

Laws of N. Carolina, passed in 1833-4.

(BY AUTHORITY.)

An act to incorporate the Cape Fear, Yadkin and Pedee Rail Road Company.

Be it enacted by the General Assembly of the State of North Carolina, that it is hereby enacted by the authority of the same, That Hugh Campbell, Jr., Hiram Robinson, John Kelly, William Nott, John H. Hall, Louis D. Henry, Robert Strange, Benjamin Robinson, Lewis Brown, John W. Sandford, Joshua W. Cochran, Thomas N. Cameron, Edward L. Winstow, Joseph Baker, Edward W. Wilkins, John Huske, Duncan McKee, Joseph Ayco, Jeremiah Kyle, James Seawell, Charles P. Mallett, Oliver P. Starke, Thomas Hybart, Dillon Jordan, Jr., Wm. B. Wright, Peter McKeller, Lauchlin Bethune, Josiah Evans, Charles McAllister, John H. Kelly, John Morrison, Edmund Deberry, John Martin, Duncan McKee, Jr., Hardy Morgan, Paul Baringer, Abram F. Alexander, Joseph Young, Thomas L. Cowan, Robert McNamara, Maxwell Chambers, Alexander Gray, William Hogan, Benjamin Elliott, Gideon Seawell, Alexander Little, John A. McKee, Samuel F. Patterson, Edmund Jones, James Wellborn, Jones Fuller, James Kyle, John M. Strong, William Hawley, Williamson Whitehead, John D. Eccles, their associates, successors and assigns, be, and they are hereby made a body politic and corporate, under the name of "the Cape Fear, Yadkin and Pedee Rail Road Company;" and by that name shall be, and are hereby made capable in law to sue and be sued to final judgment and execution, plead and be impleaded, defend and be defended, in any court of record of this State or in any other place whatsoever; to make, have and use a common seal, and the same to break, renew or alter at pleasure; and in said name shall have succession, and shall be, and are hereby vested with all the powers, privileges and immunities which are, or may be necessary to carry into effect the purposes and objects of this act, as hereinafter set forth; and the said corporation are hereby authorized and empowered to create, construct and finally complete a rail road, beginning at the river Cape Fear, in Fayetteville, and thence to the summit of the Narrows of the Yadkin river, in a line leading in a direction to the town of Wilkesborough; also a lateral rail road connecting said road from Fayetteville to the Yadkin with the Pedee, at the mouth of Rocky River, and thence to penetrate Mecklenburg and Lincoln counties; also one other lateral rail way embracing Asheborough, in Randolph county; in such manner and form as said corporation shall deem most expedient; and for that purpose the said corporation are authorized to lay out said roads at least sixty feet wide, through the whole length thereof; and for the purpose of cuttings, embankments and obtaining stone and gravel, may take as much more land as may be necessary for the proper construction and security of said roads: Provided however, that all damages that may be occasioned to any person or persons, or corporation, by the taking of such lands or materials for the purposes aforesaid, shall be paid for by said corporation in manner hereafter provided.

II. Be it further enacted, That the capital stock of said corporation shall consist of ten thousand shares, of fifty dollars each. The immediate government and direction of the affairs of said corporation shall be vested in seven directors, who shall be elected by the stockholders of said corporation, in manner hereafter provided, who shall hold their offices for one year, and until others shall be duly elected and qualified to take their places as directors; and the said directors, a majority of whom shall form a quorum for the transaction of business, shall elect one of their own number to be president of the board, who shall also be president of the corporation; and said directors shall have authority to choose a clerk, who shall be sworn to the faithful discharge of his duty; and a treasurer, who shall give bond to the corporation, with security to the satisfaction of the directors, in a sum not less than twenty thousand dollars, for the faithful discharge of his trust, and shall also take and subscribe as oath of office.

III. Be it further enacted, That the president and directors for the time being are hereby authorized and empowered, by themselves or their agents, to exercise all the powers herein granted to the corporation, for the purpose of locating, constructing and completing said rail roads, and all such other powers and authority for the effectual prosecution of the undertaking hereby intended to be effected, and for the management of the affairs of the corporation not heretofore granted, as may be necessary and proper to carry into effect the object of this grant; to purchase and hold lands, materials and other necessary things, in the name of the corporation, for the use of said roads; to make such equal assessments from time to time, on all the shares in said corporation, as they may deem expedient and necessary in the progress and execution of the work, and direct the same to be paid to the treasurer of the corporation, and to require the treasurer to give notice of such assessments; and in case any subscriber or stockholder shall neglect to pay his assessment for the space of thirty days after due notice by the treasurer as aforesaid, the directors may order the treasurer to sell such share or shares at auction, at some public place, after giving at least ten days' public notice of such sale, and the day and place at which said sale shall take place; and the person being the highest bidder for such share or shares, is hereby declared to be the proper owner thereof, and the same shall be transferred accordingly; and such delinquent subscriber or stockholder shall be held accountable to the corporation for the balance, if his share or shares shall sell for less than the assessment due thereon, with interest and costs of sale, and shall be entitled to the overplus, if the same shall sell for more than the assessment, interest and costs of sale as aforesaid: Provided, that no assessment shall be made or laid on any share exceeding the whole amount of such share or shares.

IV. Be it further enacted, That the said corporation shall have power and authority to make, ordain and establish all such by laws, rules and regulations and ordinances, as they shall deem expedient and necessary to accomplish the designs and purposes, and to carry into effect the provisions of this act, and for the well ordering, regulating and securing the interest and affairs of this corporation: Provided, always, the same shall not in any wise be repugnant to the laws and constitution of this State.

V. Be it further enacted, That a toll be, and is hereby granted and established for the sole benefit of said corporation on all passengers and property of any description, which may be conveyed or transported upon said rail roads, at such rates per mile, and by the ton or hundred, as may be agreed upon and established from time to time by the directors aforesaid. The transportation of property and persons; the construction of the wheels, the form of cars and carriages, and weight of loads, and all other matters and things relating to the use of said roads, shall be in conformity to such rules and regulations as said directors shall from time to time prescribe and direct; and shall be entitled to receive and demand toll not exceeding the following rates, viz. four cents per ton per mile for toll on property, goods or merchandise; the freight of which is usually charged by the ton of two thousand pounds, for transportation, and not exceeding six cents a mile for each passenger, until the net profits arising from the charges for transportation shall amount to a sum equal to the capital stock expended, with six per centum interest thereon from the time the money was advanced by the stockholders of said corporation until received back in net profits. But when the net profits received as aforesaid shall have amounted to a sum equal to the capital stock expended, with six per centum interest thereon as aforesaid, then the charges for transportation shall be so regulated by said corporation, as shall not exceed upon the whole capital stock expended, after deducting all charges and expenses whatever for keeping said roads in repair and for other purposes for the use of said roads, seven per centum interest upon the whole capital stock expended by said corporation as aforesaid.

VI. Be it further enacted, That the directors aforesaid for the time being are hereby authorized to erect toll gates and to establish warehouses and such other buildings, as they may deem necessary for the use of said road or roads, and appoint toll keepers and other agents to attend to the regulations required by said corporation from time to time, as the work of said roads shall be completed; and they shall from year to year make report to the Legislature, under oath, of their acts and doings, of their receipts and expenditures, under the provisions of this act; and their books shall at all times be open to the inspection of any committee of the Legislature appointed for that purpose; and if said corporation shall neglect or refuse to make such report at the General Assembly in each and every year, for every such neglect or refusal said corporation shall be liable to pay, to the use of the State, a sum not exceeding ten thousand dollars, to be recovered upon an action of debt in the name of the Governor of the State for the time being, in any court of record of this State.

VII. Be it further enacted, That said corporation shall be held to pay all damages that may arise to any person or persons, corporation or corporations, by taking their lands for said rail roads; and when said lands can-

not be obtained by voluntary agreement, the damages to be established and recovered in manner and form as follows: that in case of disagreement by the parties, either may apply to the next succeeding County or Superior Court of the county in which such land lies, for a jury of twelve freeholders, who shall go upon the lands and value the same, or make an assessment of such damages, as the case may be, as by them shall be considered just and equitable; and who shall make such valuation or assessment upon oath, which oath shall be administered to them by the sheriff; and the court at the time such application is made, shall order and require the sheriff forthwith to summon a jury of twelve freeholders, unconnected with either party, who shall, on a day appointed by the order requiring the sheriff so to summon said jury, within fifteen days from the end of the term of said court, view the lands through which said road is to run; and in estimating the value or damages, as the case may be, of said lands, they shall have regard to the additional value which may be conferred upon them by the construction of said road: Provided however, that the party for the intervention of such jury shall give the adverse party at least five days' notice of his, her or their intention to make such application; and the said corporation shall, within thirty days from such assessment or valuation, pay to the owner the full amount of the same. And the sheriff shall require from the jury a written statement of their valuation or assessment, signed by the whole of them; which statement of their valuation or assessment is hereby required and directed, together with his other proceedings had upon the same, to return to the next term of said court; and that the clerk thereof is hereby required to record said proceedings at full length upon the minutes of said court: Provided nevertheless, that nothing herein contained shall prevent the party dissatisfied from the right of appealing as in other cases of like nature.

VIII. Be it further enacted, That lands or other property or estates of any married woman, infant or person non compos mentis, which shall be necessary for constructing said roads, the husband of such married woman and the guardian of such infant or person non compos mentis may release all damages in relation to such lands or estates, to be taken and appropriated as aforesaid, as they might do if the same were held by them in their own right respectively.

IX. Be it further enacted, That if any person or persons shall wilfully, maliciously or wantonly obstruct the passage of any carriage on said roads, or in any way spoil, injure or destroy the same, any part thereof, or any improvement or fixture belonging thereto for the use of said roads, he, she or they, or any person or persons assisting, aiding or abetting in such trespass shall forfeit and pay to said corporation for such offence treble such damages as shall be proven before any justice of the peace or court of record of this State having jurisdiction of the same, to be recovered by an action of debt, to the use of the corporation; and such offender or offenders shall be further liable to indictment within the county where such trespass shall have been committed contrary to the before recited provisions, and upon conviction thereof be fined or imprisoned at the discretion of the court.

X. Be it further enacted, That the stockholders of said corporation shall, on the first Monday in November, in each and every year, hold, in the town of Fayetteville, an annual or general meeting, but which may be altered to any other day by said stockholders, a majority thereof agreeing to the same, and at which annual or general meeting the stockholders shall, by ballot, elect seven directors aforesaid; and that said directors so elected, shall appoint their president and other officers, as is herein before directed. Each proprietor or stockholder, for his, her or their share owned in said corporation, shall be entitled to one vote for every share as follows, viz. for every five shares over five, and not exceeding twenty, three votes; for every ten shares over twenty, and not exceeding fifty, two votes; for every ten shares over fifty, and not exceeding one hundred, one vote; for every twenty shares over one hundred, and not exceeding two hundred, three votes; and for every ten shares over two hundred, one vote: Provided, that no one proprietor or stockholder shall be entitled in his own right to more than two fifths of the whole number of shares: And provided also, that nothing herein contained shall be construed to prevent any stockholder in said corporation from voting in general meeting by proxy.

XI. Be it further enacted, That if said rail road, or any of its lateral roads, shall cross any public or private way, the said corporation shall so construct said rail roads, or make such provisions for crossing said public or private way, as shall not obstruct the easy passage of such way or ways.

XII. Be it further enacted, That the State of North Carolina shall be entitled to, and have preference to subscribe for two-fifths of the capital stock herein before authorized to be created and owned by said corporation, and in like manner shall be entitled to two-fifths of the increased amount of capital stock hereinafter authorized by this act; and that the interest which the State shall or may own in said corporation, shall, at the general meetings of said stockholders, be represented by an authorized agent, appointed in such manner as the Legislature shall from time to time direct; and such agent shall be entitled in the general meetings aforesaid to two-fifths of the whole number of votes; and no more.

XIII. Be it further enacted, That the persons incorporated by this act, or a majority of them, are hereby authorized and directed to call the first meeting of said corporation, and to give notice thereof in the newspapers published in Fayetteville, Salisbury, Greensborough, Raleigh and Wilmington, of the time, place and purpose of such meetings, at least ten days before the time mentioned in such notices; and which meeting the persons incorporated as aforesaid (a majority thereof being present) shall elect seven directors; which directors shall organize a board, as is herein before directed, for the purpose of opening books of subscription for the reception of subscribers to the capital stock of said corporation; and for such other purposes as may (and shall be necessary for the regular organization of the affairs of the corporation, and of giving full and efficient effect to this act: Provided, however, that the directors elected at said first meeting shall not be in office as directors for a longer period than the annual general meeting to be held, and required by this act, on the first Monday of November next; at which time a new election shall take place by the stockholders, as is herein before directed by this act.

XIV. Be it further enacted, That in addition to the capital stock herein before authorized by this act, the said corporation, for the purpose of extending said rail road and its lateral branches, are hereby authorized to increase and add to the capital stock aforesaid, a sum not exceeding five hundred thousand dollars, in shares of fifty dollars each; and the stockholders of said corporation, in general meeting, shall have power to direct books of subscription to be opened for receiving subscriptions to such increase of its capital stock, at such time, place or places, as the directors of said corporation shall or may deem proper; or, if deemed most advisable, such directors may sell such increased shares of the capital stock as may be required to extend said road or roads, as hereinafter directed, or acquire said capital, or any part thereof, by loan, and may pledge the scrip of the stock of the corporation as collateral security for such loan, or any other loan which the directors may deem necessary to make, to effect the objects of this act.

XV. Be it further enacted, That said corporation is hereby authorized to extend said rail road, and any of its lateral ways, to such point or points in the counties of Mecklenburg and Lincoln, as shall and may be found advisable; also any point or points within the direction of Salisbury, Statesville and Wilkesborough, and by any other lateral roads, so as to embrace and penetrate Randolph, Guilford, and Rockingham and Stokes counties.

XVI. Be it further enacted, That the president and directors aforesaid shall prescribe the form of the certificate or evidence of stock in said corporation; which shall be signed by the president and countersigned by the treasurer thereof, and shall prescribe the manner of transferring said certificate of stock, and of making the same assignable.

XVII. Be it further enacted, That said directors may put said road, or any part thereof, in operation as soon as the same may be completed, and semi-annually shall declare dividends out of any net profits, or any portion thereof, as may be deemed advisable, and the same pay over to each stockholder in proportion to his, her or their share or shares.

XVIII. Be it further enacted, That where it shall become necessary to erect bridges for the use of said road or roads across any river, said directors shall have authority so to construct such bridge or bridges as shall admit of being used by travellers and for neighborhood use, and may ask, demand and receive tolls for crossing the same: Provided, that the rate of toll shall not exceed the prices charged by the ferries on such rivers, nor shall toll be charged for persons and passengers on the rail road car.

XIX. Be it further enacted, That it shall be lawful for said directors to receive donations, borrow money, and secure the payment of the same by a pledge of the property of the corporation, and make and issue evi-

dences for such loans, and other assurances for the payment thereof.

XX. Be it further enacted, That the stockholders in said corporation shall from time to time, after their general meetings, regulate and fix the salaries of the directors and other officers of the corporation; but that the directors shall fix the compensation to be paid to the agent or superintendents of the corporation.

XXI. Be it further enacted, That the directors shall have power to call a general meeting of the stockholders; and that any number of stockholders, owning one thousand shares in said corporation, shall also have power to call a general meeting; which meeting the directors shall convene within forty days immediately after such request of the stockholders as aforesaid, giving thereof not less than thirty days notice in the public newspapers printed in Fayetteville, and in such other newspapers as the directors may deem advisable.

XXII. Be it further enacted, That unless the said company shall complete twenty miles of said road within four years from the passage of this act, and unless they shall complete the said road as the Narrows of the Yadkin within ten years from this date, then this act shall be void and of no effect: Provided, that such forfeiture shall not take away the right of the company to any part of said road which may have been completed at the end of either of the periods aforesaid.

XXIII. Be it further enacted, That it shall be lawful for the General Assembly, at any time hereafter, to authorize the construction of any other road to intersect or be connected with this road, which may lead to any market within the limits of this State.

RESPONSE OF MR. CALHOUN.

(Concluded.)

But it is attempted to vindicate the conduct of the Secretary on the ground of precedent. I will not stop to notice whether the cases cited are in point; nor will I avail myself of the great and striking advantage that I might have on the question of precedents: this case stands alone and distinct from all others. There is none similar to it in magnitude and importance. I waive all that; I place myself on higher grounds—I stand on the immovable principle that, on a question of law and constitution, in a deliberative assembly, there is no room—no place for precedents. To admit them would be to make the violation of to-day the law and constitution of to-morrow; and to substitute in the place of the written and sacred will of the people and the legislature, the infraction of those chartered with the execution of the law. Such, in my opinion, is the relative force of law and constitution on one side, as compared with precedents on the other. Viewed in a different light, not in reference to the law or constitution, but to the conduct of the officer, I am disposed to give rather more weight to precedents, when the question relates to an excuse or apology for the officer, in case of infraction. If the infraction be a trivial one, in a case not calculated to excite attention, an officer might fairly excuse himself on the ground of precedent; but in one like this, of the utmost magnitude, involving the highest interests and most important principles, where the attention of the officer must be aroused to a most careful examination, he cannot avail himself of the plea of precedent to excuse his conduct. It is a case where false precedents are to be corrected and not followed. An officer ought to be ashamed in such a case, to attempt to vindicate his conduct on a charge of violating law or constitution by pleading precedent. The principle in such case is obvious. If the Secretary's right to withdraw public money from the Treasury be clear, he has no need of precedent to vindicate him. If not, he ought not in a case of so much magnitude, to have acted.

I have not, said Mr. Calhoun, touched a question which has had so prominent a part in the debate, whether the withholding the deposits was the act of the Secretary or the President. Under my view of the subject, the question is not of the slightest importance. It is equally unauthorized and illegal, whether done by President or Secretary; but, as the question has been agitated, and as my views do not entirely correspond on this point, with those advocating the side which I do, I deem it due to frankness to express my sentiments.

I have no doubt that the President removed the former Secretary, and placed the present in his place, expressly with a view to the removal of the deposits. I am equally clear, under all the circumstances of the case, that the President's conduct is wholly indefensible; and among other objections, I fear he had in view, in the removal, an object eminently dangerous and unconstitutional—to give an advantage to his veto never intended by the Constitution—a power intended as a shield, to protect the Executive against the encroachment of the Legislative department—to maintain the present state of things against dangerous or hasty innovation, but which, I fear, in this case, intended as a sword, to defend the usurpation of the Executive. I say I fear, for although the circumstance of this case leads to a just apprehension that such is the intention, I will not permit myself to assert that such is the fact—that so useless and unconstitutional an object is contemplated by the President, till his act shall compel me to believe to the contrary. But, while I thus severely condemn the conduct of the President in removing the former Secretary and appointing the present, I must say, that in my opinion it is a case of the abuse and not the usurpation of power. I cannot doubt that the President has, under the constitution, the right of removal from office; nor can I doubt that the power of removal, wherever it exists, does, from necessity, involve the power of general supervision; nor can I doubt that it might be constitutionally exercised in reference to the deposits. Reverse the present case—suppose the late Secretary, instead of being against, had been in favor of the removal, and that the President, instead of for, had been against it, deeming the removal not only inexpedient, but, under circumstances, illegal; would any man doubt, that under such circumstances, he had a right to remove his Secretary, if it were the only means of preventing the removal of the deposits? Nay, would it not be his in-

dispensable duty to have removed him? and, had he not, would not he have been universally and justly held responsible?

I have now (said Mr. C.) offered all the remarks I intended in reference to the deposit question; and on reviewing the whole ground, I must say, that the Secretary, in removing the deposits, has clearly transcended his power; that he has violated the contract between the bank and the United States—that in so doing he has deeply injured that large and respectable portion of our citizens who have been invited, on the faith of the Government, to invest their property in the institution; while, at the same time, he has deeply injured the public, in its character of stockholder; and finally, that he has inflicted a deep wound on the public faith. To this last I attribute the present embarrassment in the currency, which has so injuriously affected all the great interests of the country. The currency of the country is the credit of the country—credit in every shape, public and private; credit, not only in the shape of paper, but that of faith and confidence between man and man; through the agency of which in all its forms, the great and mighty exchanges of this commercial country, at home and abroad, are effected. To inflict a wound any where, particularly on the public faith, is to embarrass all the channels of currency and exchange; and it is to this, and not to the withdrawing the few millions of dollars from circulation, that I attribute the present monetary embarrassment. Did I believe to the contrary—if I thought that any great and permanent distress would result from winding up in a regular and legal manner the present one—any other bank of the United States, I would deem it an evidence of the dangerous power of the institution, and to that extent, an argument against its existence; but, as it is, I regard the present embarrassment not as an argument against the bank, but an argument against the lawless and wanton exercise of power on the part of the Executive—an embarrassment which is likely to continue long, if the deposits be not restored. The banks which have received them, at the expense of the public faith, and in violation of law will never be permitted to enjoy their spoils in quiet. No one who regards the subject in the light in which I do, can ever give his sanction to any law intended to protect or carry through the present illegal arrangements; on the contrary, all such must feel bound to wage perpetual war against an usurpation of power so flagrant as that which controls the present deposits of the public money. If I stand alone, (said Mr. Calhoun) I at least will continue to maintain the contest, so long as I remain in public life.

As important (said Mr. C.) as I consider the question of the deposits, in all its bearings, public and private, it is one on the surface—a mere pretext to another and one greatly more important which lies beneath, and which must be taken into consideration, to understand correctly all the circumstances attending this extraordinary transaction. It is full and acknowledged on all sides that there is another and a deeper question, which has excited the profound sensation and alarm which pervades the country.

If we are to believe what we hear from the advocates of the administration, we would believe at one time that the real question was, Bank or no Bank; at another, that the question was between the United States Bank and the States Bank; and finally, that it was a struggle on the part of the administration to guard and defend the rights of the States against the encroachments of the General Government. The administration the guardians and defenders of the rights of the States! What shall I call this audacity or hypocrisy? The authors of the Proclamation, the guardians and defenders of the rights of the States! The authors of the War Message against a member of this confederacy—the authors of the "bloody bill" the guardians and defenders of the rights of the States! This a struggle for State rights! No, Sir, State rights are no more. The struggle is over for the present. The bill of the last session, which vested in the Government the right of judging of the extent of its powers, finally and conclusively, and gave it the right of enforcing its judgments by the sword, destroyed all distinction between delegated and reserved rights; concentrated in the Government the entire power of the system, and prostrated the States as poor and helpless corporations at the foot of this sovereignty.

Nor is it more true that the real question is—Bank or no Bank. Taking the deposit question in the broadest sense; suppose, as it is contended by the friends of the administration, that it involves the question of the renewal of the charter, and consequently the existence of the Bank itself; still the banking system would stand, almost untouched and unimpaired. Four hundred banks would still remain scattered over this wide republic; and on the ruins of the United States Bank, many would rise to be added to the present list. Under this aspect of the subject, the only possible question that could