

1798. — Chapter 85.

[January Session, ch. 51.]

AN ACT FOR ESTABLISHING A CORPORATION BY THE NAME OF THE FIFTH MASSACHUSETTS TURN PIKE CORPORATION.

Preamble.

Whereas the high way leading from Northfield in the County of Hampshire through Warwick & Orange to Athol, & also from Greenfield through Montague & unimproved Lands up Miller's River to Athol aforesaid thence through Gerry, Templeton, Gardner, Westminster & Fitchburgh to Leominster in the County of Worcester is Rocky & Mountainous, & the expence of straitening, making & repairing the same through the said Towns so that the same may be conveniently travelled with Horses & Carriages is much greater than reasonably ought to be required of said Towns;

Persons incorporated.

SECTION 1ST. *Be it therefore Enacted by the Senate & House of Representatives in General Court Assembled, & by the Authority of the same, That Timothy Dutton, Elisha Hunt, John Barrett, Edward Houghton, Solomon Vose, Caleb Mayo, David Mayo, Oliver Chapin, Josiah Proctor, Oliver Estey, Samuel Sweetser, Hiram Newell, Ebenezer Jones, Jonas Kendall, Phillip Sweetser, Elisha Ball, Caleb Alvord, Jonathan Leavitt, Richard E Newcomb, Solomon Smead, Jerom Ripley, Ezekiel Bascom, Daniel Wells, Calvin Munn, Thomas W. Dickinson, & all such persons as shall be associated with them & their Successors be & they hereby are constituted a Corporation by the name of the Fifth Massachusetts Turnpike Corporation & shall by that name sue & be sued, & shall have a common seal & enjoy all the privileges & powers which are by Law incident to Corporations for the purpose of laying out & making a Turn Pike Road from Capt. Elisha Hunt's in Northfield aforesaid through Warwick, Orange, Athol, Gerry, Templeton & Gardner to Westminster Meeting House, from thence to Jonas Kendall's Tavern in Leominster; & also from Calvin Munn's Tavern in Greenfield through Montague & up Miller's River through unincorporated Land so as to intersect the Road aforesaid in Athol & making the same in such place or places as the said Corporation shall choose, & for keeping the same in repair; which Road shall not be less than four rods wide & the path to be Travelled in not less than Eight*

Corporate name.

Road described.

teen feet wide in any place; & that when said Turnpike-Road shall be sufficiently made & approved of by a Committee appointed by the Court of General Sessions of the Peace for the respective Counties of Worcester & Hampshire for that purpose, then the said Corporation shall be authorized to erect Five Turnpike Gates on the same in such manner as the said Corporation shall judge necessary & convenient for collecting the Toll, one of which Gates shall be near the house where David Mayo keeps a Tavern in Warwick; one other near the house where Samuel Sweetser now keeps a Tavern in Athol, one other to be near the Line between Gardner & Westminster; — one other near the house where Jonas Kendall keeps a Tavern in Leominster, the other one Gate where the Corporation may judge most convenient on the road from Greenfield to Athol aforesaid, & shall be entitled to receive of each Traveller or Passenger at each of the said Gates the following rate of Toll, vizt. For every Coach Phaeton, Chariot, or other four wheel Carriage drawn by two horses Twenty five cents, & if drawn by more than two horses an additional sum of Four cents for each horse — for every Cart or Waggon drawn by two Oxen or Horses, Twelve and an half cents, & if drawn by more than two oxen or horses an additional sum of Three cents for each ox or horse — For every Curricle Sixteen cents — For every Chaise, Chair or other carriage drawn by one horse Twelve & an half cents — For every Man & horse Five cents — For every Sled or Sleigh drawn by two Oxen or Horses Nine cents; if drawn by more than two oxen or horses an additional sum of Three cents for each ox or horse — For every Sled or Sleigh drawn by one horse Eight cents — For all Horses, Mules, Oxen or Neat Cattle lead or driven, besides those in Teams & Carriages One cent each — For all Sheep or Swine at the rate of Three cents for one Dozen; *provided* that said Corporation may if they see fit commute the rate of Toll with any person or persons by taking of him or them a certain sum annually, to be mutually agreed on in lieu of the Toll aforesaid.

Turnpike
Gates.

Rates of toll.

Annual sum
may be received.

SECTION 2D. *And be it further Enacted by the Authority aforesaid,* That said Corporation may purchase & hold land over which they may make said Road; & the Justices of the Court of General Sessions of the Peace in the County where said Road is, are hereby authorized on

Justices of the
Session to aid.

Persons whose lands are taken to be indemnified.

application of said Corporation to lay out such Road, or any part thereof within their respective Jurisdictions, as with the consent of said Corporation they shall think proper; — And the said Corporation shall be liable to pay all damage that shall arise to any person by taking his Land for such Road, where the same cannot be obtained by voluntary agreement; to be estimated by a Committee appointed by the Court of General Sessions of the Peace in the County where such damage shall arise; saving to either party the right of trial by Jury according to the Law which makes provision for the recovery of damages arising from the laying out of Highways.

Penalty for delay and extortion.

SECTION 3D. *And be it further Enacted by the Authority aforesaid*, That if said Corporation, or their Toll gatherer or others in their employ, shall unreasonably delay or hinder any Traveller or passenger at either of said Gates, or shall demand or receive more Toll than is by this Act established, the Corporation shall forfeit & pay a sum not exceeding Ten Dollars, nor less than Two Dollars, to be recovered before any Justice of the Peace of the County where the Offence shall be committed, by any Person injured, delayed, or defrauded, in a special Action of the Case; — the Writ in which shall be served on said Corporation by leaving a copy of the same with the Treasurer, or with some individual Member of said Corporation living in the County where the Action may be brought, or by reading the same to the Treasurer, or individual Member, at least seven days before the day of Trial. And the Treasurer of said Corporation, or individual Member, shall be allowed to defend the same suit in behalf of the said Corporation: — And the said Corporation shall be liable to pay all damages that shall happen to any person from whom the Toll is demandable for any damage which shall arise from defect of Bridges, or want of repairs in said way, & shall also be liable to Presentment by the Grand Jury for not keeping the same way in good repair.

Process of a suit.

Penalty for injuring road; and forcible passage.

SECT. 4TH. *And be it further Enacted by the Authority aforesaid*, That if any person shall cut, break down, or otherwise destroy any of said Turnpike Gates, or shall dig up, or carry away any Earth from said Road, or in any manner damage the same, or shall forcibly pass or attempt to pass by force the said Gates without having first paid the legal Toll at such Gate, such person shall

forfeit & pay a fine not exceeding Fifty Dollars, nor less than Ten Dollars, to be recovered by the Treasurer of said Corporation to their use, in an action of Trespass or of the case; & if any person with his Team, Cattle or Horse, turn out of said Road, to pass any of the Turnpike Gates, & again enter the said Road with intent to evade the Toll due by virtue of this Act, such person shall forfeit & pay three times so much as the legal toll would have been, to be recovered by the Treasurer of said Corporation to the use of the same in an Action of Debt on the case; *Provided* that nothing in this Act shall extend to entitle the said Corporation to demand & receive Toll of any person who shall be passing with his Horse or Carriage to or from Public Worship, or with his Horse, Team or Cattle to or from his common labor, on his Farm, or to or from any Grist Mill, or on the common, or ordinary business of Family concerns, or from any person or persons passing on Military duty.

Attempt to evade the toll.

Exemption on certain occasions.

SECT. 5. *And be it further Enacted by the authority aforesaid*, That the shares in the same Turnpike Road shall be taken deemed and considered to be personal estate to all intents and purposes, and shall & may be transferable: And the mode of transferring said shares, shall be by Deed acknowledged before any Justice of the Peace, and recorded by the Clerk of the Corporation in a book to be kept for that purpose. And when any share shall be attached on *mesne* process, an attested Copy of such process, shall at the time of the Attachment be left with the Clerk of the Corporation; otherwise the Attachment shall be void, and such shares may be sold on Execution in the same manner as is or may by Law be provided for making sale of personal property on Execution — the Officer making the sale, or the Judgment Creditor leaving a Copy of the Execution, & the Officer's return on the same with the Clerk of said Corporation, within fourteen days after such sale, & paying for the recording the same, shall be deemed and considered as a sufficient Transfer of such share or shares in the said Turnpike Road.

Shares to be deemed personal estate.

Transfer of shares.

Process of attachment.

SECT. 6. *And be it further Enacted by the authority aforesaid*, that a Meeting of the said Corporation shall be held at the house of Oliver Chapin, Inholder in Orange, on the tenth day of April next, at ten of the Clock in the Forenoon, for the purpose of choosing a Clerk who shall

Organization of the society.

be sworn to the faithful discharge of the duties of said Office, and such other Officers as may then & there be agreed upon by said Corporation. And said Corporation may then establish such rules & regulations as the said Corporation shall judge necessary, *provided* the same are not repugnant to the Laws of this Commonwealth, for regulating the concerns thereof; & the said Corporation may then and there agree upon such method of calling Meetings in future, as they shall judge proper.

SECT. 7. *And be it further Enacted by the authority aforesaid*, that the said Corporation shall within six months after the said Road is completed, lodge in the Secretary's Office an Account of the expences thereof, and that the said Corporation shall annually exhibit to the Governor & Council a true Account of the Income or Dividend arising from the said Toll, with their necessary annual Disbursements, on said Road, & that the Books of the said Corporation shall at all times be subject to the inspection of a Committee to be appointed by the General Court, or to the inspection of the Governor and Council when called for.

SECT. 8. *And be it further Enacted*, that whenever any Proprietor shall neglect or refuse to pay any Tax or Assessment duly voted & agreed upon by the Corporation, to their Treasurer, within sixty days after the time set for the payment thereof, the Treasurer of said Corporation is hereby authorised to sell at public Vendue, the Share or Shares of such Delinquent Proprietor, one or more, as shall be sufficient to defray said Taxes and necessary incidental charges, after duly notifying in the Newspapers printed at Greenfield, Worcester, and in the paper printed by the Printer of the General Court at Boston the sum due on any such shares, & the time & place of Sale, at least thirty days previous to the time of Sale, and such sale shall be a Sufficient transfer of the share or Shares so sold to the Person purchasing; & on Producing a Certificate of such sale from the Treasurer to the Clerk of said Corporation the name of such purchaser with the number of shares so sold shall be by the Clerk entered on the Books of the said Corporation & such person shall be considered to all intents & purposes the proprietor thereof & the overplus, if any there be, shall be paid on Demand by the Treasurer to the person whose shares were then Sold.

Books to be subject to inspection.

Shares of delinquents may be sold.

To be advertised, &c.

SECT. 9TH. *And be it further Enacted* that the said Corporation shall at all places where the said toll shall be collected erect & keep constantly exposed to view a sign or board with the rates of toll of all the Tollable articles fairly & legibly written thereon in large or Capital Characters.

Sign board to be erected.

SECT. 10TH. *And be it further enacted* that the General Court may dissolve said Corporation whenever it shall appear to their satisfaction that the income arising from the said toll shall have fully compensated the said Corporation for all monies, they may have expended in purchasing, repairing & taking care of the said road together with an Interest thereon at the rate of Twelve Per Centum by the year, & thereupon the property of the said Road shall be vested in this Commonwealth & be at their disposal; *provided*, that if the said Corporation shall neglect to compleat the said Turnpike road, for the space of four years from the passing of this Act, the same shall become void & of no effect. *Approved March 1, 1799.*

Corporation may be dissolved.