THE LEWISBURG AND MIFFLINBURG TURNPIKE COMPANY

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The purpose of this paper is to relate the history of a turnpike company that once operated in Union County, Pennsylvania. As a short chapter of legal and business history, the record of this corporation will no doubt be interesting; but the major interest of such a study should lie elsewhere—in the opportunity to observe how much the thinking of the people of Pennsylvania in respect of road building and road maintenance has been transformed within less than a hundred and fifty years. The change is indeed a vast one. For whereas a century or more ago hard-surfaced roads were so difficult to come by that the people of Pennsylvania did not expect them to be free roads, today the people of this commonwealth take it for granted that Pennsylvania shall so use its taxing power as to provide, and keep in good repair, hard-surfaced roads on which they may ride, free of tolls, to the remotest districts of the state. Moreover, since it is known that the history of one turnpike company could not differ greatly from that of another, a study of this character, because of the relatively long period of time that it covers, should in some degree illumine the whole history of turnpike transportation in this commonwealth. For these reasons an historical study of a company that operated a short toll road in the Buffalo Valley from the spring of 1830 to the autumn of 1903 would appear to be justified.

The turnpike between Lewisburg and Mifflinburg (now a part of Route 45) was conceived as a part of a hard-surfaced highway which was intended to connect the northwestern portion of Pennsylvania with Philadelphia, via Sunbury and Reading.¹ This road

¹ The Centre Turnpike Company, chartered in 1808 to build a turnpike between Reading and Sunbury, completed its road in 1814. James Weston Livingood, The Philadelphia-Baltimore Trade Rivalry, 1780-1860 (Harrisburg, 1847), pp. 46, 53; Samuel Hazard, ed., The Register of Pennsylvania, II (1828), 298. By 1830 it was able to declare a dividend of three per cent. "Rarely does it happen that the affairs of a turnpike company are so prosperous as in the present case of the Centre Turnpike Company." Hazard, loc. cit., VI (1830), 32. For some additional notes on this road, see J. J. John, "The Centre Turnpike Road," Publications of the Historical Society of Schuylkill County, II (1910), 518-533.
became, in fact, a small part of a system of highways in Pennsylvania, a system constructed in a period when the subject of internal improvements was one of great national concern. Such state systems of highways—for Pennsylvania was not the only state in which turnpike roads were built—were not only expressions of the rising sentiment of nationalism in the United States; they were also, in the Middle Atlantic States, products of the spirited rivalry of New York, Philadelphia, and Baltimore for the trade of the “new west” that was rising in the Great Valley beyond the Alleghenies. The era of turnpikes, however, was not one of long duration; within a period of forty years the turnpike movement had reached its height and had begun to decline. But in Pennsylvania the abandonment of such roads was gradual, for in this state as late as 1903 there were in operation at least 1,100 miles of turnpike roads.

By the time that canals and railroads were beginning seriously to challenge the position that highways had acquired as carriers of the internal commerce of the United States, Pennsylvanians had expended much effort and considerable sums of money on turnpikes. These roads were constructed by private corporations, the first of which had been authorized by an act of the General Assembly, approved on April 9, 1792, to build a road between Philadelphia and Lancaster. The company incorporated under the provisions of this act was the first turnpike company in America, and, in a very real sense, it proved to be the parent of all later companies of like character formed in Pennsylvania. From the beginning of the nineteenth century onward for several decades, Pennsylvania turnpike companies, modeled on the plan of the one just mentioned, appeared in great profusion. By 1821, such companies to the number of 146 had been authorized, of which eighty-

2 There was, of course, a long-standing rivalry between Philadelphia and Baltimore for the trade of the Susquehanna Valley, the story of which has recently been told in detail by Livingood in the book cited above. Naturally such rivalry expressed itself, to some extent, in the construction of roads.

3 Joseph Austin Durrenberger, Turnpikes: A Study of the Toll Road Movement in the Middle Atlantic States and Maryland (Valdosta, Ga., 1931), pp. 52, 160.

4 Durrenberger, op. cit., p. 52; Livingood, op. cit., pp. 41-44; Charles I. Landis, “History of the Philadelphia and Lancaster Turnpike,” Pennsylvania History of Magazine and Biography, XLII (1918), 131-140. In 1846, speaking for the Supreme Court of Pennsylvania, Justice Thomas Burnside wrote: “All our subsequent turnpike acts are substantially copied from the act of the 9th of April, 1792, relating to the Lancaster turnpike.” 2 Pa. 114 at 115.
four had actually obtained letters patent. Seven years later the
statistics of turnpike companies that Samuel Hazard had compiled
were even more impressive. "Since the year 1792," wrote Hazard,
"168 companies have been incorporated for the purpose of making
about 3,110 miles of turnpike roads; 102 have gone into operation,
and have constructed nearly 2,380 miles of roads passable at all
seasons, at an expense of $8,431,059.50. . . . The whole surface
of the state is traversed with the numerous turnpikes which ex-
tend their branches to the remotest districts." By the middle of
the nineteenth century, Pennsylvania had chartered 428 toll-road
companies. But by the early 1830's interest in toll-road building
was declining, and interest in canal building was rising. Hence-
forth the turnpike companies that were chartered in Pennsyl-
vania were formed, as a rule, for the purpose of building lines as
feeders to roads already constructed, or as feeders to canals and
railroads. From 1832 onward the mileage of turnpikes abandoned
in Pennsylvania exceeded the mileage of new turnpikes con-
structed. Hence, it is no doubt true, as one historian of this subject
avers, that the 2,400 miles, more or less, of toll roads in operation
in Pennsylvania at the beginning of the 1830's represented the
maximum development of the turnpike movement in this state.

Unlike the other states of the Middle Atlantic region, Pennsyl-
vania lent its credit generously to turnpike companies that it had
chartered. The practice of subsidizing such companies, begun by
an act of March 31, 1806, which empowered the governor to buy
in the name of the commonwealth 100 shares of the stock of the
Erie and Waterford Turnpike Road, was continued for many
years, and was extended to other forms of internal improvements.
By 1838, as a consequence of its having lavishly supported such
enterprises, Pennsylvania had accumulated a debt of more than
twenty-seven million dollars, of which sum more than two and
a half million dollars had been invested in the stock of turnpike
companies. The Lewisburg and Mifflinburg Turnpike Company,
as we shall see, was a beneficiary of this policy of state aid.

The basic act from which the Lewisburg and Mifflinburg Turn-

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6 Durrenberger, op. cit., p. 55; Hazard, loc. cit., II (1828), 291.
7 Hazard, loc. cit., I (1828), 407.
8 Durrenberger, op. cit., p. 97.
9 Ibid., pp. 52, 55, 56.
pike Company ultimately derived its charter was approved on February 22, 1812. According to the provisions of this act, the governor, subject to certain conditions prescribed by law, was empowered to incorporate by letters patent two companies, each of which would be authorized to build a portion of a toll road intended to connect Waterford, in the county of Erie, with Northumberland, in the county of Northumberland. The first of these proposed companies would have the right to build from Waterford to the West Branch of the Susquehanna, at or near the mouth of Anderson's Creek, and the second one would have the right to build from Northumberland to the point where the first one left off, at or near the mouth of Anderson's Creek. The portion which the second one of these proposed companies could build would pass through Derrstown [Lewisburg], Youngmanstown [Mifflinburg], Aaronsburg, Bellefonte, and Milesburg.

Because the act authorizing the construction of this road is long and detailed, we need here consider only those provisions of it that pertained specifically to the formation of the company that was to build westward from Northumberland. The act named commissioners to collect subscriptions to the stock of this company, each share of which stock was to have a par value of $50. When 1,000 shares of such stock had been subscribed, the commissioners were to certify this fact to the governor, who thereupon by letters patent would incorporate the subscribers under the name of the “President, Managers, and Company, of the Northumberland and Anderson's Creek Turnpike Road,” with all the powers and franchises “incident to a corporation.” As soon as this company had been incorporated, the governor would be empowered to subscribe, in the name of the commonwealth, for $75,000 of its stock, subject to the condition, however, that not more than $25,000 of this sum should be expended on that portion of the road connecting Northumberland and Aaronsburg. If at the end of three years from the passage of the act 1,000 shares of stock had not been subscribed, the powers of the company were to cease.

A few months after the enactment of this law the United States became involved in its second war with Great Britain. Whether for this reason, or for some other not now apparent, the sub-

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11 Lewisburg was formerly called Derrstown, and Mifflinburg was formerly called Youngmanstown.
12 1812, February 22, P. L. 50, secs. 29, 30, 34, 35.
scriptions required for obtaining a charter for the proposed Northumberland and Anderson's Creek Turnpike Company were not forthcoming within the time prescribed. The reason for this failure, whatever it may have been, was not such as to persuade the General Assembly to abandon the enterprise, for by an act approved on March 14, 1814, that body decreed that the life of the act of February 22, 1812, should be extended for three years from February 22, 1815, "and no longer."1 Failing, however, to meet the requirements for incorporation within this extended time, the Northumberland and Anderson's Creek Turnpike Company was not chartered.

The General Assembly, nevertheless, seemed reluctant to give up the project, for on March 29, 1819, it provided that the act of February 22, 1812, should be again extended for three years from the first Monday in April, 1819, and that five companies should be formed to build between Northumberland and the mouth of Anderson's Creek the road that had first been authorized in 1812. One of these companies was empowered to build the portion of the road between Northumberland and Youngmanstown, by way of Derrstown. When as many as thirty persons had subscribed for 205 shares of the stock of this company, the governor would be empowered to incorporate these subscribers under the name of the Northumberland and Youngmanstown Turnpike Company, and, in behalf of the commonwealth, to subscribe for 200 shares of the stock of this company.14

By thus substituting five small companies for one large one, the General Assembly may have been endeavoring to accomplish its purpose by stimulating local pride in what would appear to be five local projects. If this was its object, it was at first destined to be disappointed, for the community to be served by the road that the proposed Northumberland and Youngmanstown Turnpike Company was authorized to construct did not subscribe the money needed to bring this company into being. Accordingly, the General Assembly, still hopeful, carried the process of localization one step farther by an act of April 10, 1826, empowering the governor, when certain specified requirements should have been met, to incorporate two companies to construct a turnpike road between Northumberland and Youngmanstown, one of which companies

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1 1814, March 14, P. L. 113, sec. 1.
2 1819, March 29, P. L. 277, secs. 1, 3, 8.
should build from Northumberland to the east end of the Lewis-
burg bridge, and the other from the west end of that bridge to
Youngmanstown. Both of these companies were required to con-
struct the roads authorized by this act "in such a manner as to
combine shortness of distance with suitable ground and other con-
veniences." The two companies, moreover, were required to re-
main forever separate and distinct entities. 15

Within a period of less than three years after the enactment
of this law, the Derrstown and Youngmanstown Turnpike Com-
pany was incorporated. As commissioners to take subscriptions for
the stock of this company, the act of April 12, 1826, had desig-
nated five men and had empowered them to accept subscriptions
from both individuals and corporations. When twenty or more
persons had subscribed for 120 shares, each such share having a
par value of $50, the commissioners were required to certify this
fact to the governor, who thereupon would incorporate the sub-
scribers. The subscription of the state that had been authorized
under the act of March 29, 1819, was now so divided that the
company building the road between Northumberland and Derrs-
town would receive the value of 105 shares. 16

Having collected the required subscriptions, and having certified
that fact to the governor, 17 who thereupon issued letters patent
to the Derrstown and Youngmanstown Company on November 11,
1828, the commissioners advertised a meeting to be held at the
house of Jacob Musser, in Lewisburg, on December 15, 1828,
for the purpose of electing officers for the new company. This
meeting was held as appointed, and Dr. Thomas Vanvalzah was
elected president, Robert Hayes was elected treasurer and clerk,
and twelve other men were elected managers. To this meeting
three of the commissioners appointed to take stock subscriptions
made a report of the doings of the commissioners and delivered
up to the officers of the Company the subscription book and the
Company's charter. 18

15 1826, April 10 P. L. 308, secs. 1, 5.
16 Ibid., secs. 2, 4, 5. The name of the Derrstown and Youngmanstown Turn-
pike Company was officially changed to the Lewisburg and Mifflinburg
Turnpike Company in 1858, 1858, February 23, P. L. 48, sec. 2.
17 The original charter is in the Company Papers, now in the possession of
Merrill W. Linn, Lewisburg, Pa.
18 Lewisburg and Mifflinburg Turnpike Company, Minute Book, pp. 4-5
(hereafter cited as Minute Book).
The board of managers of the new company, now empowered to do business in the name of the corporation, proceeded forthwith to set the Company’s affairs in order. The urgent task that confronted the board was that of getting the road constructed and approved by the state, for upon such approval the Company would receive a substantial contribution from the state, as well as the right to begin taking tolls. Accordingly, at this first meeting the board resolved, *inter alia,*

that the managers are to receive as a compensation for their services in locating the road and the business of the company generally one Dollar & twenty five cents per day and find themselves

... that the President be authorized to contract with a surveyor to lay out the Road at the rate of two Dollars & twenty five cents pr day & find himself drafting at the same rate

... that the President & Managers will not allow any damages for any property they may have occasion to pass over or through on their route unless compelled by law, except where buildings have to be removed and then if they cannot agree, to have it decided by law—

... that the President be authorized to advertise the sale of the Road on Tuesday the 20th & Wednesday the 21st days of January next and that written proposals will be received at that time by the Managers to commence at

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19 How the Lewisburg and Mifflinburg Turnpike Company, notwithstanding the fact that the law under which it was incorporated provided that this company should pay damages for all the property it took, acquired its right of way (as its records show that it did) with little or no cost to itself, is a question of some interest. Two possible explanations may be offered. As early as 1712 the practice began in the province of Pennsylvania, upon the giving of a patent for a parcel of land, of adding, without cost to the purchaser, six per cent of the quantity of land called for by the patent. The purpose of this gift was to enable the public authorities, when building a road through such land, to take thereof up to six per cent without compensation to the owner. This practice was continued for a long time after Pennsylvania ceased to be a British possession. Most of the properties through which the road of the Lewisburg and Mifflinburg Turnpike Company passed were patented under the “Officers’ Surveys of 1769,” and therefore contained the “six per cent for roads.” On this subject, in general, there is an excellent note in 2 Smith Laws 105, beginning at 139 (Bioren ed., Philadelphia, 1810). The other possible explanation is that the Company profited by the practice, dating from an early day in Pennsylvania, whereby the owner of property, in his eagerness to get a road through his property, gladly gave a right of way. So persistent has this practice been that even today a board of view, when laying out a road across private property, acts under court instructions to attempt to obtain release of damages from the owners of land to be taken for such road, and to assess damages for land so taken only as a last resort.
Youngmanstown at the House of Jacob Maize and in the Borough of Lewisburg at the House of Jacob Musser.

... that the Road be laid out in half mile sections

... that the Treasurer is authorized to call upon the stockholders by advertisement for five Dollars on each share subscribed the first to be paid on the first of Febry next & five Dollars on the first day of each succeeding month untill [sic] all is paid

... that the President & Managers meet at the House of Jacob Musser on Monday the 22d. Inst for the purpose of Locating the Road and such other matters as may appear to them necessary

Between December 22 and 25 the board occupied itself in exploring routes, and on Christmas day it selected one of the three routes proposed. On December 26 and 27 it located the road from Youngmanstown as far east as “the cross Road Leading to New Berlin.” The work of locating the rest of the road it turned over to a committee, which, after completing its task, reported to the board on January 3, 1829, at which time the board approved the road as “surveyed and drafted.” On January 20 and 21 the board met to receive construction bids, and on the last named day accepted the bid of John Maclay. On January 27 Dr. Vanvalzah signed with John Maclay, Robert P. Maclay, and John Forster articles of agreement, whereby the Company promised to pay the contractors at the rate of $3.90 a perch for constructing the road, and the contractors in turn bound themselves by a bond of $5,000 to complete the road according to the specifications not later than November 1, 1829. On January 31 the board approved this agreement.

By September 1, 1829, the expenses of the Company had exceeded its receipts from payments on stock, and on that day the board resolved “that the president be authorized to borrow as much money as will pay the estimates on the work untill [sic] the state appropriation is received to be repaid out of the said appropriation.” During the month of September, Dr. Vanvalzah accordingly borrowed for the Company the sum of $1,600.

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20 Minute Book, pp. 6-7.
21 Ibid., pp. 7-10.
22 Ibid., p. 13.
23 Lewisburg and Mifflinburg Turnpike Company, Treasurer’s Book, p. 5 (hereafter cited as Treasurer’s Book).
The progress of the road was such that the board, at a meeting on October 23, 1829, authorized the president to “advertise for contracting for the building a Toll House, twenty-six feet in length by seventeen feet in width one story and a half high, the lower story to be seven feet in height to be constructed of frame or logs to have an overshot of three feet in front with the necessary windows and doors also a Toll Gate.” On November 10, the board voted “that the Toll House be built near the south East corner of John Rockey’s field north side of the Turnpike.” The contract for building the toll house was presumably let to Henry Barnheart, for on January 11, 1830, he received “on acct Toll House” the sum of $70, and on February 8, 1830, the further sum of $100 “in full for Toll House.” Whether it was a frame house or a log house, the record does not disclose.

On November 25, 1829, the governor of Pennsylvania, having been informed by the president and the managers of the Company that the road was completed according to law, appointed James Dale, Robert Barber, Jr., and Hugh Wilson, Esquires, as commissioners to inspect the road. These men subsequently reported to the governor that the road had been made from the “west end of the Lewisburg Bridge to Mifflinburg (or Youngmanstown) in Union County and perfected throughout the whole distance thereof, being nine miles and ninety perches—in a complete and workmanlike manner according to the true intent and meaning of the several Acts of the General Assembly which authorise the making of the same.” Thereupon Governor George Wolf, on February 3, 1830, authorized the Company to erect gates and to collect tolls.

The road thus approved had been constructed according to specifications set out in the above-mentioned act of February 22, 1812,
which provided for a road sixty feet wide, within which limits an “artificial” road, twenty feet wide, should be made “of firm, compact and substantial materials, composed of wood, gravel, pounded stone, or other small hard substances, in such a manner as to secure a solid foundation, and an even surface, as far as the nature of the country, and the materials will admit.” This road the Company was required to keep in repair, and for failure to do so proceedings instituted before a justice of the peace might result in the withdrawal of the right to collect tolls for use of the portions needing repairs, as well as in a fine imposed on the person responsible for making the repairs, if such repairs were not made within a specified time. In still other ways the rights of the public were safeguarded. In the matter of tolls, a collector who overcharged a person using the road was made subject to a fine. Under certain conditions, moreover, the road could be used without the payment of tolls. No toll, for example, could be collected from “any person passing or re-passing from one part of his or her farm to another; or to and from any place of public worship; or funerals, or from militia-men, on days of training, going to and returning from the same; or persons going to or returning from general elections.” Finally, the legislature reserved the right to gain possession of the road at any time after 1830 by purchase following an appraisal of the property.

But if this law imposed on the Company limitations and obligations, it also conferred upon it substantial and solid benefits. Besides the rights it would enjoy in virtue of its incorporation, the Company would profit by special protection of certain of its property that was exposed, and that therefore could be easily damaged. Penalties, for example, were imposed specifically on persons who should deface mile-stones, direction-posts, or printed rates of toll exposed to public view. Furthermore, by proceedings brought before a justice of the peace, the Company could collect a fine of $15 from anyone attempting to evade the payment of tolls. But the most substantial right which this law conferred upon the Company was the right to collect tolls, the rates of which, as prescribed by section thirteen of the aforesaid law, were as follows:

37 1812, February 22, P. L. 50, secs. 11, 14, 15, 20, 22, 26.
For every space of five miles, and in proportion for greater or less distances, for

A score of sheep .................................................. 4c
A score of hogs .................................................. 6c
A score of cattle ................................................ 12c
Every horse or mule, laden or unladen, with rider or led ................................ 3c
A two-wheeled vehicle
drawn by one horse ........................................... 6c
drawn by two horses .......................................... 9c
A four-wheeled vehicle
drawn by two horses ......................................... 12c
drawn by four horses ......................................... 20c
A sled or sleigh, for each horse ............................ 2c
Wagons of burden
with wheels not more than four inches wide, for each horse 4c
with wheels more than four inches wide but not more than seven inches wide, for each horse 3c
Two oxen estimated as equal to one horse ............... 3c

During the seventy-odd years that the Company collected tolls, the rates were not changed much from those established in the beginning, a fact disclosed by the schedule advertised by the Company during the later years of the nineteenth century as follows:

For any distance of five miles in length of the said road, the following sums of money, and so on in proportion for any other distance, or for any greater or lesser number of sheep, hogs or cattle, to wit:

1. For every score of Sheep .................................. 5c
2. For every score of Hogs .................................. 5c
3. For every score of cattle ................................ 10c
4. For every horse or mule, laden or unladen, with his rider or leader .......................... 3c
5. For every sulky, chair or chaise, with one horse and two wheels ........................................ 6c
6. For every sulky, chair or chaise, with two horses and two wheels ....................................... 9c
7. For every buggy, with one horse and four wheels .......................... 8c
8. For every buggy, with two horses and four wheels .......................... 10c
9. For every chaise, coach, phaeton, stage, wagon, coachee or light wagon, with two horses and four wheels .......................... 12c
10. For either of the carriages last mentioned, with four horses .......................... 20c
11. For every other carriage of pleasure, under whatever name it may go, the like sums, according to the number of wheels, and horses drawing the same
12. For every sleigh, for each horse drawing the same .................. 3c
13. For every sled, for each horse drawing the same .................. 2c
14. For every cart or wagon, or other carriage of burden, the wheels of which do not exceed four inches in breadth, for each horse drawing the same .................. 4c
15. For every cart or wagon, the wheels of which shall exceed in breadth 4 inches, and shall not exceed 7 inches, for each horse drawing the same .................. 2c
16. And for every cart or wagon, the breadth of whose wheels shall be more than seven inches, for every horse drawing the same ________________________________ 1c

17. And when any such carriage as aforesaid is drawn by oxen or mules, in whole or in part, two oxen shall be estimated as equal to one horse, and an ass or mule as equal to one horse, in charging the aforesaid toll. 28

Within a few weeks after receiving permission to do so, the Company began collecting tolls. Anticipating the governor’s license, the board on December 28, 1829, had elected John Linn “Toll Keeper for one year from the first day of April next at forty eight Dollars per annum.” 29 The Company, however, began taking tolls as early as March, 1830, and on the 20th of that month the treasurer entered in his book the sum of $40, the first receipt of toll money from John Linn. 30

For more than thirteen years the Company maintained only one toll gate and employed only one toll collector. But at a special meeting on August 23, 1843, the board resolved to

errct [sic] two tollhouses one on the hill West of Lewisburg along John Brown’s field and the other in the east end of Mifflinburg—

... that William Cameron Esq be employed to build the one near Lewisburg—he agreeing to wate [sic] for the expense of it until the company be able to pay for it—

... that Frederick Pontius be authorized to enquire whether any person in the east end of Mifflinburg will agree to have a gate erected [sic] at his house and collect the toll for the company— 31

Presumably the construction of the eastern toll house went forward rapidly, for at another special meeting, held on October 20, 1843, the board resolved

that a toll gate be immediately erected [sic] at the new toll house where the turnpike crosses the West line of the Borough of Lewisburg; and that Alexander S. Lewis

28 From a printed notice in the Company Papers. This notice, printed by J. R. Cornelius, “Chronicle” Office, Lewisburg, Pa., appears to have been brought out in the summer of 1886. On August 10, 1886, the treasurer of the Company paid Cornelius “for printing Rates of toll,” $3.25. Treasurer’s Book, p. 100.
30 Treasurer’s Book, p. 7.
31 Minute Book, p. 31.
be hereby authorized to collect the tolls at said gate untill [sic] the 1st day of April next—

The board further resolved that Mr. Lewis should receive for this service $25 and that the Company should "find him two loads of coal and a stove to burn it in." Presumably a person was found in the east end of Mifflinburg who was willing to have a toll gate erected near his house, for on June 3, 1844, the board appointed a committee to put up a gate at the west end of the road. Before the end of that year, William Fehrner was collecting tolls at the upper, or west, gate. From 1846 onward, the two gates were commonly called the east and west gates.

In later years the Company erected other toll houses for the use of its collectors, at the east end of the road as well as at the west end. On March 1, 1847, the board authorized a committee to purchase from Joseph H. Smith a lot of land adjoining the east toll-gate house, and on December 18 of that year the treasurer paid Mr. Smith $85 for a "toll house lot." Five years later the board authorized another committee "to purchase a piece of land from Francis Wilson not exceeding an acre to erect [sic] a toll house on instead of the present eastern gate." A year later this committee was re-appointed. On March 3, 1856, another committee was appointed to "purchase a toll gate lot," and this committee succeeded in doing so, for on September 2, 1857, the treasurer paid Francis Wilson $110 for such a lot.

In the meantime, on March 2, 1857, the board had authorized William Cameron and James F. Linn "to erect [sic] a toll house on the lot of ground near the X Roads that the company purchased of Francis Wilson for that purpose and move the eastern gate to...

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Ibid., p. 32. At its meeting on March 3, 1845, the board directed that William Cameron be paid $123.39 "for work on the Turnpike and moving Toll Gate." Ibid., p. 35.

Ibid., p. 33.

Treasurer's Book, p. 37. The Company employed for short periods at least two women as toll collectors. On March 1, 1847, "Widow Yellers was appointed gate keeper for the Western gate for the ensuing year at $25.00 per year." She was collecting tolls as late as March, 1850. In 1851 and 1852, the treasurer paid Catherine Kreisher small sums for collecting tolls. Minute Book, p. 38; Treasurer's Book, pp. 42-50.

Minute Book, p. 36. From 1865 onward, the treasurer entered separately the receipts from the east gate and the west gate.

Minute Book, p. 39; Treasurer's Book, p. 42.

Minute Book, pp. 44-45.

Ibid., p. 48; Treasurer's Book, p. 60.
At the west end of the road, it appears that the Company had no toll house of its own before 1874. On March 2 of that year, the supervisor, E. B. Walter, was authorized "to cause to be erected a new dwelling House for the gatherer at the Western Gate, of such dimensions as he may deem to the interest of the Company, and such other improvements as he may deem necessary." On March 1, 1875, Mr. Walter was paid for building this house the sum of $755.82, and was authorized and required to have erected at the west gate a suitable stable. Perhaps to forestall adverse criticism of the supervisor for an expenditure which for the time being put the Company in debt and compelled it to pass its dividend for 1875, the board, by a resolution passed on March 1, 1875, fully approved the course that Mr. Walter had taken, and also commended his "management of the affairs of the Company generally during the past year."

Not all the money that was paid to the Company for the use of its road was collected at the toll houses. On an average, perhaps as much as one-third of the receipts were collected, presumably in advance, from persons who made annual contracts with the Company for the use of the road. As early as February 8, 1831, the board authorized the president to "make yearly contracts with all such persons as wish to take the Road by the year," and on March 12, 1832, it resolved that all such contracts should be paid in advance. On June 3, 1839, it restricted to the residents of Union County the privilege of making such contracts. The requirement that cash be paid in advance for such contracts appears, however, not to have been strictly enforced, for on March 3, 1879, the board resolved that thenceforth "all contracts must be cash, without any abatement." Fifteen years later the board again resolved that "permits must be paid for in cash when lifted," and that "those who have not paid for their permits for previous years shall not have permits until the same are paid."

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*Minute Book, p. 49. From the meager entries in the Treasurer's Book it is impossible to tell precisely what this building cost.
*Ibid., p. 68.
*Treasurer's Book, p. 88; Minute Book, p. 70.
*Minute Book, p. 70.
*Treasurer's Book, passim.
*Minute Book, pp. 16-17, 25.
*Ibid., p. 77.
The annual receipts of the Company were never large. Not until the middle of the 1850's was the annual income as much as $1,000. Thereafter, until the later years of the 1870's, the Company was relatively prosperous, its income in one year rising to more than $1,500. But from the time of the Civil War to 1904, the average annual income of the Company was perhaps somewhat less than $1,300. From 1893 to 1904, the average was $1,194.30. The annual expenses were considerable, with the result that the net earnings were never large.\textsuperscript{47} In fact, the condition of the Company was such that it could not pay a dividend at all until sixteen years after the completion of its road.\textsuperscript{48}

Without the generous assistance that it received from the state, the Company could hardly have become solvent. When it received its license to collect tolls, on February 3, 1830, it was heavily in debt. But the issuance of this license brought the Company some relief, for now it was entitled to receive the money the state had pledged itself to pay in support of this enterprise. Accordingly, the treasurer entered in his book, as of February 3, 1830, the sum of $5,092.50 as payment by the state for 105 shares of the Company's stock. For some reason not apparent, the state had received a discount of three per cent on this purchase.\textsuperscript{49}

Despite this relief, the pecuniary difficulties of the Company were not yet ended. There were still many bills outstanding, for the payment of which the officers of the Company were compelled to borrow money. By June 4, 1832, the total expenditures of the Company amounted to $15,252.56, but on that date the receipts from loans, sales of stock, and tolls also amounted to $15,252.56. Thus at last the books were balanced and the treasury was empty. Between June 4, 1832, and June 3, 1833, the receipts of the Company were $356.58 and the expenditures were $331.17¼2. Of the meager sum of $25.40½ in the treasury on the last-named date, one dollar was counterfeit.\textsuperscript{50} With such low earnings the

\textsuperscript{47} Treasurer's Book, passim.
\textsuperscript{48} Minute Book, p. 37.
\textsuperscript{49} Treasurer's Book, p. 5.
\textsuperscript{50} Ibid., pp. 10-13. This was not the Company's last experience of counterfeit money, as the following entries of the treasurer will show: June 4, 1837—"To one dollar counterfeit received of R. Hayes, former treasurer. . . . To 2 3 dollar counterfeit shins on Borough of Harrisburg recd as toll." June 3, 1839—"To amount of shinplasters Recd of collector counterfeit—$6.00." January 28, 1848—"To counterfeit ten dollar note returned by J. PONTIUS last fall." Treasurer's Book, pp. 22, 26, 42.
LEWISBURG AND MIFFLINBURG TURNPIKE

Company could not have paid the interest on its debts. From its precarious situation it was soon rescued, however, by further aid from the state. Between 1837 and 1840, in a manner presently to be described more fully, the state invested the further sum of $2,400 in this Company, thereby relieving it of its debts and hastening the day when it could begin paying dividends. The total capital of the Company that was eventually paid in amounted to $13,642.50, of which sum only $6,150 had been privately subscribed. In other words, the state had paid more than half the cost of building the Lewisburg and Mifflinburg turnpike road.

When the first dividend of the Company was declared, on March 23, 1846, there were 277 shares of stock on the books, of which number one share was subsequently forfeited. Of this stock, William Cameron owned 154 shares, or more than half of the total. Before the end of another year, he had added one more share to his holding, and by March 13, 1854, still another; but before March 5, 1855, he had disposed of one share, thus reducing his holding to 155 shares, a block of stock which remained substantially intact from that year until the dissolution of the Company. The person who held this stock could, of course, subject to the laws of Pennsylvania, control the operations of the Company.

The opportunity to effect this concentration of ownership was given by a change of state policy. As we have seen, Pennsylvania for many years, beginning in 1806, had aided with a lavish hand the building of turnpikes and other forms of internal improvements. In the beginning, as we recall, it had bought 105 shares of the stock of the Lewisburg and Mifflinburg Turnpike Company. In 1837 it once again came bearing aid, for in an act of April 4, 1837, the General Assembly provided

That the dividends declared, or to be declared, upon the stock held by the state in the Youngmanstown and Bellefonte turnpike road, be, and the same are hereby

See references in Notes 55 and 56, infra.


Treasurer's Book, pp. 264-268; Minute Book, p. 48.

appropriated to the payment of the debt due by the company incorporated to make a turnpike road from the south [west] end of the Lewisburg bridge to Youngmanstown: Provided, That the sum so appropriated, shall not exceed the sum of twenty four hundred dollars.  

To fulfill the obligation thus established, the state, between June 14, 1837, and July 30, 1840, paid to the Company in four installments the sum of $2,400, for which the Company issued to the state forty-eight additional shares of its stock. By July, 1840, therefore, the state had contributed to the capital of the Company the sum of $7,492.50 and had acquired title to 153 shares, or more than half of the outstanding stock. But the state did not long remain the principal stock-holder of the Company. Plunged into pecuniary distress by the depression which came in the train of the panic of 1837, the state, in 1843, decided to dispose of its stock in banks and in turnpike companies. Accordingly, pursuant to a newly enacted law, it advertised its stock in the Lewisburg and Mifflinburg Turnpike Company for sale in Northumberland on June 24, 1843. The disposal of this stock was a matter of much concern to the Company, as a minute adopted at its annual meeting on June 5, 1843, attests:

William L. Harris and James F. Linn were appointed a committee to attend the sale of state stock at Northumberland on the 24th June 1843—and use their discretion as to the purchase of the state stock in this company.

How these men exercised their discretion, the records of the Company do not disclose; they merely show that on June 24, 1843, this stock was sold, and that on July 6, 1843, it was transferred to William Cameron. On April 20, 1857, William Cameron transferred the 155 shares he then owned to J. & A. Frederick, who on March 31, 1866, sold them to E. B. Walter and Daniel D. Boyer. On March 2, 1867, E. B. Walter became sole owner of this stock and kept it until March 1, 1883, when he sold it to William Wertz, who kept it until the Company was liquidated.

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85 1837, April 4, P. L. 352, sec. 1.
87 1843, April 8, P. L. 180, sec. 4.
88 Minute Book, p. 30.
89 Treasurer's Book, p. 338; Dividend Book, p. 113.
Perhaps because of lack of opportunity, there was no other major concentration of ownership of the Company's stock. Only a few persons ever acquired ten or more shares. In the beginning, the Lewisburg Bridge Company, which had subscribed for fifteen shares, was the largest holder. On June 22, 1867, these shares were sold to John B. Packer, and when the Company was liquidated they were being held as a part of Packer's undivided estate.60 By 1846 William Hayes, who in the beginning had subscribed for eight shares, had acquired twelve shares, which soon thereafter were transferred to other persons.61 By 1852 George F. Miller had acquired fourteen shares, to which he later added other shares, so that by March, 1878, he held twenty-six shares. When he died, in 1885, these shares were divided equally between his sons, D. Bright Miller and G. Barron Miller, who each now possessed fourteen shares, which they retained until the Company was dissolved.62 By March, 1884, J. Merrill Linn had acquired ten shares, and by March, 1894, William L. Harris had also acquired ten shares. Mr. Linn died in 1897, but his stock was held as a part of his undivided estate as long as the Company existed. Mr. Harris also retained his stock until the Company was dissolved.63 Apart from the block of originally state-owned stock, the largest single concentration of ownership was that of James F. Linn. In the beginning, he subscribed for one share, but when the first dividend was declared, in 1846, he held seventeen shares. Thereafter, it appears, he passed by no opportunity to add to his holding, with the result that in 1854 he owned thirty-one shares. Two years later, when the total number of shares outstanding had been reduced to 276, he held thirty-two shares. As the years went by, he acquired more shares, and at the time of his death, October 8, 1869, his total holding amounted to forty-four shares, which were divided, as nearly equally as could be done, among five heirs, one of whom was his son, John Blair Linn, widely known as the author of Annals of the Buffalo Valley.64

62 Treasurer's Book, pp. 282, 328; Dividend Book, pp. 58, 113; Minute Book, pp. 89-90.
63 Dividend Book, pp. 70, 90, 112-113.
64 Treasurer's Book, p. 266; Dividend Book, pp. 5, 11, 42; Minute Book, p. 63.
Unlike many of the turnpike companies chartered in Pennsylvania, the Lewisburg and Mifflinburg Turnpike Company through long years consistently paid dividends, although the yield on the original investment was not large. Between 1846 and 1904, a period of fifty-nine years, the Company passed its annual dividend only three times—in 1848, 1849, and 1875. Sometimes, it is true, the dividend was very small, in the year 1857 being only fifty cents. The largest dividend, $2.75, was declared in 1863. The next largest, $2.60, was declared in 1868, but thereafter in only one year, 1885, was a dividend larger than $2.00 declared. Between 1846 and 1904, each share earned $72, or at the rate of 2.44 per cent annually—certainly not an excessive rate of interest. Indeed, on the stock that was paid for in 1830 the average annual return was considerably less than two per cent per annum. But this showing is by no means the whole story, for it is certain that the stock that changed hands after 1830 sold for much less than $50 a share, the price at which it had been issued. Persons who were fortunate enough to pick up shares of this stock at bargain prices earned a good rate of interest on their investment.

During the period of fifty-nine years that the Company was on a dividend-paying basis, the average annual dividend was only $1.22. Assuming that a dividend of five per cent would have been a fair return on such an investment, the average value of a share of stock during this period was $24.40; or, assuming that four per cent would have been a fair yield, the average value of a share was $30.50. By this mode of reckoning, a share was at par value, on the basis of a five per cent yield, when it was paying an annual dividend of $2.50; or, on the basis of a four per cent yield, when it was paying an annual dividend of $2.00. The stock, therefore, was seldom at a premium and not often at par. During the last eleven years of the life of the Company, the average annual dividend was only $1.08. On the basis of a five per cent yield, the average value of a share of stock during these years was but $21.60.

Durrenberger, *op. cit.*, pp. 112-114. On this subject Samuel Hazard, in 1828, wrote as follows: “None of them [i.e., turnpike companies] have yielded dividends sufficient to remunerate the proprietors: most of them have yielded little more than has been expended on their repairs; and some of them have yielded tolls not sufficient even for this purpose, and consequently, in some cases have been abandoned by their proprietors. Hazard, *loc. cit.*, I (1828), 407.

From 1883 forward, in order to ascertain the value of the stock for the purpose of determining the state capital-stock tax, the Company made its appraisal of its stock on the principle that the annual dividend should represent a return of six per cent on the actual value. Hence, during this period the appraised value of a share varied from a high of $36.66 2/3 on March 2, 1885, when a dividend of $2.20 was declared, to a low of $9.16 2/3 on March 5, 1900, when a dividend of fifty-five cents was declared. According to the Company's annual reports to the state auditor general, one share sold in 1894 for $15, one share in 1896 for $11, six shares in 1897 for $15 each, six shares in 1898 for $10 each, one share in 1899 for $12, and one share in 1902 for $5.90.

One investment in the stock of the Company that is now known to have yielded a respectable return in dividends was that of William Wertz, who in 1883 bought for $4,000 the block of 155 shares that William Cameron once had owned. During the next twenty-one years, a period which was by no means the most prosperous one in the Company's history, Wertz received in dividends from this investment the sum of $3,592.25; or, to state the case differently, this investment paid him for twenty-one years interest at the average annual rate of slightly more than 4.27 per cent.

The prospect of earning substantial dividends was not, however, the only reason why the block of 155 shares of stock was sought; nor was the possession of the controlling interest acquired by anyone as a means of gaining for himself the presidency of the Company. The object of the successive owners of this stock lay elsewhere. To them the value of this stock, dividends apart, lay in the fact that the owner of it could get the position of road supervisor, or general manager, and thus put himself in position to do the work of repairing the road and of collecting tolls, and perhaps also put himself in position to sell supplies to the Company. At the next annual meeting after his purchase of the state stock, William Cameron was elected supervisor, a position which he retained until he surrendered this stock. Other owners of this stock followed him successively in this position, and at least two of them, E. B. Walter

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6 Testimony of William Wertz, August 4, 1903, in Re Petition of Citizens of Union County for a Jury to View and Condemn that Part of the Lewisburg and Mifflinburg Turnpike Road as Extends Eastward from the Borough of Mifflinburg and into the Borough of Lewisburg, Union County, Court of Quarter Sessions (No. 2, May Sessions, 1903). A copy of this testimony is in the Company Papers.
and William Wertz, served also as toll collectors at the east gate. During the last thirty years of the life of the Company, the annual salary of the collector at this gate was $150.

The executive offices in the Company were ordinarily held, sometimes for long tenures, by men whose pecuniary interest in the Company was not large. These were offices of honor rather than of profit, for the best paid of the officers, the clerk and treasurer, never received more than $30 a year. During the whole time of its existence, the Company elected only six men as president. The first president, Dr. Thomas Vanvalzah, served from December 15, 1828, to June 5, 1837. He was followed by Alexander Graham, who died during his term in office, before the annual meeting in 1840. Between June 1, 1840, and March 5, 1849, Henry S. Graham was president, and his successor, George Schnabel, was in office from March 5, 1849, to March 1, 1858. Longest of all the tenures in the presidency was that of George F. Miller, who was elected on March 1, 1858, and who served continuously in that office until his death on October 21, 1885. On March 1, 1886, D. Bright Miller was elected to succeed his father, and he continued in this office until the Company was dissolved.

Even fewer men filled the office of clerk and treasurer. The first man elected to this office, Robert Hayes, served from December 15, 1828, to June 4, 1832. He was succeeded by James F. Linn, one of the original subscribers, who served continuously until his death on October 8, 1869. On March 7, 1870, William L. Harris was elected clerk and treasurer, and he served in this office without interruption from that date until January 17, 1903, when he resigned because of a physical infirmity. On March 2, 1903, Philip B. Linn was elected to this office, in which he remained as long as the Company existed.

Long records of service on the board of managers were also made, the longest being that of J. Frederick Pontius, who served continuously from 1834 to 1870. Other men who served long terms as managers, each of them at least for twenty years, were Martin Dreisbach, John N. Pontius, J. Merrill Linn, and Philip Frederick. In the beginning, the law required the election of twelve managers, but a later law of April 6, 1830, reduced the number to four, who, like the other officers, were to be elected annually. This law con-

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68 1830, April 6, P. L. 233.
continued in force during the remaining life of the Company. The pecuniary compensation that a manager received was negligible. From 1865 onward, however, the practice of the Company permitted its officers to use the road without paying tolls.

The chief satisfaction that came to one from being a member of the directorate of this company—apart from the satisfaction that Americans commonly derive from holding lesser offices and from acquiring minor titles—was no doubt that of attending the annual meeting and eating a dinner at the expense of the Company. The annual meeting, at which time the election was held, soon became the big event of the year for the officers. In choosing its meeting places, the Company was as conservative as it was in retaining its officers. From 1839 onward, it held its annual meeting regularly in East Buffalo Township—for several years at Colonel Samuel Reber's house and for other years at Gideon Biehl's or at John Stein's. Finally, in the middle 1870's, the Company settled upon Lochiel House, of which David Royer was proprietor, as the place for holding the annual meeting, the expense of which was commonly $18 and never more than $20, the laconic entry in the treasurer's book showing, year after year, that the sum thus expended was for "dinner, stationery &c." Some indication of what may have gone on at these meetings in "Old Lochiel" is revealed by a letter written by an absent stockholder from Philadelphia on March 6, 1898. This man regretted "exceedingly" that he could not be present at the meeting on the following day "to partake of the good things that the table is generally loaded with," and "to enjoy the jokes & yarns usually spun by the good fellows who gather in." He then expressed the hope—certainly not a very fervent one—that they would "all have a good glorious time and all go home perfectly sober." The hope thus expressed may have been a partial explanation of the "&c" that the treasurer almost invariably included in his entry of the expense incurred by such a meeting.

In the beginning, the annual meeting of the Company was held on the first Monday in June, but a law of September 6, 1843, changed the time to the first Monday in March. September 6, P. L. 1, sec. 6. Contrary to the wording and intent of this later law, the Company held its meeting for 1844 on June 3, and did not begin complying with the provisions of the new law until 1845. Minute Book, pp. 33, 35.

Data concerning Company officers and Company meetings were taken from the Minute Book, passim.

Original letter in the Company Papers.
During the active life of the Company, which extended from the presidency of Andrew Jackson to that of Theodore Roosevelt, vast changes took place in the United States, not a few of which directly touched the Company and its operations. This was a period of great economic transformation in the United States, a time when, especially after the Civil War, the industrial revolution was coming of age in this country. It was a time of revolutionary changes in modes of transportation and communication, and of the extension of facilities for increasing the conveniences and comforts of living. It was likewise a time of political and constitutional readjustment, to which Pennsylvania responded by making significant changes in her constitution in 1837 and by adopting a new constitution in 1873. In one way or another, in periods of peace no less than in periods of war, the Lewisburg and Mifflinburg Turnpike Company was affected by these significant happenings.

Periods of national prosperity, as well as periods of national depression, were reflected more or less accurately by the earnings of the Company. The early 1850's, for example, a time of general prosperity in the United States, was also a time when the Company was paying relatively high dividends. During the period of the Civil War, the taxing power of the Federal Government laid hold of the Company's earnings. Section 8 of the amendment to the Federal Excise Law, approved on March 3, 1863, required of all "canal companies, canal navigation, or slackwater corporations, and turnpike companies" a three per cent tax on interest earned and on dividends declared. Accordingly, the Lewisburg and Mifflinburg Turnpike Company paid into the treasury of the United States on March 7, 1864, a three per cent tax on the dividend it declared that day. Nor was this all. Between that date and March 1, 1867, the Company paid taxes to the United States at the rate of three per cent per annum on its gross receipts and at the rate of five per cent per annum on the dividends it declared. All told, its payments of Federal war-time taxes amounted to $166,87½. After the Civil War, the earnings of the Company, as disclosed by the dividends declared, fluctuated considerably, some years being fairly prosperous ones; but after 1868 there was no consider-

72 From a notice issued by the United States Treasury Department, Office of Internal Revenue, dated at Washington, March, 1863, in the Company Papers.
73 Treasurer's Book, pp. 72, 74, 76, 78, 80.
able period of continuous profits like the period of the 1850's and the period of the Civil War.

The latter years of the nineteenth century saw the appearance on the roads of the United States of new vehicles of transportation, first the bicycle, and then, near the turn of the century, the automobile. With both these new vehicles the turnpike companies had to reckon. In dealing with these and related matters, these companies learned, through court decisions, the essential nature of their business and the scope of their powers. As to the nature of a turnpike road, the Supreme Court of Pennsylvania held that

The main object and purpose of a turnpike is to provide a public highway of a superior quality. . . . It is for the use of every person desiring to pass over it, on payment of the toll established by law. . . . Common understanding and public policy [the court affirmed] unite in requiring us to hold that a turnpike is a public highway, in so far that an indictment will lie against one obstructing it, as for a public nuisance.74

By other decisions the status of the turnpike companies was further clarified. It was held, for example, that a turnpike, although it had been built by a private company, was nevertheless a public highway, constructed for public purposes in virtue of public authority; and it was further held that a turnpike company did not, by reason of its incorporation, acquire an estate in the soil that it occupied, but merely a right of way.75 Moreover, though it had acquired the right to exact a reasonable toll of each and every vehicle that passed over its road,76 a turnpike company could not exclude from its road any vehicle that might lawfully move upon a public highway. On the other hand, the owner or operator of a vehicle could not avoid the payment of toll for using a turnpike merely because the law authorizing the taking of tolls had not specifically mentioned such vehicle. Accordingly, it was held that a bicycle is a two-wheeled carriage and, as such, when it moves upon a turnpike, is subject to the payment of such toll as is levied

74 The Northern Central Railway Co. v. Commonwealth, 90 Pa. 300 at 306 (1879).
75 Fisher v. Coyle, 3 Watts 407 at 408 (1834).
upon other two-wheeled carriages.\textsuperscript{77} Later it was held that an automobile could not be excluded from a turnpike, provided that the driver thereof was willing to pay lawful toll for the use of such a road.\textsuperscript{78}

Just after the turn of the century, the Lewisburg and Mifflinburg Turnpike Company was called upon to assent to the entrance upon its right of way of two companies which were seeking to extend their facilities of comfort and convenience to a part of the area in which the Turnpike Company operated. Such consent, of course, the Turnpike Company granted, with proper safeguards to itself. At a special meeting on April 24, 1900, the board granted to the Lewisburg Water Company permission to extend its main line, with its connections, westward on the right of way of the Turnpike Company, from the west line of Lewisburg to a distance of at least 3,000 feet, provided that the Lewisburg Water Company would guarantee the Turnpike Company against loss from any and all actions and against claims for damages that might arise or result from the construction, maintenance, and operation of such extension.\textsuperscript{79} Somewhat more than a year later, at another special meeting, held on July 24, 1901, the board of the Turnpike Company gave the United Telephone and Telegraph Company permission to erect poles and operate its lines on the right of way of the Turnpike Company between Lewisburg and Mifflinburg, provided that a telephone "be located free of charge for use at the west toll gate, near Mifflinburg," and that the Telephone Company "save harmless and indemnify" the Turnpike Company against any and all actions and claims that might arise "by reason of the construction, maintenance and operation of the said telephone line."\textsuperscript{80}

The most difficult task, perhaps, that confronted the Lewisburg and Mifflinburg Turnpike Company was that of steering safely between the Scylla of constitutional revision and the Charybdis of new laws affecting corporations.\textsuperscript{81} This company, it will be re-

\textsuperscript{78} Scranton v. Laurel Run Turnpike Co., 225 Pa. 82 (1909).
\textsuperscript{79} Minute Book, p. 124.
\textsuperscript{80} Ibid., pp. 126-127.
\textsuperscript{81} An indispensable guide to the cases touching Pennsylvania turnpike and other road companies is 9 Vale's Digest (Philadelphia, 1912), pp. 13,828-13,869. On Pennsylvania corporations in general, see also 2 Vale's Digest (Philadelphia, 1908), pp. 2,085-2,233.
called, was the product of special legislation, and the charter which it received was a contract, guaranteed by the Constitution of the United States against the impairment of the obligation thereof by any state action. The extent to which the state might control this company’s operations and the means by which the state might subject it to the regulations it had imposed upon other such corporations subsequently formed under the provisions of general law became, therefore, interesting questions of constitutional law. In the course of years the General Assembly enacted, from time to time, special laws affecting the Company. In an act approved on March 6, 1847, it declared that the Company should charge tolls according to the provisions of the eleventh [thirteenth] section of the act approved on February 22, 1812, the basic act from which the Company had derived its charter.\footnote{1847, March 6, P. L. 220.} Again, in 1858, the General Assembly authorized the Company to change the construction of its road from the western boundary of Lewisburg to Mifflinburg so that the stone part thereof should be only fifteen feet wide; and by another section of the same act it changed the name of the Company from Derrstown and Youngmanstown Turnpike Company to Lewisburg and Mifflinburg Turnpike Company.\footnote{1858, February 23, P. L. 48, sec. 2. Before the enactment of this law, the hard-surfaced portion of the road was required to be twenty feet wide.} Also, in a law approved on May 1, 1861, the General Assembly enacted

That hereafter, when the Lewisburg and Mifflinburg turnpike shall not be kept in proper repair, any person aggrieved thereby may make complaint by petition, under oath, to the court of quarter sessions; and if the persons having care of the road, shall not within thirty days after notice issued from said court and duly sworn, make the necessary repairs, a bill of indictment shall be prepared against such delinquent, in the same manner as now allowed by law against township supervisors; . . .

and the General Assembly enacted further,

That so much of the act relating to said turnpike road, as authorizes proceedings before justices of the peace, in case the turnpike road is not in proper repair, and all other laws inconsistent with the preceding section, be and the same is [sic] hereby repealed.\footnote{1861, May 1, P. L. 637.}
All this legislation the Company accepted as a matter of course, for there is no evidence in its papers that it considered any portion of it burdensome, or as an infringement upon its charter rights. Whether the Company was subject to general laws requiring the registration of corporations and imposing upon such corporations taxes upon their capital stock or upon their earnings is another question, and one of vital import. It would appear that the Company came under the provisions of an act of March 27, 1824, requiring, *inter alia*, the officers of every turnpike company “now created, or which may hereafter be created,” by Pennsylvania law, in which the state owned stock, to make to the state auditor general an annual report on its business operations. This law was in force as late as 1846, yet there is no evidence in the Company’s papers showing that the Company complied with the provisions thereof.\(^8\) Equally certain, it would appear, was the liability of the Company for all the taxes laid by the state without discrimination upon state-chartered corporations. The reason for thinking it was thus liable rests upon an opinion of Chief Justice Marshall, handed down in 1830 in the case of *Providence Bank v. Billings*,\(^6\) holding that the relinquishment by a state of its taxing power must never be inferred. In construing the provisions of a charter, therefore, the courts must hold that, in the absence of a special exemption from taxation, the state which granted the charter intended to grant no such exemption. This rule the Supreme Court of Pennsylvania, in the case of *Bank v. Commonwealth*, decided on July 5, 1849, quoted with approval.\(^7\) The Lewisburg and Mifflinburg Turnpike Company had received no special exemption from taxation.

That the officers of this company had at one time believed that their company was liable for a general corporation tax is made clear by the action they took with respect to such a law enacted in 1844. While the government of Pennsylvania was still feeling the effects of the depression that began in 1837, the General Assembly passed an act, approved on April 29, 1844, which had for one of its objects the reduction of the state debt. To this end, therefore, it imposed an annual tax on the capital stock of “banks, institutions, and companies” chartered by Pennsylvania. According

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\(^6\) 4 Peters 514 at 561.

\(^7\) 10 Pa. 442 at 450.
to the provisions of this statute, if any such company declared an annual dividend of at least six per cent, it would be taxed at the rate of one-half mill on each one per cent of the dividend so declared; but if any such company declared no dividend, or if it declared a dividend of less than six per cent per annum, then it would be taxed at the rate of three mills on every dollar of the appraised value of its stock. Presuming that their corporation was affected by this law, the officers of the Company held a special meeting on November 9, 1844, and approved a sworn statement to be sent to the auditor general, which statement affirmed (1) that the capital stock of the Company amounted to two hundred and seventy-six shares, which originally sold for $50 a share, (2) that the managers had never declared a dividend on this stock, and (3) that the managers estimated the cash value of the stock to be one dollar a share. On this low appraisal, the Company owed the state an annual tax at the rate of three mills a dollar on $276. On January 15, 1846, the treasurer of the Company paid the tax for the years 1844 and 1845, and on November 29, 1849, he paid this tax, at the same low appraisal rate, for the years 1846 to 1849, both these years inclusive. His records for subsequent years, however, disclose no further payments of this tax.

Between May 1, 1868, and June 7, 1879, the General Assembly of Pennsylvania enacted several laws to revise, consolidate, and equalize the taxes it laid upon corporations. From none of the taxes imposed by these laws, it appears, was the Lewisburg and Mifflinburg Turnpike Company exempt. An act of May 1, 1868, it is true, provided that “building associations, plank road or turnpike companies, shall not be liable for any tax to the commonwealth when such companies make or declare no dividends.” This exemption for turnpike companies was repealed by an act of April 24, 1874, which, however, as an aid in collecting the taxes imposed by this act, required annual reports of all corporations operating in Pennsylvania, except banks and savings institutions.

88 1844, April 29, P. L. 486, sec. 33.
89 Minute Book, p. 34.
90 Treasurer’s Book, pp. 38, 44.
91 1868, May 1, P. L. 108, sec. 4. There is nothing in the Company Papers to indicate that the Company ever complied with the law of April 21, 1858, requiring annual reports of corporations taxable under Pennsylvania laws.
92 1874, April 24, P. L. 68.
But neither the grant of the foregoing exemption, nor its repeal, affected in any way the Lewisburg and Mifflinburg Turnpike Company, for the year 1875 was the only year after 1849 in which that company did not declare a dividend. A law of March 20, 1877, continued taxes of the sort above-mentioned, and, in addition thereto, required, with few exceptions, corporations then operating in Pennsylvania, including turnpike companies, to make to the auditor general annual reports of their business operations; and a law of June 7, 1879, besides re-enacting in substance the provisions of the aforesaid law of March 20, 1877, imposing taxes and requiring annual reports, specifically required that "every institution or company now engaged in business in this commonwealth shall, within ninety days after the passage of this act, register as herein required in the office of the auditor general." Oddly enough, the Lewisburg and Mifflinburg Turnpike Company ignored all these laws, with the result that by the spring of 1883 it was in serious difficulty, having by its negligence become subject to a heavy penalty for non-compliance with the revenue laws of the state.

On April 25, 1883, at a special meeting held to consider the matter of taxes due from the Company to the commonwealth, the board voted to appoint a committee composed of G. Barron Miller and William L. Harris to arrange a settlement of the matter with the auditor general and the state treasurer. Pursuant to a compromise agreed to by the Company and the state, the Company was duly registered on May 10, 1883, according to the act of June 7, 1879, and on the same day it filed annual reports of its business for the years from 1872 and 1882, both these years inclusive. On June 27, 1883, the Company paid the state treasurer the sum of $162.84 as tax due for the years 1872 through 1882 on its capital stock and dividends under the aforesaid acts of May 1, 1868, April 24, 1874, and March 20, 1877; and on January 29, 1884, it paid the state treasurer the further sum of $21.39, the amount of the tax due under the act of June 7, 1879, for the year ending the first Monday in November, 1883. The Company now appeared to be in good standing with the state, having been absolved from the obligation of making reports and paying taxes for the years 1828

1877, March 20, P. L. 6, secs. 1-5.
Minute Book, p. 86.
through 1871. Thenceforth it paid promptly the annual tax on its capital stock.

But the Company had not heard the last of its delinquent conduct. In 1900 some one in the auditor general's department—no doubt an efficiency expert—discovered that the department's files disclosed no capital stock reports of the Lewisburg and Mifflinburg Turnpike Company for the years 1829 to 1871, inclusive; and on May 16, 1900, the department mailed the Company a notice stating that the Company was in default and reciting a heavy penalty for such default imposed by an act of June 8, 1891. Once again the fat was in the fire. On August 2, 1900, the board of managers voted at a special meeting to send Joseph C. Bucher and William L. Harris to Harrisburg on August 7, to endeavor "to adjust the matter of the demand of the auditor general's department." For the purpose of aiding the negotiation, Harris prepared an affidavit, in which he reviewed the proceedings taken in 1883 and restated the agreement then reached, that the Company should be absolved of all liability for taxes prior to 1872. On October 2, 1900, the auditor general confirmed in writing the fact that the Company had been relieved of taxation from the date of its incorporation to the end of the year 1871. Oddly enough, in these negotiations no mention appears to have been made of the small tax that the Company had actually paid to the state between 1844 and 1849.

It seems altogether unlikely that the Company, when it registered in 1883 for purposes of taxation, also consented to operate thenceforth within the provisions of the latest Pennsylvania constitution. These two actions would have been separate and distinct. The Pennsylvania constitution of 1874 did not compel corporations already chartered to give up rights inconsistent with the pro-

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66 On March 3, 1884, the board of managers resolved as follows: "That the thanks of the Company, and the Board of Managers, is due to William L. Harris, the Treasurer of the Company, for the able manner in which he has discharged his duties, and especially for his careful and diligent adjustment of the taxes, assessed by the State against the Company, which he managed in a way that redounded to the advantage of the Company, while all that was honestly due, was paid to the authorities." Minute Book, p. 86.

67 A copy of this letter is in the Minute Book, p. 124, and the original is in the Company Papers.

68 The minutes of the special meeting of August 2, 1900, together with a copy of the above-mentioned affidavit, are in the Minute Book, p. 125.

69 Minute Book, p. 126.
visions of that constitution, but it did provide (Art. XVI, Sec. 2) that

The General Assembly shall not remit the forfeiture of the charter of any corporation now existing, or alter or amend the same, or pass any other general or special law for the benefit of such corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this constitution.

As construed by the Supreme Court of Pennsylvania in the case of *Hays v. Commonwealth*, decided on October 31, 1876, the meaning of this provision was that

... Charters of private corporations are left exactly as the new constitution found them, and so they must remain until the companies holding them shall enter into a new contract with the state by accepting the benefit of some future legislation.\(^{100}\)

In an act “to provide for the incorporation and regulation of certain corporations,” approved on April 29, 1874, the General Assembly laid down a procedure whereby the corporations in existence before January 1, 1874, could enter into a “new contract with the state.” Such corporations, this law declared,

upon accepting the provisions of the constitution and of this act by writing under the seal of said corporation, duly filed in the office of the secretary of the commonwealth, shall be entitled to all of the privileges, immunities, franchises and powers conferred by this act upon corporations to be created under the same; and upon such acceptance and approval thereof by the governor, he shall issue letters patent to said corporation reciting the same.\(^{101}\)

Some four years later the General Assembly, in a new enactment, declared that that body would confer no benefit, either by special or general enactment, upon any corporation that had not previously accepted the provisions of the aforesaid constitution; and,


\(^{101}\) 1874, April 29, P. L. 73, sec. 26.
as if to entice such compliance by the simplicity of the procedure provided therefor, the General Assembly further declared that such acceptance could be made by a resolution adopted at a regular or at a specially called meeting of the directors "or other proper officers of such corporations." The papers of the Lewisburg and Mifflinburg Turnpike Company, however, do not show that the Company ever received from a governor of Pennsylvania letters patent other than the letters patent issued to it in 1828; nor do they show that the officers or managers ever passed any resolution, pursuant to the aforesaid act of 1878, formally accepting the provisions of the constitution of 1874. We conclude, therefore, that the Lewisburg and Mifflinburg Turnpike Company never accepted the constitution of 1874.

However that may be, there was no question after 1883 as to the Company's liability for state corporation taxes. Nor was there any question as to its liability under the provisions of an act, approved on June 2, 1887, authorizing the condemnation of turnpikes. Section 1 of this act recites:

That whenever twenty-five or more resident taxpayers of any county, in this Commonwealth, shall petition the court of quarter sessions of their county representing that any turnpike, road or highway, heretofore or hereafter constructed, upon which tolls are charged the traveling public under any general or special law, is located wholly or in part in their county, and that it would be for the best interests of the people of their county for such turnpike, road or highway, or any part thereof, to become a public road, free from tolls and toll-gates, it shall be the duty of such court of quarter sessions to appoint a jury of view, consisting of five reputable citizens of the petitioners' county, to view and condemn such turnpike, road or highway, or part thereof, for public use, free from tolls and toll-gates, and to assess the damages to which the owner or owners thereof may be entitled therefor. The language of this section is broad enough to cover every turnpike company ever chartered by Pennsylvania, and the act of

382 1878, May 22, P. L. 84, sec. 2.
which it is a part could not be successfully attacked on the ground
that it did not contain any provision exempting those corpora-
tions which may not have accepted the latest constitution of Penn-
sylvania. In this act the state was invoking its power of emi-
nent domain, a power superior to any right claimed by any person
under any grant from any state legislature. The act did not tres-
pass upon or in any way impair the obligation of a contract; on
the contrary, it provided for the condemnation for public use of
property held by virtue of a state grant. It did not provide for
the taking by arbitrary action of property without just compen-
sation; on the contrary, it provided for the assessing of damages for
property condemned for public use by a procedure against which
there could be offered no reasonable objection. Consequently the
act did not offend against either of the two great property-
protecting clauses of the United States Constitution—viz., the
clause forbidding a state to impair the obligation of a contract
and the clause forbidding a state to deprive a person, whether
natural or artificial, of property without due process of law.

It was in accordance with the provisions of this law that the
Lewisburg and Mifflinburg Turnpike Company eventually lost
the right to collect tolls for the use of its road. A petition of citi-
zens of Union County, asking that a jury be appointed to view and
condemn the turnpike, was filed in the court of quarter sessions,
Union County, on May 23, 1903. On that day the court appointed
a jury of five viewers, together with Albert W. Johnson as mas-
ter. At several meetings held between July 12 and August 19,
the jury viewed the turnpike and took the testimony of twenty-
seven witnesses, and on the latter date signed its report, which
was filed on September 21, 1903. The jury condemned the road
and awarded as damages to the Company the sum of $2,511.43. From this award the Company appealed to the court of common
pleas, as the act of June 2, 1887, permitted it to do, and on October
17, 1903, this court allowed the appeal. Accordingly, the case came
on for trial, and on September 24, 1904, a jury returned a verdict
allowing the Company $2,900 as damages. At once the Company

104 Union County, Court of Quarter Sessions, Road Docket, No. 5, pp. 377-
383 (No. 2, May Sessions, 1903).

105 Ibid., pp. 384-385. A copy of the testimony, together with the charge of
the master, is in the Company Papers. The master, Albert W. Johnson, was
later a judge of the court of common pleas, Union County, and still later a
Federal judge for the Middle District of Pennsylvania.
moved for a new trial, which motion the court granted on the
ground that the sum awarded by the jury was inadequate. On
October 1, 1904, the Company filed a petition for a change of
venue, but this petition the court denied. On March 13, 1905, a
jury was sworn to try the case, but before the trial could be held
the parties reached an agreement; whereupon the court, on March
14, 1905, directed the jury to return a verdict awarding the Com-
pany as damages the sum of $4,000, together with all buildings at
the toll gates and the privilege of removing these buildings from
the right of way.\textsuperscript{106} The record being now remanded to the court
of quarter sessions, the judge therein on March 14, 1905, con-
firmed finally the report of the viewers condemning the turnpike
and ordered the Company “to cease collecting tolls, remove the toll
gates forthwith, and within one year from April 1, A.D. 1905, re-
move the houses and other buildings connected therewith from the
line of the turnpike.”\textsuperscript{107} On June 3, 1905, the treasurer of Union
County paid the treasurer of the Company the sum of $4,053.33,
being the amount awarded as damages, together with accrued in-
terest thereon since the preceding March 14.\textsuperscript{108}

The matter of damages being now settled, the Company pro-
cceeded to liquidate its affairs. On June 8, 1905, it distributed to
the stockholders the net proceeds of the judgment amounting to
$3,467.95. The payment made on each share of stock was $12.56.\textsuperscript{109}
Subsequently, after the Company had disposed of its buildings, the
final distribution of $2.80 on each share was made.\textsuperscript{110} On April 30,
1906, the Company, its business affairs having been wound up,
voted to request the court of common pleas for an order of dis-
solution, and on September 29, 1906, it filed a petition for such
an order, which order the court granted on November 7, 1906.\textsuperscript{111}

\textsuperscript{106} Union County, Court of Common Pleas, Appearance Docket, No. 34,
pp. 342, 379-380 (No. 48, January Term, 1904).
\textsuperscript{107} Union County, Court of Quarter Sessions, Road Docket, No. 5, p. 385
(No. 2, May Sessions, 1903).
\textsuperscript{108} Union County, Court of Common Pleas, Appearance Docket, No. 34,
p. 390 (No. 48, January Term, 1904); Dividend Book, p. 112.
\textsuperscript{109} Dividend Book, pp. 112-113.
\textsuperscript{110} Ibid., pp. 115-116.
\textsuperscript{111} Union County, Court of Common Pleas, Appearance Docket, No. 35, p.
216 (No. 16, January Term, 1907).