

# STAR, AND NORTH CAROLINA STATE GAZETTE.

NO. 12

RALEIGH, N. C. THURSDAY, MARCH 13, 1834

VOL. XXV

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

(BY AUTHORITY.)

An act to incorporate the Roanoke and Yadkin 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 and may be lawful to open books, at any time before the first day of April next, in the town of Warrenton, under the direction of Peter R. Davis, James Somerville, Robert Stamper, Daniel Turner, Dr. Joseph W. Hawkins and Henry Fitzes; at Oxford, under the direction of Rhodes N. Herndon, Joseph H. Bryan, William M. Sneed, James Cooper and Thomas J. Hunt; at Hillsborough, under the direction of William Cain, junior, Dr. James S. Smith, Harrison Parker, Gabriel B. Lea, Michael Holt and John Caruthers; at Yanceyville, under the direction of William A. Lee, George Williamson, James Kerr, Paul Harralson, Stephen Dodson and Quinton Anderson; at Greensborough, under the direction of Judith Harper Lindsey, Daniel Clapp, Moses H. Mendenhall, Eli Smith, Abraham Green and Henry Humphreys; at Rockborough, under the direction of Stephen M. Dickens, John Barnett, William L. Allen, Portius Moore, Alexander Gordon; at Salem, under the direction of Emanuel Shober, John C. Blum, Charles F. Bagge, Frederick H. Shuman; at Rockford, under the direction of Peter Clingman, Meshach Franklin, Matthew M. Hughes, John Wright and Daniel W. Courts; at Lexington, under the direction of John A. Hogan, James Wiseman, William R. Holt, Absalom Williams, John Smith, Evander Melver and John Lee; at Salisbury, under the direction of Thomas L. Cowan, Maxwell Chambers, John Murphey, William F. Kelly, Robert McNamara, William Chambers and James Martin, juniors; at Wentworth, under the direction of Thomas Settle, Robert Martin, William A. Carrigan, John Lawson and William Barnett; at Statesville, under the direction of Theophilus Falls, William F. Cowan, James Campbell, Joseph Chambers, Absalom K. Simonton; at Ashborough, under the direction of Benjamin Elliott, Jonathan Worth, Hugh McCain, George Hoover and Elisia Coffin; and at such other places, and under the direction of such other persons, as the six first named commissioners, or any three of them, may order or direct, for the purpose of receiving subscriptions to the amount of one million of dollars, to constitute a joint capital stock for the purpose of making a rail road from the town of Blakely or Weldon, upon the Roanoke, or such other place upon the river above said towns as may be fixed upon by the company by this act incorporated, to terminate at any point upon or west of the Yadkin river, in the State of North Carolina, if the corporators may wish to cross said river, to be selected by the company by this act created. The times and places for receiving subscriptions, as above, shall be advertised in the manner deemed most proper by the commissioners; and the books for receiving the same shall be kept open twenty days; and should it, at the expiration of the twenty days, appear that more than one million of stock shall have been subscribed for upon the books, it shall be the duty of the said commissioners, or any five of them, to reduce the number of shares subscribed for by each individual, in fair and equal proportions, until the whole number of shares shall be reduced to ten thousand: *Provided*, that no reduction shall be made upon subscriptions not exceeding two shares; but should the whole amount of ten thousand shares not be subscribed for at the end of twenty days from and after the first day of April next, then the books shall be kept open until the whole amount of ten thousand shares shall have been subscribed for: *Provided, however*, that as soon as one thousand shares shall be subscribed, and the company incorporated, the books shall thereafter be opened under the direction of the company.

II. *Be it further enacted*, That at the expiration of the twenty days after the books are opened, should there be one thousand shares or more subscribed upon the books, then the subscribers, their heirs, executors, administrators and assigns, shall be, and they are hereby declared to be incorporated into a company, under the name and style of the Roanoke and Yadkin 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 body politic in law; and may make all such by laws and regulations as bodies politic and corporate are allowed to make within this State (not inconsistent with the constitution and laws of the land) that may be necessary for the well ordering and governing of the said corporation.

III. *Be it further enacted*, That upon every share subscribed, there shall be paid at the time of subscribing, by the person subscribing, the sum of three dollars, to the commissioners authorized to receive the subscriptions, and the residue thereof shall be paid in such instalments and at such times as the president and directors of the company may require. The said commissioners, and all persons holding money paid on subscriptions of stock, shall forthwith, after the election of president and directors for said company, pay over all moneys in their hands belonging to the company; and upon failure thereof, the president and directors may recover the amount due from them, or any one or more of them, by motion, on ten days' previous notice in writing, in the Superior or County Court of any county wherein such commissioner or commissioners, their executors or administrators may reside.

IV. *Be it further enacted*, That when one thousand shares or more of the stock shall be subscribed, public notice may be given by any three or more of the commissioners, who shall call a general meeting of the subscribers, at the town of Warrenton, giving thirty days' notice in some one or more of the newspapers having in their opinion the greatest circulation in the section where the subscribers live, at such time as they may name in the said notice; to constitute any such meeting, a number of persons representing a majority of all the votes that can be given upon all the shares subscribed for, shall be present or represented by proxy; and should a sufficient number not attend, those present shall have power to adjourn, from time to time, until a majority of the shares subscribed shall be represented; those meeting shall then proceed, a majority of the stock being represented, to elect a president and five directors, who shall hold their office until the next annual meeting of the stockholders, and until their successors in office shall be appointed; subject, nevertheless, to the provisions hereinafter mentioned. Annually a general meeting of the stockholders shall be called within the state, at which the election of president and directors shall take place; and where a vacancy shall occur by death, resignation or otherwise, the vacancy may be filled, for the time being, by the remaining president and directors; or if the presidency be vacant, the directors may fill as above. Any three or more of the directors may have power, in the absence of the president, to appoint one of their body president *pro tempore*, and transact business: *Provided always*, that the proprietors of one fourth part of the stock of said company may at any time call a general meeting of the stockholders; and such meeting so called shall have power to remove any president or director, and to fill any vacancy occasioned by such removal; but no president or director shall be removed unless a number of votes representing a majority of shares of stock in said company be given against him: *And provided further*, that none but a resident citizen of this State shall be eligible to act as president and director.

V. *Be it further enacted*, That the president and directors of the said company shall be, and they are hereby invested with all the rights and powers necessary for the construction, repair and maintaining a rail road, to be located as aforesaid, with as many sets of tracks as they or a majority of them may deem necessary and proper to be made; also to make and construct all works whatsoever which may be necessary and expedient in order to the proper completion of the rail road. The said president and directors of the company shall have power to make contracts with any person or persons for any work to be done upon or for the said road, in such a manner and under such rules and regulations as they may deem proper and right; and all such contracts and agreements made by the company, or their legal agents, with any person or persons, shall be binding on the individual or individuals making them and also on the company. The president and directors shall have power to call on all the stockholders for a due and equal proportion of the amount subscribed by them to the capital stock of said company, in such sums and at such times as they, the president and directors, may deem proper and right, by giving one month's notice of such call in one or more newspapers printed in this State. The president and directors shall have power to appoint a treasurer, clerk and all other officers that they may deem necessary and proper to aid and assist in managing and prosecuting said work, and to fix their compensation, and take such bonds with security for performance of duty, as they may prescribe. If any stockholder shall fail to pay the sum required of him by the president and directors, or a majority of them, within one month after the same shall have been advertised in one of the newspapers published as aforesaid, it shall and may be lawful for the president and directors to sell at public

auction, and to convey to the purchaser, the share or shares of such stockholders so failing or refusing, giving one month's previous notice of the time and place of sale in manner aforesaid; and after retaining the sum due and all charges of the sale out of the proceeds thereof, to pay the surplus over to the former owner, or to his legal representative; and if the said sale shall not produce the sum required to be advanced, with the incidental charges attending the sale, then the president and directors may recover the balance of the original proprietor, or his assignee, or the executor or administrator or either of them, by motion, on ten days' notice, before any court having jurisdiction thereof; and any purchaser of the stock of the company under the sale of the president and directors, shall be subject to the same rules and regulations as the original proprietor was. The president and directors, their officers, servants and agents shall have full power and authority to enter upon all lands and tenements through which they may judge it necessary to make the said rail road, and to lay out the same according to their pleasure, so that neither the dwelling house, yard, garden or curtilage of any person be invaded without his consent. If the president and directors cannot agree with the owner of the lands the terms upon which the said rail road shall be opened through it, it shall be lawful for them to apply to the court of the county in which the land lies; and upon such application, upon petition in writing, it shall be the duty of the court to appoint five discreet, disinterested and impartial freeholders to assess the damages to such land which will result from opening the said rail road through it; no such appointment, however, shall be made, unless ten days' previous notice, in writing, of the application shall have been given to the owner of the land; or to the guardian, if the owner be an infant or non compos mentis, if such owner or guardian can be found within the county; or if he cannot be so found, then such appointment shall not be made, unless notice of the application shall have been published at least one month in some public newspaper published at Raleigh. A day for the meeting of the freeholders to perform the duties assigned them, shall be designated in the order appointing them; and any one or more of them attending on that day, may adjourn from time to time, until the business shall be finished: of the five freeholders so appointed, any three or more of them may act, after having been sworn or solemnly affirmed, before some justice of the peace, that they will impartially and justly, to the best of their ability, ascertain the damages which will be sustained by the proprietor of the land from opening the said rail road through the same; and that they will truly certify their proceedings thereupon to the court of the said county.

VI. It shall be the duty of the said freeholders, in pursuance of the order appointing them, to assemble on the land through which the rail road is to be opened, and after viewing the same and hearing such witnesses who may be qualified before a justice of the peace, as either party may offer, to ascertain, according to their best judgment, the damages which the owners of the land will sustain by opening the rail road through the same. In performing this duty, they shall take into consideration the quality and quantity of the land which the rail road will occupy, the additional fencing or gates which will be required thereby, and all other inconveniences which will result to the said land from the opening of the said rail road; and shall combine therewith a just regard to the advantages which the owner of the land will derive from opening the rail road through the same.

VII. When the said freeholders shall have agreed upon the amount of damages, they shall forthwith make a written report of their proceedings under their hands and seals, in substance as followeth: "We, freeholders, appointed by an order of the court for the purpose of ascertaining the damages which would be sustained by the proprietor of certain lands in said county through which the Roanoke and Yadkin Rail Road Company propose to open a rail road, do hereby certify that we met together on the land aforesaid on the day of the day appointed for that purpose by the said order, (or the day to which we were regularly adjourned from the day appointed for our meeting by the said order, as the case may be); and that having first been duly sworn, or affirmed, and having viewed the premises, we proceeded to estimate the quantity and quality of the land aforesaid which would be occupied by the said rail road, the quantity of additional fencing or gates which would probably be occasioned thereby, and all other inconveniences which seemed to us likely to result therefrom to the said land; that we combined with these considerations, as far as we could, a just regard to the advantages which would be derived by the proprietor of the said land from the opening of the aforesaid rail road through the same; that under the influence of these considerations, we have estimated, and do hereby assess the damages aforesaid at the sum of dollars. Given under our hands and seals, this day of . . . The report of the freeholders so made, together with the certificate of the magistrate aforesaid, shall be forthwith returned by the said freeholders to the court of said county; and unless good cause be shown against the report, it shall be affirmed by the court and entered on record; but if the said report should be disaffirmed, or the said freeholders, being unable to agree, should report their disagreement, or if, from any other cause, they should fail to make a report within a reasonable time after their appointment, the court may at its discretion, as often as may be necessary, supercede them or any of them, appoint others in their stead, and direct another view and report to be made in the manner above prescribed. On the affirmation of any such report, and on payment or tender of payment of said damages into court, when for good causes shown the court shall so have ordered it, the president and directors shall be at liberty to open the said rail road upon the ground viewed and assessed by the freeholders aforesaid.

VIII. Whenever it shall become necessary to subject the lands of individuals to the use of the said company in opening and constructing the said rail road through the same, and the consent of the proprietor or proprietors cannot be obtained, it shall be lawful for the president and directors of the said company, and for their superintendents and agents, contractors, laborers and servants, by order of said company, to enter upon such lands and proceed in opening and constructing the said rail road through the same. The pendency of any proceedings in court, or before assessors or valuers, to ascertain the damages that will be sustained by the proprietor or proprietors of such land from opening and constructing the said rail road through the same, shall in no manner hinder or delay the progress of the said work; the true intent and meaning of this act being that all injury which may be done to any land without the consent of the proprietor or proprietors thereof by opening and constructing the said rail road through the same, over and above the advantages of the said road to the proprietor or proprietors of such land, shall be fully and completely compensated for in damages when assessed. For such damages, when ascertained by a confirmation of the report of the assessors or valuers, by the respective County Courts, if they be not paid to the party or parties entitled to the same, or into the court by the company, during the term at which the report shall be confirmed, the clerk of the court shall, at any time after the adjournment of the court, on application of the parties entitled to the said damages, or his or their attorney, issue execution for the amount of the said damages against the said company.

IX. *Be it further enacted*, That the president and directors, for the purpose of making the said rail road, or of repairing the same after it shall have been made, shall also be at liberty by themselves, their officers, agents or servants, at any time, to enter upon any adjacent lands and to cut, quarry, dig, take and carry away therefrom, any wood, stone, gravel or earth, which they may deem necessary: *Provided, however*, that they shall not, without the consent of the owner, cut down any fruit tree or trees preserved in any lot or field for shade or ornament, nor take any timber, gravel, stone or earth constituting any part of any fence or building. For all the wood, stone, gravel or earth, taken under authority of this act, and for all incidental injuries done to the enclosures, crops, woods or grounds, in taking or carrying the same away, the said president and directors shall make the owner a fair compensation, to be ascertained, if the parties cannot agree, by any three impartial and disinterested freeholders, who, being appointed for that purpose by any justice of the peace thereto required by the owner, shall be sworn or affirmed by the justice, and shall then ascertain the compensation, upon their own view, for the wood, stone, gravel or

earth taken, and for the injury done as aforesaid in taking them; of all which proceedings the president or chief engineer of the company shall have at least five days' notice, in writing; and either party dissatisfied with their award thus made, may take an appeal to the next Court of Pleas and Quarter Sessions of the county where the land lies.

X. If the president and directors of the said company shall not obtain the consent of the proprietor or proprietors of land through which they propose to open and construct the said rail road, and shall apply to the County Court to procure assessors or valuers to be appointed to ascertain the damages which will result to the proprietor or proprietors of any land from opening and constructing the said rail road through the same, within forty days from the time the said president and directors, their superintendents, agents, contractors, laborers or servants, shall commence opening and constructing the said rail road through each land, then it shall be lawful for the proprietor or proprietors of such land, at any time previous to an application for the appointment of valuers being made by the said rail road company, giving the said company ten days' previous notice, in writing, by serving the same on the president or any one or more of the directors of said company, to apply to the said county court; and upon such application it shall be the duty of the said county court to appoint five discreet, disinterested and impartial freeholders, to assess the damages that will result to the proprietor or proprietors of such land from opening and constructing the said rail road through the same, who shall be qualified in the same manner, and shall upon the same principle and in the same manner in all respects proceed to assess and report to the court the damages that will result to the proprietor or proprietors of such land, by opening and constructing the said rail road through the same, as if they had been appointed on motion of the said company; and the said court shall proceed upon the said report, and confirm or set the same aside and appoint other assessors or valuers, in all respects as if the same had been made by assessors or valuers appointed on motion of the said company; and if the said company shall not pay to the proprietors of such land, or into the said court, the damages assessed during the term of the said court at which the report thereof shall be confirmed, at any time after the adjournment of the court, on the like application, the clerk shall issue execution for the amount.

XI. Whenever in the construction of the said rail road, it shall be necessary to cross or intersect any established road or way, it shall be the duty of the president and directors of the said company so to construct the said rail road across any road or way already or hereafter to be established by law, as not to impede the passage or transportation of persons or property along the latter; and where it shall be necessary to pass through the land of any individual, it shall also be their duty to provide for such individual proper wagon ways across the said rail road.

XII. The said president and directors, or a majority of them, shall have power to purchase with the funds of the said company and place on the said rail road, constructed by them under this act, machines, wagons, vehicles, carriages and teams, of any description whatsoever, which they may deem necessary or proper for the purposes of transportation.

XIII. All machines, wagons, vehicles and carriages purchased as aforesaid with the funds of the company, and all their works constructed under the authority of this act, and all profits which shall accrue from the same, shall be vested in the respective shareholders of the company forever, in proportion to their respective shares.

XIV. So soon as a section of ten miles of the said rail road shall be completed, and as often thereafter as any other section of like length shall be completed, the said president and directors shall transport all produce or other commodities, that shall be deposited convenient to the said rail road, and which they shall be required to transport, to any point to which the said rail road may have been completed, in the order in which the company shall be required to transport the same, after it shall have been deposited conveniently to the said rail road, so that equal and impartial justice shall be done to all the owners of produce or other commodities in the transportation thereof by the company: *Provided*, the owners of the produce or other commodities required to be transported by the said company on the said rail road, shall pay or tender to the said company, at their toll gates, the toll due on such produce or other commodities under this act; and it shall be lawful for the president and directors of the said company, and they are hereby authorized to erect, on such section or sections, a toll gate or gates; and they shall be entitled to demand and receive a sum not exceeding twelve and a half cents per ton, or two thousand pounds, per mile, for transporting produce or other commodities thereof; and for each passenger a sum not exceeding five cents per mile, until the net 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 net profits; but when the net profits received as aforesaid by the tolls aforesaid, shall have amounted to a sum equal to the capital stock expended as aforesaid, with six per cent. per annum interest thereon, as aforesaid, their toll which the said president and directors shall be entitled to demand and 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 said company, so as to make them sufficient in their estimation to yield a net profit equal to ten per cent. per annum on the capital stock expended in making and completing the said rail road, over and above what may be necessary for the repairs and renewal of the same. The president and directors of the said company shall, at the end of each year, report to the Board of Public Works or Internal Improvement, if there be any such board, or, otherwise, to the Legislature, a statement showing the whole amount of capital stock expended in the construction of the said rail road, the amount of tolls received during each year, the expense and charges incurred during each year, and the net annual profit or loss on the capital expended.

XV. That each stockholder in said company shall be entitled to one vote for each share by them held, as far as ten shares; and one vote for every five shares afterwards: *Provided, however*, that no stockholder shall be entitled to more than thirty votes.

XVI. The president and directors shall render distinct accounts of their proceedings and disbursements of money to the annual meeting of the stockholders.

XVII. So soon as the first ten miles of the said rail road shall be completed, the president and directors of the said company or a majority of them may declare and make such dividend of the net profits from the tolls herein granted as they may deem advisable, to be divided among the proprietors of the stock of the said company in proportion to their respective shares, and so on for each ten miles so completed.

XVIII. After the said rail road shall be completed and put into operation, if the said president and directors shall, by reason of the said rail road being out of repair, or from any other cause, fail or neglect to transport any produce or other commodities which shall be deposited conveniently to the said rail road, and which the said president and directors shall be required to transport as aforesaid, the toll for the transportation being tendered, as a penalty for such failure or neglect, the company shall be liable to the action of the party injured by such failure or neglect: *Provided*, it shall not be required of the said president and directors to transport more produce or other commodities or passengers than the cars or other vehicles of the company in ordinary use are capable of conveying, when in good order.

XIX. And if any toll gatherer, at any toll gate to be erected by authority of this act, shall ask, demand or receive any other or greater tolls than are herein allowed, he shall forfeit and pay to the party aggrieved thereby twenty dollars for every such offence, recoverable, with costs, by warrant before any justice of the peace; and if such toll gatherer, being at the time of incurring such penalty in the service of the company, shall be unable to pay the judgment thereupon recovered against him, the said company shall be liable for the same.

XX. If the president and directors shall not begin the said work within three years after the passage of this act, or shall not complete the same or one tract from the Roanoke to the Yadkin within twenty years thereafter, then the interest of the said company in this charter, so far as respects the unfinished part of the route, shall be forfeited and cease.

XXI. The president and directors shall cause to be written or printed certificates for the shares of the stock in said company; and shall deliver one such certificate, signed by the president and countersigned by the treasurer, to each person for every share subscribed by him, which certificate shall be transferable by him; subject, however, to all payments due or to become due thereon; and such assignee, having first caused the transfer or assignment to be entered in a book of the company to be kept for that purpose, shall thenceforth become a member of the said company, and shall be liable to pay all sums due upon the stock assigned to him: *Provided, however*, that such assignment shall in no wise exempt the assignor or his presen-

tainers from their liability to the said company for the payment of all such sums as were directed to be paid by the assignor or his representative. XXXII. If the president and directors, or a majority of them, cannot agree with the proprietors for the purchase and sale of any such quantity of land for the said rail road, the said president and directors, or a majority of them, shall be liable to the said proprietors for the same. XXXIII. If the president and directors, or a majority of them, cannot agree with the proprietors for the purchase and sale of any such quantity of land for the said rail road, the said president and directors, or a majority of them, shall be liable to the said proprietors for the same. XXXIV. 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