STAR, AND NORTH CAROLINA STATE GAZETTE.

NO. 11 — RALEIGH, N. C. THURSDAY, MARCH 6, 1834 — VOL. XXV

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

(BY AUTHORITY.)

An act to incorporate the Wilmington and Raleigh Rail Road Company.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That it shall be lawful to open books in the town of Wilmington, under the direction of Edward B. Dudley, P. K. Dickinson, Robert H. Cowan, Aaron Lazarus, James Owen, William B. Meares, William P. Hort, Alexander McRae and James S. Green, or any five of them; and in the city of Raleigh, under the direction of Gavin Hogg, William H. Haywood, Charles L. Hinton, Johnson Busbee, Charles Manley, Alfred Jones, Willis Whitaker, Ruffin Tucker, Weston R. Gales and E. P. Guion, or any five of them; and at any other places, under the direction of commissioners which may be designated by any three of the aforesaid commissioners at Wilmington, or any three of the commissioners at Raleigh, for the purpose of receiving subscriptions to an amount not exceeding eight hundred thousand dollars, in shares of one hundred dollars each, to constitute a joint capital stock, for the purpose of effecting a communication by a rail road, from some point within the town of Wilmington, or in the immediate neighborhood of the said town, to the city of Raleigh, or in the immediate neighborhood of the said city, the route of which road shall be determined on by the company hereby incorporated. The time and places of receiving subscriptions as aforesaid shall be made public by an advertisement in some newspaper published at Wilmington, and a newspaper published at Raleigh; but the said commmissioners and deputy commissioners shall keep open the said books at least sixty days at each place of opening them; and at the time to be fixed by the commissioners at Wilmington for that purpose, it shall be the duty of all the said commissioners and their deputies to make return to the said commissioners at Wilmington of the subscriptions by them taken respectively; and if it shall appear that three hundred thousand dollars, or any larger sum, has been subscribed, the commissioners at Wilmington shall make it known by advertisement in the newspapers published there and in the city of Raleigh, and call a meeting of the subscribers at such time and place as they shall think fit, provided they shall give at least twenty days' notice of said meeting; but if the sum of three hundred thousand dollars shall not be subscribed for within the time first appointed, the commissioners at Wilmington and Raleigh, and at other places to be designated as aforesaid, shall again open the said books to receive further subscriptions, and keep them open until such time as they may deem proper and fit; and the like proceedings shall be adopted by the said commissioners and their deputies upon the re-opening of said books, as are required to be pursued upon the original or first opening of them; and if the whole amount of the capital or joint stock shall not be subscribed for upon either the first or second opening of the said books, then the books may be closed or continued open, as a majority of the commissioners at Wilmington may judge most beneficial, and for such a period of time as they may prescribe: *Provided, however,* that if upon the first or upon the second opening of the said books, the sum of three hundred thousand dollars shall be subscribed for, the power to continue open the said books shall be transferred and vested in the subscribers to the said company, or the president and directors whom they shall appoint, and not in the commissioners.

II. *Be it further enacted,* That when three hundred shares shall be subscribed for in the manner aforesaid, the subscribers, their executors, administrators or assigns, shall be, and they are hereby declared to be incorporated into a body politic or company, by the name and style of "the Wilmington and Raleigh Rail Road Company;" and in that name may sue and be sued, plead and be impleaded; and shall possess and enjoy all the rights, privileges and immunities of a corporation or a body politic in law; and may make all such rules, bye laws and regulations, not inconsistent with the constitution of the United States and this State, as shall be deemed necessary for the well ordering and conducting the affairs of the company.

III. *Be it further enacted,* That upon any subscription for stock in said company, there shall be paid two dollars on each share, at the time of subscribing, which payment shall be made to the commissioners receiving such subscriptions; and the residue thereof shall be paid in such instalments and at such time as may be required by the president and directors of said company. The commissioners and deputy commissioners appointed to receive subscriptions, shall forthwith, after the election of a president and directors of the company, pay over to the said president and directors all moneys received by them; and on failure thereof, the said president and directors may recover the amount due from them or from any one or more of them, by motion or by petition, in any County or Superior Court of the State; and if the sums are demanded by petition, the defendants shall answer on oath, and the suit whether by motion or petition shall be heard and determined at the first court: *Provided, however,* that in either case the defendants shall have been notified at least ten days before the court in which the motion is made or the petition filed.

IV. *Be it further enacted,* That when three hundred thousand dollars or more of the said stock shall be subscribed for, public notice of that event shall be given by any three or more of the commissioners at Wilmington, who shall have power at the same time to call a general meeting of the subscribers, at such convenient place and time as they shall name in said notice. To constitute such meeting, or any general meeting of the stockholders, a number of persons holding a majority of all the shares shall be present, either in person or by proxy; and if a sufficient number do not appear on the day appointed, those who do attend shall have power to adjourn from time to time until a meeting shall be formed.

V. *Be it further enacted,* That the proprietors of the stock, at the general meeting above directed, and every annual meeting thereafter, shall elect a president and ten directors, who shall continue in office, unless sooner removed, until the next annual meeting after their election, and until their successors shall be elected; but the said president or any of the directors may at any time be removed, and the vacancy thereby occasioned be filled by a majority of the votes given at any called or general meeting. The president, with any five or more of the directors, shall constitute a board for the transaction of business; and if the office of president become vacant, the directors shall elect one of their own body pro tem.; and if there be a vacancy in the directory, the other directors may fill the vacancy by electing a stockholder; and if the president shall at any time be absent from the board, the directors may, if five be present, appoint one of their own body to act as president during that meeting.

VI. *Be it further enacted,* That there shall be annual meetings of the proprietors of stock, at such times and places as the preceding general meeting have appointed. Proprietors may attend by proxy, under such rules as the bye laws prescribe: *Provided,* that in no case shall the president or any director vote under the authority of another stockholder; nor shall any officer or agent of the company be the proxy of a stockholder; and if there be any proxy which is jointly made to the president and another or others, or to any director and another or others, or to any other officer or agent of the company jointly with another or others, the proxy shall be void.

VII. *Be it further enacted,* That special meetings of the company may be called by the president and directors, or a majority of their board assembled; or it shall be called by the president whenever ten members of the company or more, owning together two hundred shares, shall require it: *Provided,* that public notice shall be first given of the time and place of the said meeting, and of the purpose for which it is called, unless the interest of the company requires that the cause of convening the meeting should not be published: *And provided,* that, either in person or by proxy, there shall be present at the meeting a number of persons owning together a majority of the stock.

VIII. *Be it further enacted,* That the president and directors of said company shall be, and they are hereby invested with all the rights and powers necessary for the construction, repair and maintaining of a rail road to be located as aforesaid, and to begin at such point and prosecuted in such directions as the stockholders shall direct; and they may cause to be made and constructed for the said company all works whatsoever which may be deemed necessary or expedient to the successful and proper completion and enjoyment of said rail road. They may appoint a secretary and treasurer, and other officers, and take from them bonds and security for the faithful performance of their duties, which bonds shall be made payable to the company; but the salaries or other compensation of the said officers shall be regulated by the stockholders in general meeting. And during the intervals between the general meetings of the stockholders, the president and directors may transact all the business of the company, with the limitations herein before and hereafter stated.

IX. *Be it further enacted,* That the president and directors shall have power to make contracts with any person or persons, on behalf of the company, for making said rail road and performing all other works respecting the same: *Provided,* they shall not make any contract with any member of the board of directors, nor with the president without the express assent of the stockholders being given to such a contract at a general meeting.

X. *Be it further enacted,* That at any general meeting of the stockholders, no person who has an individual interest in a question to be decided by them, shall be allowed to vote either for himself or as the proxy of another stockholder; and no person shall be elected a president or a director of the company, who does not own at least twenty shares of stock in the company; and if any person, after his election to the office of president or director, ceases to be the owner of so many shares, he shall thereupon cease to be a president or a director of the company, and the vacancy shall be filled as heretofore provided for; nevertheless the stockholders may elect a president and directors who are not owners of twenty shares each, if it is done by the unanimous consent of those present at a general meeting.

XI. *Be it further enacted,* That if any stockholder shall fail to pay the sum required of him on his subscription by the president and directors, or a majority of them, within one month after the same shall have been advertised in some newspaper published at the seat of government, it shall and may be lawful for the said president and directors, without further notice, to move for judgment in the County or Superior Court of Wake or of New Hanover against the delinquent stockholder or his assignee, or both, for the amount of the instalment required to be paid, at any court held within one year after the notice, and the court shall give judgment accordingly; or they may sue for the same, in an action of assumpsit, or by warrant, according to the jurisdiction of the respective tribunals of the State; and in case of a warrant, there shall be no stay of execution; and it shall and may be lawful for the said president and directors, either without any such suit or after it, to sell at public auction, and convey to the purchaser, such share or shares of such stockholder so failing or refusing, giving however one month's notice of the time and place of sale, by advertisement in some newspaper published at the seat of government; and after retaining the sum due and all costs and charges of the suit or of the sale, or of both, out of the proceeds thereof, to pay the surplus over to the former owner or his legal representative; and if the sale shall not produce the sum required to be advanced, with the incidental costs and charges aforesaid, the president and directors may recover the balance of the original proprietor or his assignee or executor or administrator, by notice in court as aforesaid; or if judgment has been already obtained, they may take out execution thereon for the balance due them; and any purchaser of the stock of the company, under the sale by the president and directors, shall be subject to the same rules and regulations as the original proprietor; and no sale by the original proprietor or his assigns, nor by the company, shall release the original proprietor from his obligation to the company to pay the whole amount of his subscription; but the president and directors may proceed against the original proprietor and his assigns, or the assignee of the original proprietor and his assigns, so that they do not exact full payment from both or any more than one.

XII. *Be it further enacted,* That the debt of a stockholder due to this company for stock therein, either as original proprietor or first or subsequent assignee, shall be considered as of equal dignity with judgments in the distribution of the assets of a deceased stockholder by his executor or administrator.

XIII. *Be it further enacted,* That it shall and may be lawful for the said company to purchase and hold, and to take by gift or devise all lands and other estate and property of any kind, to be by them used or improved, or resold and conveyed: *Provided,* the said property and estate are faithfully applied to the purposes and objects hereby intended to be effected; and they in general meetings and at other times, the president and directors for the time being are hereby authorised and empowered by themselves or their agents to exercise all the powers herein granted, 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 herein before granted, as may be necessary to carry into effect the object of this grant.

XIV. *Be it further enacted,* That if the president and directors aforesaid cannot agree with the owners of land through which it may be necessary to make the said rail road, as to the terms upon which the said rail road shall be opened through the same, then it shall and may be lawful for the president and directors to file a petition, in the name of the company, in the Court of Pleas and Quarter Sessions of the county wherein the land lies, under the same rules and regulations as are now prescribed by law for laying off public roads in said county; and upon the filing of said petition, the same proceedings shall be had as in cases of laying off public roads, excepting these, to wit: the president and directors, by themselves or by their agent, shall mark out the course of the road, and it may be wide enough to give the company sixty five feet clear on each side of the base of the road; and the jury in assessing the damage shall likewise assess the value of the benefits resulting to the owners of the land for the constructing of the road through or near the lands of the owner or owners of that which is marked out for the road, and the jury shall be sworn to act accordingly; and when the jury shall have assessed the damages to the owner or owners of the land through which the road is laid off, and also the value of the benefit resulting as aforesaid, it shall be returned to court, and final judgment entered accordingly for the damages assessed, which, however, shall be extinguished pro tanto by the value of the benefits resulting to the owner; and it shall be lawful for the company or the president and directors to pay the difference, if there be any, into the office of the clerk for the use of the owner or owners or his, her or their guardian, as the case may be, and thereupon, and also if there be no damage due, enter upon the land laid off, and construct their road or other improvements thereon, to make all necessary excavations and embankments and to hold the said land to their own use and benefit; and in all things have the same power over the said land so laid off as though they owned the fee simple therein: *Provided,* that nothing in this act contained shall be so construed as to give power to said company to lay off said road through the yard, garden or burial ground, appurtenant to the mansion house of any person whatever, without the consent of the owner thereof, or his, her or their guardian, as the case may be.

XV. *Be it further enacted,* That the written consent of any owner or proprietor of any lands through which the said road is to be constructed, showing his, her or their agreement to the same, shall be valid and effectual to give the same power and authority over the lands covered by the road, and sixty-five feet on each side thereof as aforesaid, as if the same had been conveyed by a deed of bargain and sale, or condemned upon petition as aforesaid; and although the said lands may belong to a feme covert, the signing of such assent by her and her husband shall be as conclusive and effectual against her, as though she had been a feme sole, subject however to the proviso contained in the preceding section; and this assent shall be binding and conclusive though it be signed before the company is formed.

XVI. *Be it further enacted,* That when any wood, gravel, earth or stone shall be wanted for the construction or repairing of said road, and the president and directors cannot agree with the owners of the lands adjacent, as to the terms upon which they can procure the same, then it shall be lawful for the president and directors, by themselves or agents or officers, to enter upon any adjacent lands not in a state of cultivation, and take therefrom all wood, stone, earth or gravel so needed as aforesaid: *Provided,* that they shall not, without the owner's consent, cut down any fruit trees, or trees preserved in any lot or field for shade or ornament, or take any timber, gravel or stone, constituting any part of a fence or building; and when any gravel, stone, or earth shall be taken as in this act is provided, the president and directors may tender amends to the owner or proprietor; and if the owner or proprietor shall be dissatisfied with the amount, he may refuse it and file his petition against the company in any court of the county where the land lies, (first giving ten days' notice thereof to the president and directors) praying to have a jury summoned to go upon the land, view it and assess the damages he, she or they may have sustained thereby; upon which it shall be the duty of the court to order a jury as in laying off public roads; which jury shall go upon the land, and, after being duly sworn to do equal justice to all parties, they shall consider what damages the owners of the land shall have sustained; and, after assessing the same, shall return their proceedings to court; and if the court approve thereof, the damages so assessed shall be paid by the company; but if the court shall not approve thereof, they shall order another jury to be summoned, who shall proceed in like manner to assess and make return to the court; and if the court shall approve thereof, the company shall pay the damages assessed, and if they do not pay it, judgment may be entered and execution may issue thereon as against other corporations: *Provided, however,* that the jury shall in all cases take into view the benefit which has resulted to the owner of the land by the construction and maintaining of the road: *Provided further,* that if the damages assessed by the jury are not more than the amount tendered by the company or its agent, (although the amount of the tender be not paid into court,) the petitioner shall not recover costs: *And provided further,* that either party not satisfied with the judgment of a County Court in such cases, may appeal therefrom to the Superior Court, upon giving bond and security, as in other cases of appeals.

XVII. *Be it further enacted,* That the president and directors, and all other officers and agents of the company, may enter upon the lands of any person or persons whatever, for the purpose of surveying a route for the said rail road and laying off the same; and they may mark or chop on the trees the courses laid off as aforesaid, so that they do not invade the dwelling or the yard or garden of any person or persons, without his, her or their consent.

XVIII. *Be it further enacted,* That if the president and directors of said company shall, without the consent of the owner, construct the said rail road over the lands of any person or persons before a condemnation of the same in the manner provided in the preceding section, it shall and may be lawful for the owner or owners of said lands to petition after the manner and according to the rules provided in the sixteenth section hereof, and not otherwise; and after the assessment of the damages to be paid, and the payment thereof, the property in the ground covered by the road and sixty five feet on each side thereof, measuring from the base of the said road, shall become to all intents and purposes vested in the company in fee simple; and if the owners of said lands shall bring any action of trespass against the company or any of its officers, or any other action but a petition as aforesaid, the defendants may give this act in evidence under the general issue, or upon a special plea; and it shall bar the said action or suit.

XIX. *Be it further enacted,* That it shall and may be lawful for the said president and directors to determine from time to time what instalments shall be paid on the stock subscribed; to purchase with the funds of the company, and place on the said rail road constructed by them, all machines, wagons, vehicles, carriages and teams of any description whatsoever, which may be deemed necessary and proper for the purposes of transportation; and all the property purchased by the said president and directors and that which may be given to the company, and the works constructed under the authority of this act, and all profits accruing on the said works, and the said property shall be vested in the respective shareholders of the company and their successors and assigns forever in proportion to their respective shares; and the shares shall be deemed personal property and the property of said company; and the shares therein shall be exempt from any public charge or tax whatsoever.

XX. *Be it further enacted,* That the stockholders of the said company may, at any general meeting, re open the books of subscriptions, under regulations to be prescribed by them, to increase the capital stock of said company until the whole capital of eight hundred thousand dollars is subscribed; or they may sell the stock remaining unsubscribed for, and the advance on the same above par shall belong to the proprietors of the stock originally subscribed; and in case the books are opened after a part of the road is completed and profits received thereon and expended on the road, the original subscribers shall be reimbursed out of the profits of the road the amount of profits that has been expended anterior to the last subscriptions, before any dividends of profits is made among all the stockholders.

XXI. *Be it further enacted,* That the stockholders in general meeting may, if they think fit, resolve to construct a branch or branches to the main road, to be connected with the main road at such point or points as they determine on, and to lead in such direction, and to such a point or points as they may think best; and in order that they may do so, the said stockholders are fully authorised to cause books to be opened for subscriptions to the said lateral road or branch of the main road; and the subscribers for stock shall be subject to all the rules previously made by the company, and become members of the company with this exception only, viz. that the stock subscribed by them shall be faithfully and honestly applied to the construction of that branch of the road for which they subscribed it; but the subscribers for the main road and the branches shall constitute but one company; and their rights of property and estate shall be in common and not separate: *Provided, however,* that the whole capital of subscribed stock shall not exceed one million of dollars.

XXII. *Be it further enacted,* That all the powers, rights and privileges conferred by the preceding sections upon the said company, in respect to the main road, and the lands through which it may pass, are hereby declared to extend in every respect to the said company, and the president and directors thereof, in the laying out, in the construction, and in the use and preservation of said lateral or branch roads.

XXIII. *Be it further enacted,* That it shall and may be lawful for the said company to construct a branch to the main road as aforesaid, under the restrictions aforesaid, so soon as the main road has reached the point at which the branch road is intended to be joined with the main road; but they shall not, under any pretence whatever, apply the funds of the company to the construction of a lateral or branch road until the main road is completed, except they be subscriptions specifically made for the branch or lateral road.

XXIV. *Be it further enacted,* That no person shall have leave to connect or intersect with the said rail road or any of its branches, unless it shall be done by some company incorporated in this State; and in all such cases, the company intersecting shall erect the most approved and suitable apparatus for weighing the cars or other vehicles that are to be brought over the road intersected with; and if they fail to do so within a reasonable time after a request made of them, the company omitting this shall forfeit and pay to the other company two hundred dollars, to be recovered by action of debt before any court of record in this State; and shall be liable moreover to pay the cost of such an apparatus after it is put up by this company, which shall be recoverable by an action on the case brought before any court of record in this State: *Provided, however,* that the General Assembly shall not grant this right to intersect with this road to any company who shall build a road less than twenty miles long on one side of this road.

XXV. *Be it further enacted,* That where a branch or lateral road to the main road is shorter than twenty miles, no other person or company shall be authorized or empowered to build a rail road from any point near its termination, so as to intersect with this main road in order to injure this company.

XXVI. *Be it further enacted,* That so soon as ten miles of said rail road shall be completed, and as often thereafter as any other section of like length shall be completed, the said company or the president and directors may transport all produce or other commodities that shall be deposited convenient to the said road for that purpose, and which they may be required to convey to any point on said road; and it shall be lawful for the said president and directors or the company aforesaid, and they are hereby authorised to erect a toll gate or toll gates on said roads at such points as they may choose; and they shall be entitled to receive and to demand the following rates, to wit: not exceeding four cents a mile for toll, and nine cents a mile for transportation per ton of 2000 lbs.; and for the transportation of passengers, not exceeding six cents per mile for each passenger, until the nett profits received shall amount to a sum equal to the capital stock expended, with six per cent. per annum interest thereon from the time the money was advanced by the stockholders until received back in the nett profits; but when the nett profits received as aforesaid from the tolls aforesaid shall have amounted to a sum equal to the capital stock aforesaid, with interest thereon as aforesaid, then the tolls which the said company or the president and directors shall be entitled to receive for the transportation of produce or other commodities on the said rail road shall be fixed and regulated from time to time by the president and directors of the company, so as to make them sufficient, in their estimation, to yield a nett profit equal to fifteen per cent. per annum on the capital stock of the company over and above what may be necessary for the repairs, improvement or renewal of the same, together with all other incidental expenses of the company; and it shall not be be lawful for any other person or company whatever to travel along or upon the said road or any part thereof, or use it or any part thereof for transportation of produce or otherwise, without the license or permission of the president and directors; but nothing herein contained shall be so construed as to prevent the said company from making a contract for the transportation of the mail upon such terms as may be agreed on between said company and the agents of the United States.

XXVII. *Be it further enacted,* That it shall be lawful for the said company, in the construction of said road, to intersect or cross any public or private way established by law; and it shall be lawful for them to run their road along the route of any of said roads: *Provided,* that whenever they intersect or cross the said public or private roads, the president and directors shall cause the rail road to be so constructed as not to impede the passage of travellers on the public road or private way aforesaid; and whenever the rail road runs over and along with such public common road (which said president and directors) to be opened at their expense; but the jury impannelled shall again take into view, in estimating the damages of the owners, the value to the said owner of having the rail road constructed through or near his lands.

XXVIII. *Be it further enacted,* That certificates of stock shall be issued under such regulations as the bye laws prescribe; and the shares of the company shall be transferable according to such rules and upon such terms as may be established by the company in general meeting; and the profits accruing on the said shares shall be paid to the holders thereof, or their executors or other representatives, at such place or places as the president and directors shall direct.

XXIX. *Be it further enacted,* That it shall be lawful for the president and directors to erect warehouses and other necessary buildings for the use of the company, at convenient and eligible sites; they may also erect for the objects of this act, and to make and issue all proper evidences of such loan

XXX. *Be it further enacted,* That the president and directors shall have power to borrow money