

# THE RALEIGH STAR AND NORTH CAROLINA GAZETTE.

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## LAWS OF NORTH CAROLINA

(Passed at the session of Assembly 1844-45.)

### CHAPTER XXII.

An Act to cede to the United States a certain tract of land lying on the Island of Portsmouth, Carteret County, for the purpose of erecting a Marine Hospital thereon.

Whereas the 27th Congress of the United States, passed an act authorizing the erection of a Marine Hospital on the Island of Portsmouth, Carteret County, and the collector of the Port of Ocracoke, having by authority of the Secretary of the Treasury, selected a site:

Be it therefore enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That all that piece or parcel of land described in a deed from Edward E. Graham, clerk and master of the court of equity for the county of Craven, Mary Nelson, trustee of Bryan Gardner, and Caroline W. Gardner, his wife, and of Mary James Nelson, all of the county of Craven and State of North Carolina, which deed is on record in the Register's office of Carteret County, Book Y, page 439, be ceded to the United States of America; and the said United States shall and may have and exercise exclusive jurisdiction over the said land so long as they shall choose to hold and occupy it for the purposes specified: *Provided*, that nothing herein contained shall be construed to prevent the proper officers of this State from executing any process, civil or criminal, within the limits of said land.

[Ratified the 6th day of December, 1844.]

### CHAPTER XXIII.

An Act to repeal the 8th section of the Revised Statutes, entitled an act concerning crimes and punishments.

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North Carolina, and it is hereby enacted by the authority of the same, That the said section be, and the same is hereby repealed.

[Ratified the 8th day of January, 1845.]

### CHAPTER XXIV.

An Act to cede a portion of Rutherford county to the county of Cleveland.

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 all that portion of Rutherford county, lying east of a line commencing at a point on the South Carolina line, three miles west of where the Rutherford and Cleveland line intersects said line, and running thence a direct course to the junction of Main and Second Broad Rivers; thence a direct course to a point on the dividing line between Rutherford and Cleveland, two miles north of where Drury Dobbin now resides, be ceded to and made a part of the county of Cleveland.

Sec. II. Be it further enacted, That it shall be the duty of the County Courts of Rutherford and Cleveland, each, to appoint one commissioner, who shall jointly employ a surveyor and run said line, and report to the courts of their respective counties.

[Ratified the 7th day of January, 1845.]

### CHAPTER XXV.

An Act to cede a portion of Rutherford County to the County of Henderson.

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 all that portion of the county of Rutherford lying west of a line beginning at a point on the dividing line between the county of Henderson and Rutherford, on top of the Sugar Loaf Mountain, running thence south 10 degrees east to the South Carolina line; then west with said line to the Henderson county line; then commencing at the beginning join and running another line on the dividing ridge between Fall creek and Heady Patch creek to Broad River at Paris Gap; then north 5 degrees east to the McDowell county line; then with said line to the Buncombe line; then with said line to the Henderson line, be, and the same is hereby ceded to and made a part of Henderson county.

Sec. II. Be it further enacted, That the line described in the foregoing section be hereafter deemed and held to be the dividing line between the counties of Rutherford and Henderson; and that all laws and clauses of laws coming within the meaning and purview of this act, be, and the same are hereby repealed.

[Ratified the 9th day of December, 1844.]

### CHAPTER XXVI.

An Act supplemental to an act, passed by the present General Assembly, entitled "an act to attach that part of Carteret County known as Ocracoke to Hyde County."

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 nothing in the act, entitled "an act to attach that part of Carteret County known as Ocracoke to Hyde County," passed at the present session of the General Assembly, shall be construed so as to prohibit the Sheriff of Carteret County from collecting such monies as are now due, or may become due, on any judgment, before the third Monday of February next, or from collecting the arrears of taxes in the same manner as he could have done previous to the passage of the act aforesaid.

[Ratified the 9th day of January, 1845.]

### CHAPTER XXVII.

An Act to provide for a vacancy in the office of County Surveyor.

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 for the County Courts, whenever the office of county surveyor is vacant, to appoint a special surveyor to survey any lands that may be entered, who shall be governed by the laws now in force regulating the duties of county surveyors; and the plats and certificates of such special surveyor, accompanied by a copy of the order of the County Court appointing him, shall be deemed and held valid, as if done by a county surveyor elected according to the provisions of 42d chapter of the Revised Statutes.

[Ratified this 1st day of January, 1845.]

### CHAPTER XXVIII.

An Act to revive and continue in force an act, passed at the Session of the General Assembly of 1831-32, entitled "an act to re-enact and extend the provisions of an act, passed in the year 1829, chapter 35, entitled an act to incorporate the Lake Drummond and Orapeak Canal Company, and to repeal an act, passed in the year 1830, chapter 109, entitled an act to amend an act, passed at the last Session of the General Assembly of this State, entitled an act to incorporate the Lake Drummond and Orapeak Canal Company, and for other purposes."

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 the above recited act, passed at the Session of the General Assembly of 1831-32, be, and the same is hereby revived and continued in full force, in as full and ample manner as if every clause, sentence, paragraph and section therein contained, not inconsistent with the provision of this act, were here set forth at full length; and that all the rights, and privileges, immunities and advantages therein granted shall be held, possessed and enjoyed by the said company, in the same manner as if the limitation of time within which the work was to have been commenced and finished, had not been inserted therein; any law to the contrary notwithstanding: *provided*, however, the said work is commenced and finished within ten years after the ratification of this act.

Sec. II. Be it further enacted, That in lieu of the persons heretofore appointed to open books of subscription, Jesse Wiggins, Samuel R. Harrel, J. R. Lassater, Andrew Voight, Isaac T. Harrel, Dr. John Gatling and Burrell Brother, be, and they are hereby appointed commissioners to open books in the town of Gatesville, in the county of Gates; and when twenty five thousand dollars or more shall have been subscribed public notice shall be given thereof by said commissioners, in a newspaper published in the borough of Norfolk, Virginia, calling a general meeting of the stockholders at such convenient time and place as they shall name in said notice.

Sec. III. Be it further enacted, That this act shall be in force from and after its ratification.

[Ratified the 8th day of January, 1845.]

### CHAPTER XXIX.

An Act for a Canal from Cape Fear to Lumber River.

Whereas the cutting a navigable canal from the waters of the Cape Fear to the waters of Lumber River, in this State, will be of great public utility, and tend to develop many resources of the State, which are now wholly unavailable from the want of sufficient maritime communication, and whereas many of the good citizens of the State are willing to subscribe liberal sums of money to effect a work so highly beneficial, and it is but just that they, their executors, administrators and assigns should be empowered to levy and receive a reasonable satisfaction in tolls for the money expended in carrying the work into execution; therefore,

I. 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 in the town of Wilmington, under the direction of Alexander McKee, James T. Miller, William C. Bettencourt, Oscar G. Parsley, P. K. Dickenson, Henry Nutt, William A. Berry, H. R. Savage, Miles Costin, C. D. Ellis, John P. Brown, Owen Fennel, and Gilbert Potter; in the town of Elizabethtown, under the direction of Jas. M. White, Thos. J. D. McDowell, Alex. J. Troy, and James Child; in the town of Whitesville, under the direction of Wm. M. Baldwin, John A. Mantley, Fernoy George and A. F. Toone; in the town of Lumberton, under the direction of R. W. Fuller, Edmund McQueen, R. C. Rhodes, John A. Rowland, and James Wood; in the town of Salisbury, under the direction of D. A. Davis, John J. Shaver, Arelibald Henderson and Alexander Brandon; and in such other places, and under the direction of such other persons, as the commissioners for the town of Wilmington, above named, or a majority of them, shall designate and appoint, for the purpose of receiving and entering subscriptions, for the aforesaid undertaking, to an amount not exceeding three hundred thousand dollars, in shares of one hundred dollars each; which subscription, if it shall be required by the commissioners, shall be paid in current gold and silver coin. That the said books shall be opened for receiving subscriptions on the first day of February next, and shall continue open for the space of thirty days; and within ten days after the expiration of the said thirty days, the said books shall be compared, in the town of Wilmington, by the commissioners aforesaid; and if, upon such comparison, it shall be found that the sum of seventy five thousand dollars has not been subscribed, then it shall be lawful for the said commissioners, or a majority of them, to re-open said books and continue them open for such a length of time as they shall direct, not exceeding two years; and if, at the end of two years, the said sum of seventy five thousand dollars shall not have been subscribed, then the subscriptions taken shall be void and the said books closed. And whenever it shall be found, from comparison of said books, that the said sum of seventy five thousand dollars has been subscribed, then it shall and may be lawful for the commissioners aforesaid, or a majority of them, to call a general meeting of the subscribers, their executors, administrators and assigns, to be held in the town of Wilmington, on such a day as they may designate, fifteen days' notice of such meeting being given in some paper or papers published in the towns of Wilmington and Fayetteville.

Sec. II. And be it further enacted, That when the said sum of seventy five thousand dollars shall be subscri-

bed in manner aforesaid, the subscribers, their executors administrators and assigns shall be, and they are hereby declared to be, a body corporate, by the name and style of "The Cape Fear and Lumber River Canal Company;" and in that name may sue and be sued, plead and be impleaded; and may have perpetual succession, and a common seal; and may possess and exercise all the rights, powers, privileges and immunities which belong to a body corporate in law; and may make all such rules, regulations and bye laws, not inconsistent with the constitution of the United States and of this State, as may be deemed necessary and expedient for managing the affairs of the company.

Sec. III. Be it further enacted, That at the general meeting above mentioned, if a majority of the whole number of shares subscribed for shall not be represented, it shall be lawful for the commissioners for the town of Wilmington aforesaid to adjourn said meeting from day to day, until said majority shall be represented, either in person or by proxy; and when a majority of the whole number of shares subscribed for shall be represented at said meeting, either in person or by proxy, it shall and may be lawful for said subscribers to elect a President and seven Directors, a Treasurer and Secretary, who shall continue in office until the next annual meeting, and until their successors are appointed; and in electing their officers, each share shall be entitled to one vote. The President, and any four of the Directors shall constitute a board for the transaction of business; and if the office of President should at any time become vacant, the Directors shall appoint a person, who shall hold the office until the next annual meeting of the stockholders, and if there should be a vacancy in the directors, the other directors shall appoint a stockholder to fill the same until the next annual meeting; and if the President should be absent at any meeting, the directors, a majority of them being present, may appoint one of their own number to preside at that meeting.

Sec. IV. Be it further enacted, That there shall be annual meetings of the stockholders of the company, at such times and places as the next preceding annual meeting shall have appointed, for the purpose of electing officers and transacting such other business as may be laid before them by the President and Directors; and at every such annual meeting each share shall be entitled to one vote; *provided*, that no such annual meeting shall be competent to transact business unless a majority of the whole number of shares subscribed for shall be represented at such meeting, either in person or by proxy; and if at any annual meeting a majority of the whole number of shares should not be so represented, then it may be lawful for the stockholders who are present, to adjourn said meeting from day to day until the requisite number of shares are so represented: *and provided further*, that it shall not be lawful for the President or any Director or any officer or agent of the company to be the proxy of any stockholder.

Sec. V. Be it further enacted, That special meetings of the stockholders may be called from time to time as President and Directors may appoint and direct, public notice being given of the times and places of such meetings; and all such special meetings shall be constituted and regulated in the same manner as is herein prescribed for the regular annual meetings of the company.

Sec. VI. Be it further enacted, That no person shall be elected a President or Director, who shall not own five shares in the stock of said company; and if any person elected a President or Director shall at any time cease to own the said number of shares, his office shall thereupon become vacant, and shall be filled as in other cases of vacancy.

Sec. VII. Be it further enacted, That upon every subscription for stock in said company, there shall be paid five dollars in each share at the time of subscribing, to the commissioners receiving subscriptions; and the residue thereof at such times and in such installments as the President and Directors shall appoint; and the commissioners aforesaid, as soon as a President and Directors shall be elected, shall forthwith pay over to them or to their order all sums of money by them received; and on failure thereof, it shall be lawful for the President and Directors to move for, and obtain judgment in a summary manner against any delinquent commissioner or his personal representatives, in any County or Superior Court of the State, ten days' notice in writing of such motion having been previously given to such commissioners.

Sec. VIII. Be it further enacted, That the stockholders in general meeting shall locate the route of the said canal, and shall designate and determine at what point it shall begin, in what direction it shall be prosecuted, and where it shall end. And the President and Directors and all officers and agents of the company shall have full power and authority to enter upon the lands of any person or persons whatsoever, for the purpose of laying off and surveying the route of said canal, as designated by said meeting, and may mark upon the trees the courses of the same; *provided*, that it shall not be lawful for them to enter the dwelling, yard or garden of any person for that purpose, without their consent.

Sec. IX. Be it further enacted, That the stockholders, in general meeting, shall regulate the salaries of the officers of the company, and the times of paying the same, and may alter the same from time to time as to them shall seem fit.

Sec. X. Be it further enacted, That the President and Directors shall be, and they are hereby invested with all the powers and rights necessary and proper for the construction, repair and maintenance of a Canal to be located as aforesaid, and shall and may cause to be built and erected all necessary dams, locks, a piers, causeways, toll gates, buildings, and all other works which may be deemed necessary and fit for the proper construction of said canal; and shall or may purchase or cause to be built all necessary boats for the transportation of freight, and may purchase all horses necessary for drawing the same; and shall have full power and authority to make contracts on the part of the company with any person or persons for making said canal and its necessary works; and shall and may do all other acts and things necessary and proper for carrying into effect the aforesaid undertaking.

Sec. XI. Be it further enacted, That the President and Directors shall have full power and authority from time to time to direct and declare at what times and in what installments the sum subscribed shall be paid off and discharged; and shall give at least one month's notice of all such orders, by public advertisement in some newspaper published in the town of Wilmington or Fayetteville; and if any subscriber shall neglect or refuse to pay any instalment so required, for the space of one month after the same shall have been so advised, then it shall be lawful for the President and Di-

rectors, at their discretion, either to sell at public auction, and convey to the purchaser (the share of shares of any such delinquent subscriber, or as many thereof as may be necessary to pay off the said instalment, giving at least one month's notice of the time and place of such sale, in some gazette published in the town of Wilmington or Fayetteville, and returning the surplus remaining after paying said instalment, to the subscribers or their representatives; or to move for and obtain judgment in a summary manner against such subscribers for the amount of such instalment, in any County or Superior Court of the State, ten days' notice, in writing, of such motion having been previously given to such subscriber.

Sec. XII. Be it further enacted, That it shall be lawful for the said company to purchase, and by other just means acquire, hold and transfer, land and other property of every description; *provided*, that the said property and the proceeds thereof, when sold, shall be used and applied in good faith for the objects hereby intended to be effected.

Sec. XIII. Be it further enacted, That if the President and Directors shall not be able to agree with the owners of the land over which the said canal shall be laid off, for the purchase of the same, or if any owner of said land shall bid an infant, a lunatic or non-composmentis, then it shall be lawful for any two Justices of the Peace for the county where the land lies, upon the application of the President and Directors, or their agent or attorney, ten days' notice, in writing, of such application having been previously given to the owner of said lands, or if he be an infant, a lunatic or non-composmentis, to his guardian or committee, with authority to issue their warrant to the sheriff or any constable of said county, commanding him to summon a Jury of twelve freeholders to meet upon the land on a day named in said warrant; and the said Jury having come to the land, and being first sworn to do impartial justice in the premises, shall proceed fairly and justly to value the land, not exceeding one hundred feet on each side of the base of said canal, and to assess the damages which will accrue to the owner of said land by cutting the said canal through the same; and the inquisition so taken shall be reduced to writing and signed by the said jury and returned by the Sheriff or other officer to the next County Court of said county, and ordered to be recorded; and the valuation and assessment so made by the Jury shall be paid by the President and Directors to the owner of said land; and upon payment thereof, the said land, not exceeding one hundred feet on each side of said canal, shall immediately be transferred to the said company and vested in them in fee simple. *Provided*, that the said Jury, in assessing the said damages, shall take into consideration and make allowance for the benefit resulting to the owner of said land, by cutting said canal, either by improving the value of said land or otherwise; and *provided further*, that if either party should be dissatisfied with the finding of the said Jury, it may be lawful for such party to appeal to the next Superior Court of said County, giving bond as in other cases of appeal; and *provided further*, that nothing herein contained shall be so construed as to authorize the President and Directors to invade the dwelling, yard, garden or burial ground of any person, without his consent.

Sec. XIV. Be it further enacted, That the written consent of any owner of lands through which said canal shall be laid off, shall be as effectual to vest full power and authority over the said land and one hundred feet thereof on each side of said canal, in the said company; and to transfer to them all title in and to the same, as if such land had been conveyed by deed or confirmed in the manner above set forth.

Sec. XV. Be it further enacted, That the shares in the stock of said Company shall be deemed and held personal property; and that certificates of stock shall be issued and the shares transferred, under such rules and regulations as the bye laws shall direct.

Sec. XVI. Be it further enacted, That it shall and may be lawful for the President and Directors to borrow money for the use of the company, to be applied in effecting the objects herein set forth, and to make and issue bonds, notes and other evidences of said loan and proper assurances for the repayment of the same.

Sec. XVII. Be it further enacted, That the said company shall be, and they are hereby fully authorized and empowered to dig and cut through all public and private roads which may intersect the line of said canal, *provided*, that the said company shall build and erect good and substantial bridges over those portions of the canal intersecting such roads, so that passage over the same be not hindered or impeded; and the bridges so erected shall be kept in repair at the expense of the company.

Sec. XVIII. Be it further enacted, That whenever any timber, earth, stone, or gravel shall be wanted for the construction or repair of said canal, and the President and Directors shall not be able to agree with the owners of the adjacent lands for obtaining the same, it shall and may be lawful for the said President and Directors to enter upon any adjacent lands, not cultivated, and take therefrom the requisite quantity of the materials aforesaid, first tendering a reasonable satisfaction to the owner thereof; and if said owner should not be satisfied with the sum so tendered, it shall be lawful for him to make application to any two Justices of the Peace for the county, where in the land lies, ten days previous notice in writing of such application having been previously given to the President and Directors; and the said Justices shall forthwith issue their warrant to the Sheriff or any constable of said county, commanding him to summon a Jury of twelve freeholders to meet on said land on a day named in said warrant; and the said Jury shall assess the damages accruing to the said owner, by the taking of the said materials; and if the amount so assessed shall not be immediately paid by the President and Directors, the said sheriff or other officer shall cause the inquisition so taken to be reduced to writing and signed by the Justices, and shall return the same to the next County Court of said county; and said Court shall give judgment in a summary manner for the damages so assessed against the President and Directors; and execution thereon shall be issued immediately; *provided*, that the said Jury shall take into consideration benefits resulting to said owner by the cutting of the said canal; and *provided further*, that if the amount assessed by the Jury shall not exceed the sum tendered by the President and Directors, the said owner shall not recover any costs; and *provided further*, that if either party shall be dissatisfied with the finding of said Jury, said party may appeal therefrom to the next Superior Court of said county, giving bond as in other cases of appeal.