the persons holding the same shall be and they are hereby incorporated into a company, by the name and style of "the Bordentown and Columbus Turnpike Company," and by that name and style shall have, enjoy and exercise all the rights, powers and privileges appertaining to corporate bodies and necessary to carry the objects of this act into effect.

3. *And be it enacted*, That at the time of subscribing for said stock, one dollar shall be paid upon each share subscribed for to the said commissioners, or any of them, which money shall be paid over to the treasurer of the company, as soon as one shall be appointed; and the residue of the subscriptions shall be paid in instalments, at such times and places, and to such persons as the president and directors of the company shall from time to time direct, and give public notice thereof in manner aforesaid; and upon failure of the payment thereof, as so directed, the said president and directors shall have power to forfeit the shares of each and every person so failing to pay said instalments, or any of them, or to sue for the amount thereof, to and for the use of said company.

4. *And be it enacted*, That if the number of shares, herein before made necessary for the incorporation of said company, be not subscribed for within three years from the time of opening the said subscription books, this act, and all the subscriptions under it, shall be null and void, and the said commissioners, after deducting thereout, the expenses incurred, shall return the residue to the respective subscribers or their representatives, in proportion to the sums paid by them.

5. *And be it enacted*, That when two hundred shares of said stock be subscribed for, the said commissioners shall call a meeting of the stockholders, giving at least twenty days notice of the time and place of said meeting, as hereinbefore directed with regard to the opening of the books, at which meeting the subscription books shall be laid before the stockholders, who shall thereupon proceed to elect by ballot, nine directors, who shall be citizens of this state, to manage the affairs of the said company for one should occur, when there is no travel to bring a dollar. According to the same course of argument, the legislature would have a perfect right to block up every avenue to the bridge, and to obstruct every highway which should lead to it, without any violation of the chartered rights of Charles River Bridge; and at the same time it might require every burthen to be punctiliously discharged by the proprietors, during the prolonged period of seventy years. I confess, that the very statement of such propositions is so startling to my mind, and so irreconcilable with all my notions of good faith, and of any fair interpretation of the legislative intentions; that I should always doubt the soundness of any reasoning which should conduct me to such results.

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The truth is, that the whole argument of the defendants turns upon an implied reservation of power in the legislature to defeat and destroy its own grant. The grant, construed upon its own terms, upon the plain principles of construction of the common law, by which alone it ought to be judged, is an exclusive grant. It is the grant of a franchise, *publici juris*, with a right of tolls; and in all such cases the common law asserts the grant to be exclusive, so as to prevent injurious competition. The argument seeks to exclude the common law from touching the grant, by implying an exception in favour of the legislative authority to make any new grant. And let us change the position of the question as often as we may, it comes to this, as a necessary result; that the legislature has reserved the power to destroy its own grant, and annihilate the right of pontage of the Charles River Bridge. If it stops short of this exercise of its power; it is its own choice, and not its duty. Now, I maintain, that such a reservation is equivalent to a power to resume

the grant; and yet it has never been for a moment contended, that the legislature was competent to resume it.

To the answer already given to the objection, that, unless such a reservation of power exists, there will be a stop put to the progress of all public improvements; I wish, in this connexion, to add, that there never can be any such consequence follow upon the opposite doctrine. If the public exigencies and interests require that the franchise of Charles River Bridge should be taken away, or impaired; it may be lawfully done upon the making due compensation to the proprietors. "Whenever" says the constitution of Massachusetts, "the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor:" and this franchise is property; is fixed, determinate property.

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Not a shadow of authority has been introduced to establish the position of the defendants, that the franchise of a toll-bridge is confined to the planks of the bridge; and yet it seems to me, that the onus probandi is on them; for all the analogies of the common law are against them. They are driven, indeed, to contend that the same principle apply to ferries, which are limited to the ferry ways, unless some prescription has given them a more extensive range. But here, unless I am entirely mistaken, they have failed to establish their position. As I understand the authorities, they are, unequivocally, the other way. Are we then to desert the wholesome principles of the common law, the bulwark of our public liberties, and the protecting shield of our private property; and assume a doctrine, which substantially annihilates the security of all franchises affected with public easements?

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year, of which election the said commissioners, or a majority of them, shall be judges; and at the expiration of that term, and annually thereafter, upon like notice to be given by the directors for the time being, the said stockholders shall elect by ballot the same number of directors, who shall be citizens of this state as aforesaid; and at every such election, and in all other cases in which the stockholders shall be entitled to vote, a vote may be given for each share by the holder or holders thereof, either in person or by proxy.

6. *And be it enacted*, That within twenty days after the election as aforesaid, the directors shall elect from their number a president of their said company, who shall

be a citizen of this state, and resident of the county of Burlington, who shall hold office for one year, and until another shall be elected, and receive such compensation for his services as a majority of said directors shall direct, and shall be presiding officer at all meetings of said directors, and shall have the casting vote when they shall be equally divided; he shall have charge of the seal of the company, and shall appoint the judge or judges of elections of the stockholders; or in case of his death, absence or inability so to do, the said directors shall appoint some other suitable person, who, for the time being, shall possess the same powers and authority, and perform all the duties herein prescribed.

7. *And be it enacted*, That the said directors, or a majority of them, may supply any vacancy occurring in the interval between the annual elections, by death, resignation, removal or refusal to act of any president or director, and may appoint a treasurer, who shall be a citizen of this state, and resident of the county of Burlington, and all officers, agents, superintendents and other servants that may be required to transact the business of the company, with such compensation as they may determine upon, and may exact from them such security for the due performance of their respective trusts as they may think expedient; they shall regulate the tolls, and have the superintendence and directions of all receipts and disbursements and all other affairs of the company, and may make and enforce such ordinances and by-laws as they may think expedient to regulate the transfer of the stock and the general government of the company and management of its affairs; *provided*, the same are not repugnant to the constitution and laws of this state or of the United States.

8. *And be it enacted*, That at the annual meeting of the stockholders, it shall be the duty of the president and directors of the preceding year to exhibit to the stockholders a complete statement of the affairs of the company during said term.

9. *And be it enacted*, That special meetings of the stockholders may be called, by the order of the said president and directors, or by the stockholders owning one-fourth of the whole stock of the company, by giving notice of the time and place of holding the same, as hereinbefore directed with regard to the annual meeting, which said notice shall specify the particular object of the meeting; but that no business of the company shall be transacted at such special meeting, unless a majority in value of the stockholders attend and concur therein, who may require the books, accounts and all other papers and proceedings of the company, to be exhibited to them by the president and directors.

10. *And be it enacted*, That if from any cause an election hereinbefore named shall not be had at the time specified in this act, the same may be held at any other time, on notice as aforesaid, and that, until such election be had, the officers of the preceding year shall continue to hold their respective offices until others be elected in their stead, and that this charter shall not be defeated nor avoided by reason of irregularity or want of such election.

11. *And be it enacted*, That it shall and may be lawful for the said company to construct and make a turnpike road from Bordentown to Columbus, in the county of Burlington, beginning at or near the public wharf on the river Delaware, in the main street in Bordentown; thence along the public road leading from Bordentown to Columbus, the most approved course, to a stake in the main street or road in Columbus, with the privilege to straighten certain points along said road, which said turnpike road shall be at least thirty-two feet in width, and shall be sufficiently arched and drained to make and keep the same dry; and at least sixteen feet thereof shall be sufficiently bedded and faced with stone, gravel, or other material, to make a solid, firm and even road, at all seasons of the year; and it shall be so graded that in its progress no part of said road shall rise above an angle of five degrees with the plane of the horizon; and the said company shall construct, keep in repair, maintain and make good and sufficient bridges along the line of said road, not less than twenty feet in width; and whenever the said road shall be raised so much at the margin or side as to render carriages passing thereon liable to upset, the said company shall cause good and sufficient railings to be erected and maintained on the side, so as to prevent horses and carriages from running off; and the said company may, by their officers, agents or other persons in their employ, enter from time to time, and at all times, upon all lands, to search for stone, gravel, sand or clay for constructing or improving said road as aforesaid, doing no unnecessary damage to said land; *provided*, that before the said company shall construct the said turnpike road as aforesaid, they shall pay to the respective owners of the land over which the same may pass all damages which the said owners will sustain by reason of the construction of said turnpike road; and in case the said company and the owners cannot agree upon the amount of said damage, then the damages shall be ascertained and determined, as nearly as may be, in the manner hereinafter provided for ascertaining and determining the damage which any land owner or owners may sustain by the taking of stone or gravel from his lands, for the construction or maintaining of said turnpike road.

12. *And be it enacted*, That it shall be lawful for the said company, their officers, superintendents, engineers and workmen, with carts, wagons and other carriages, and with beasts of burthen and draft, and all necessary materials, tools and

implements, to enter upon all lands contiguous or near to the route of said road, doing as little damage thereto as possible; repairing any breach they might make in the enclosures thereof, and to make all ditches and underdrains across and through such lands necessary for properly draining said road; and to take and carry away stones, gravel, clay, sand, earth or other material, suitable for making or repairing said road; and that when the said company or its agents cannot agree with the owner or owners of such required lands or materials for the use or purchase thereof, or when, by reason of the legal incapacity or absence of such owner or owners, no such agreement can be made, a particular description of the land or material so required for the use of the said company in the construction of the said road, shall be given in writing, under the oath or affirmation of some engineer or proper agent of the company, and also the name or names of the occupants, if any there be, and of the owner or owners, if known, and their residence, if the same can be ascertained, to one of the justices of the supreme court of this state, or to one of the judges of the court of common pleas of the county of Burlington, who shall cause the said company to give notice thereof to the persons interested, if known and in this state, or if unknown or out of the state, to make publication thereof as he shall direct, for any term not less than twenty days, and to assign a particular time and place for the appointment of commissioners, hereinafter named, at which time, upon satisfactory evidence to him of the service or publication of such notice aforesaid, he shall appoint, under his hand and seal, three disinterested, impartial and judicious freeholders commissioners to examine and appraise the said lands and materials, and to assess the damages, upon such notice to the persons interested as shall be directed by the justice or judge making such appointment, to be expressed therein, not less than twenty days; and it shall be the duty of the said commissioners, having first taken and subscribed an oath or affirmation, before some person duly authorized to administer an oath or affirmation, faithfully and impartially to examine the matter in question, and to make a true report according to the best of their skill and understanding, to meet at the time and place appointed, and to view and examine the said lands and materials, and make a just and equitable appraisal of the value of the same, and assessment of damages to be paid by the said company for such lands or materials and damages aforesaid, and to make a report thereof, under the hands and seals of the said commissioners, or any two of them, and file the same within ten days thereafter, together with the aforesaid description of the lands or materials, and the appointments and oaths or affirmations aforesaid, in the clerk's office of the county of Burlington, to remain on record therein, and shall be recorded by the said clerk, which report or a copy thereof, certified by the clerk of said county, shall at all times be considered as plenary evidence of the right of said company to have, hold, use, occupy, possess and enjoy the said lands or materials, after the payment of the value and damages

so assessed, and of the right of the said owner or owners to recover the amount of said valuation, with interest and costs, in an action in any court of competent jurisdiction, in a suit to be instituted against the company, if they shall neglect or refuse to pay the same for twenty days after demand made of their treasurer, and shall continue a lien upon the property of the company, in the nature of a mortgage; and the said justice or judge shall tax and allow such costs, fees and expenses to the justice or judge, commissioners, clerks and other persons performing any of the duties prescribed in this section, as he shall think equitable and right, which shall in all cases be paid by the company.

13. *And be it enacted*, That as soon as the said company shall have constructed the said road in a workmanlike manner, according to the several directions in the eleventh section and the true intent and meaning of this act, it shall and may be lawful for the said company to erect gates or turnpikes across the said road, and to demand and receive toll for traveling each mile, and all fractions over half a mile of said road, not exceeding the following rates to wit:

For every carriage, sleigh or sled drawn by one beast, one cent;

For every additional beast, one cent;

For every horse and rider, or led horse or mule, five mills;

For every dozen of calves, sheep or hogs, five mills;

For every dozen of horses, mules or cattle, two cents; and it shall and may be lawful for the toll-gatherer to stop persons riding, leading or driving any horses, cattle, mules, calves, sheep or hogs, or carriages of burthen or pleasure, from passing through the said gates or turnpikes until they shall have paid the toll as above specified; *provided* that nothing in this act shall be so construed as to entitle the said company to demand or receive toll of or from any person passing to or from public worship on the sabbath day, or horses, carriages, sleighs or sleds carrying persons to or from a funeral, or any person passing to or from his common business on his farm, not exceeding one mile from his residence, or any militiaman passing to or from any training on a muster day appointed by law, or any other military officer or soldier passing or repassing when called to do duty by the laws of this state or of the United States.

14. *And be it enacted*, That before the said company shall receive toll for traveling said road, they shall cause milestones or posts to be erected and maintained, one for each and every mile in use on said road, and on each stone or post shall be

fairly and legibly marked the distance the said stone or post is from Bordentown, and shall cause to be fixed, and always kept up at the gates or turnpikes aforesaid, in some conspicuous place, a printed list of the rates of toll which may be lawfully demanded; and also a board, on which shall be in large letters, "Keep to the right, as the law directs."

15. *And be it enacted*, That if any person shall wilfully break, throw down or deface any of the milestones or posts so erected on the said roads, or wilfully tear down or deface any of the printed rates of toll or directions, or shall cut, break down or destroy, or otherwise injure any gates, turnpikes or bridges that shall be erected pursuant to this act, or shall forcibly pass the same without having paid the legal toll at such gates or turnpikes, such persons shall forfeit and pay the sum of twenty dollars, besides being subject to an action of damages for the same, to be recovered by the said company by an action of debt, or other proper action, in any court of competent jurisdiction, with costs of suit; and if any person, with his or her carriage, team or horse, turn out of said road to pass a gate or gates on private grounds adjacent thereto, and again enter on said road, with intent to avoid the toll due by virtue of this act, such person or persons shall forfeit and pay three times as much as the legal toll would have been for passing through said gate, to be recovered by the said company for the use thereof, in an action of debt, with costs of suit.

16. *And be it enacted*, That if any toll-gatherer shall unnecessarily delay or hinder any traveler, passing at any of the gates or turnpikes, or shall demand and receive more toll than is by this act established, he shall, for every such offence, forfeit and pay the sum of twenty dollars, with costs of suit, to be prosecuted by and recovered for the sole use of the person so unreasonably hindered or defrauded.

17. *And be it enacted*, That all the drivers of carriages, sleighs or sleds, of every kind and description, whether of burthen or of pleasure, or persons on horseback, using the said road, shall deep their horses, carriages, sleighs or sleds on the right hand of said road, in the passing directions, leaving the other side of the said road free and clear for other carriages, sleighs or persons on horseback to pass; that if any person shall offend against this provision, such person shall forfeit and pay the sum of ten dollars to any person who shall be obstructed in his and her passage, and will sue for the same, and shall also be subject to an action for damages for every such offence, to be recovered with costs of suit.

18. *And be it enacted*, That if the said company shall not keep the said road and bridges in repair, and complaint thereof shall be made to any judge of the court of



common pleas of the county of Burlington, he shall immediately appoint, by writing, three disinterested freeholders of said county, who shall view the said road, and report in writing, under their hands and seals, or under the hands and seals of two of them, whether the said road so complained of be in such a state as the law requires it to be kept; and if the report be unfavorable to the said road, the said judge shall immediately, under his hand and seal, order the keeper of the gates or turnpikes to keep open the same until otherwise ordered; and if the said keeper shall, notwithstanding the order of the said judge, refuse to open the said gate or turnpike, and exact toll of travelers, he shall, for each offence, forfeit and pay twenty dollars, to be sued for by any person who will prosecute for the same, in an action of debt, with costs of suit; and the judge shall be allowed for his services fifty cents, and the persons appointed one dollar each, to be paid by the company; and it shall be the duty of the persons so appointed or a majority of them, on application from said company, again to view the said road or bridge, and report as aforesaid, their opinion to the said judge, who shall, if authorized by the report of the said persons, or any two of them, by license under this hand and seal, directed to the toll-gatherer, permit the gates or turnpikes to be shut, and the toll to be collected as before, and the said fees shall be allowed and paid as before directed; but if on the first view as before mentioned, the report of the persons appointed, or a majority of them, shall be in favor of the company, the same fees shall be allowed as before prescribed, and paid by the person or persons making the complaint.

19. *And be it enacted*, That whenever the said company shall have completed any three consecutive miles of said road, according to the directions and true intent and meaning of this act, it shall be lawful for the said company to erect a toll-gate across said road, and demand and receive toll for traveling thereon, agreeably to the foregoing rates; *provided*, said company shall not erect a gate on said road north of the road leading to Stever's mills.

20. *And be it enacted*, That the said corporation may use any portion of the main public road on the route above named, by and with the consent of three-fourths of all the landholders along or on the route of said road; and if the owners of such lands shall refuse their consent, then and in that case such road shall be first vacated according to law.

21. *And be it enacted*, That if the said road be not commenced and completed within three years from the passage of this act, that then and in that case this act

shall be void; and the said corporation shall possess the several powers, and be subject to the restrictions and liabilities, contained in the act entitled, "An act concerning corporations."

22. *And be it enacted*, That this act shall continue in force for and during the term of twenty-five years, and that the legislature may at any time alter, modify or repeal the same.

Approved March 14, 1856.

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