

LAWS

PASSED BY THE

LEGISLATURE OF NORTH CAROLINA.

AT ITS SESSION OF 1848-49.

[BY AUTHORITY.]

AN ACT to incorporate the Fayetteville and Western Plank Road Company.

Sec. 1. 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 Fayetteville, under the direction of George McNeill, James Kyle, A. A. McKethan, John H. Cook, E. J. Hale, Wm. H. Bayne, Charles Montague, Duncan G. McKay, Daniel McDiarmid, Henry Elliott, Charles T. Haigh, John T. Gilmore, Benjamin W. Robinson, Thomas N. Cameron, Duncan Murchison and John Waddell; and in the town of Salisbury, under the direction of D. A. Davis, John J. Shaver, Joseph P. Chambers, and Calvin S. Brown; and at such other places, and under the direction of such other persons, as the commissioners hereinafter named to superintend the receiving of subscriptions in the town of Fayetteville shall direct, for the purpose of receiving subscription to an amount not exceeding two hundred thousand dollars, in shares of fifty dollars each, for the purpose of effecting a communication by means of a plank road from the town of Fayetteville to the town of Salisbury, by the most practicable route, to be determined by the said company, after the same shall have been formed.

Sec. 2. Be it further enacted, That the times and places for receiving subscriptions shall be advertised in one or more newspapers printed in the town of Fayetteville and Salisbury; and the books for receiving the same shall not be closed, in less than thirty days. And the said commissioners shall have power to open the books from time to time, as they may think proper, until the whole number of shares be subscribed.

Sec. 3. Be it further enacted, That when the sum of twenty-five thousand dollars shall be subscribed for in manner aforesaid, the subscribers, their executors, administrators or assigns, shall be, and they are hereby declared to be incorporated into a company by the name and style of "The Fayetteville and Western Plank Road Company," and that name shall be capable in law of purchasing, holding, selling, leasing and conveying estates, real and personal, and mixed, so far as shall be necessary for the purposes of said company; and shall have perpetual succession; and by said corporate name, may sue and be sued; and may have a common seal, which they shall have power to alter and renew at pleasure; and shall have and enjoy, and may exercise all the powers, rights and privileges, which other corporate bodies may lawfully do, for the purposes mentioned in this act; and may make all such by-laws, rules and regulations, not inconsistent with the laws of this State or of the United States, as shall be necessary for the well ordering and conducting the affairs of said company.

Sec. 4. Be it further enacted, That upon any subscription of stock as aforesaid, there shall be paid at the time of subscribing, to the said commissioners or their agents appointed to receive such subscriptions, the sum of one dollar on every share subscribed; and the residue thereof shall be paid in such instalments, and at such times as may be required by the President and directors of said company.

Sec. 5. Be it further enacted, That the said commissioners, or their agents, shall further, after the first election of 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 legal process in the court of pleas and quarter sessions, or in the Superior court of law in any county wherein such commissioner or commissioners, their executors or administrators may reside, or by warrant before a justice of the peace for said county.

Sec. 6. Be it further enacted, That when twenty-five thousand dollars shall have been subscribed, public notice of that event shall be given by the said commissioners at Fayetteville, who shall have power at the same time to call a general meeting of the stockholders at such convenient place and time as they shall name in said notice.

Sec. 7. Be it further enacted, That to constitute any such meeting, a number of persons, entitled to a majority of all the votes which could be given upon all the shares subscribed, shall be present either in person or by proxy; and if a sufficient number to constitute a meeting do not attend on that day, those who attend shall have the power to adjourn from time to time until a meeting shall be formed.

Sec. 8. Be it further enacted, That the subscribers, at their general meeting before directed, and the proprietors of stock at every annual meeting thereafter, shall elect a President and nine 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 and directors, or any of them, may, at any time, be removed, and the vacancy thereby occasioned be filled by a majority of the votes given at any general meeting.

The President, with any three or more of the directors, or, in the event of the sickness and absence or disability of the President, any five or more of the directors may appoint one of their own body President pro tem., shall constitute a board for the transaction of business. In cases of vacancy in the office of President or any director, happening from death, resignation or otherwise, such vacancy may be supplied by the appointment of the board until the next annual meeting.

Sec. 9. 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, repairs, and maintaining of a plank road, to be located as aforesaid, with as many branches diverging from the main stem as they, or a majority of them, may deem necessary; and may cause to be made, and also to make and construct all works whatsoever, which may be necessary and expedient in order to the proper completion of the said road and all its branches.

Sec. 10. Be it further enacted, That the said President

and directors shall have power to make contracts with any person or persons, on behalf of the company, for making the said plank road, together with any branches of the same, and performing all other things respecting the same, which they shall judge necessary and proper; and to require from the subscribers from time to time such advances of money on their respective shares as the wants of the company may demand, until the whole of their subscriptions shall be advanced; to call, on any emergency, a general meeting of the stockholders, giving one month notice thereof, in one of the newspapers printed in each of the towns of Fayetteville and Salisbury; to appoint a Treasurer from among the stockholders, (but not of their own body,) who shall give bond and security for the faithful discharge of his duty, and duly accounting for all the money which may come into his hands as Treasurer; to appoint a clerk and such managers and toll gatherers as they may deem necessary; and to transact all the business of the company during the intervals between the general meetings of the stockholders.

Sec. 11. Be it further enacted, That if any stockholder shall fail to pay the sum required of him by the President and directors, or by a majority of them, within one month after the same shall have been advertised in one of the newspapers printed in each of the towns of Fayetteville and Salisbury, it shall and may be lawful for the President and directors, or a majority of them, 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 previous notice of the time and place of sale in manner aforesaid; and after retaining the sum due and all the charges of the sale out of the proceeds thereof, to pay the surplus over to the former owner or to his legal representatives; and if the said sale shall not produce the sum required to be advanced, with all the incidental charges attending the sale, then the President and directors may recover the balance of the original price or his assignee, or the executor or administrator, or either of them, by suit in any court of record having jurisdiction thereof, or by warrant before any justice of the peace of the county of which he is a resident; 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 proprietors.

Sec. 12. Be it further enacted, That if the capital stock of the company hereby incorporated shall be found insufficient for the purposes of this act, it shall and may be lawful for the President and directors of the said company, or a majority of them, from time to time to increase the said capital stock to an amount not exceeding three hundred thousand dollars, by the addition of as many shares as they may deem necessary, first giving the individual stockholders, for the time being, or their legal representatives, the option of taking such additional shares in proportion to the amount of stock respectively held by them, and opening books in the towns of Fayetteville and Salisbury, and such other places as the President and directors may think proper, for any balance of the capital stock created, which may not be taken by the stockholders for the time being, or in their behalf, and the subscribers for such additional shares of the capital stock in the said company, are hereby declared to be and they are hereby incorporated into the said company, with all the privileges and advantages, and subject to all the liabilities of the original stockholders.

Sec. 13. Be it further enacted, That the President and directors, their officers or agents may agree with the owners of any land over which the said road or any of its branches is intended to pass, for the purchase thereof; and in case of disagreement, or if the owners shall be *ferre covert*, under any two justices of the peace of the county where the lands lie, the justices shall issue their warrant to the sheriff of said county to summon eighteen freeholders, to meet on the land to be valued, on a day expressed in the said warrant, not less than ten, nor more than twenty days thereafter; and the sheriff, on receipt of the warrant, shall draw twelve of them, who, after being duly sworn, will impartially value the land in question, and consider the damages the owners thereof may sustain; and the requisition so taken, shall be signed by the sheriff and the jury, and returned to the clerk of the county court, to be recorded. And in all cases the jury is hereby directed to describe the land valued, and such valuation shall be conclusive; and the President and directors shall pay the sum to the owner of the land valued, or his legal representatives; and if neither can be found in this State, or if they should refuse to receive the money, then to the clerk of the county court; and on payment thereof, the said corporation shall be seized in fee of the land, as fully and absolutely as if it had been conveyed to them by the owners.

Sec. 14. Be it further enacted, That the President and directors may agree with the proprietor or proprietors for any quantity of land, not exceeding five acres, at or near each place or station intended for collecting tolls, for the purpose of erecting the necessary buildings, gates, &c.; and in case of disagreement or of any disabilities aforesaid, or the owner or owners being out of the State, the same proceedings may be had and the same conveyances shall follow as are described in the preceding section.

Sec. 15. Be it further enacted, That it shall and may be lawful for the said President and directors to demand and receive, at some convenient toll gates to be by them erected, a reasonable toll from all persons using said plank road, or any of its branches, which toll so to be collected, shall be so regulated, that the profits shall not exceed twenty per cent. on the capital of said company in any one year.

Sec. 16. Be it further enacted, That the said road hereby authorized to be made by the President and directors, shall not be less than ten feet nor more than thirty feet wide. And that so soon as ten miles in extent shall have been constructed, it shall and may be lawful for the President and directors of said company to erect a toll gate, and collect such toll from persons using said road, as may be determined by the President and directors, in accordance with the rates imposed by the fifteenth section of this act, and in like proportion for a greater extent of road; and if any person or persons shall refuse to pay the toll at the time of offering to pass the place or places designated for their collection, and previous to passing the same, the toll gatherers respectively may refuse a passage to the person or persons so refusing to pay; and if any person or persons shall pass, or drive through any wheeled carriage or animal liable to toll, without paying the same, he or they shall be liable to a fine of five dollars, which fine may be recovered by warrant before any Justice of the Peace of the county wherein such toll gate may be situated.

Sec. 17. Be it further enacted, That if any person or persons shall wilfully or maliciously injure, or in any man-

ner hurt, damage or obstruct, or shall wilfully or maliciously cause or aid, or assist or counsel and advise any other person or persons to injure, hurt, damage, or obstruct the said plank road, toll gates, or toll houses, such person or persons so offending shall be liable to be indicted therefor, and on conviction, shall be imprisoned or fined at the discretion of the court before which said conviction shall take place.

Sec. 18. Be it further enacted, That the President and directors shall render distinct accounts of their proceedings and disbursements of money to the annual meetings of the stockholders, and to the Governor of the State.

Sec. 19. Whenever in the construction of said plank road, it shall be necessary to cross or intersect any established road or way, it shall be the duty of the President and directors so to construct the said plank road across such established roads or ways as not to impede the passage or transportation of persons or property along the same. And if in the construction of said plank road it may become necessary or expedient to occupy or use any portion of any established public road or way, it may be lawful for the President and directors to change the said roads at points where they may deem it necessary so to do; and that for entering upon or taking any land that may be necessary therefor, they shall be and are hereby authorized to proceed under the provisions of this act as in the case of land necessary for the plank road: Provided further, that in the making of any such change, the said company shall make and prepare a road equally good with the portion of the road proposed to be substituted; but nothing herein contained shall be so construed as to make it incumbent on the company to keep in repair the portion of any road which they may have changed as aforesaid.

Sec. 20. Whenever one fifth of the capital stock of said company shall be subscribed by individuals or corporations as herein before provided, the Treasurer of the State for the time being shall be, and he is hereby authorized and directed to subscribe one fifth of said capital stock of said company for and on behalf of the State; and whenever another fifth of said capital stock shall be subscribed by individuals or corporations, as hereinbefore provided, the Treasurer of the State for the time being shall subscribe two fifths more of the said capital stock for and on behalf of the State, so that the State shall hold an interest of three fifths of the proposed capital stock of said company: Provided, however, that the State shall not be called on to pay any instalments of such subscriptions but as follows: Whenever three fourths of the first by subscription of one fifth of the said individuals or corporations have been paid or secured, then the State shall pay its first subscription of one fifth; and whenever three fourths of the other one fifth subscribed by individuals or corporations shall have been paid or secured, then the State shall pay its last subscription of two fifths; the payments or the fact that the said proportion of the subscription by individuals or corporations is secured, to be first certified by the President and Treasurer of said company: And provided further, that nothing herein contained shall render the State liable for any additional subscription whatever, should the capital stock of said company be increased.

Sec. 21. In all general meetings of the stockholders, the Board of Internal Improvements, or such person or persons as they shall appoint, shall be entitled to represent the stock held by the State, and shall be entitled to give three fifths of the whole number of votes, which may be presented at such meetings, either in person or by proxy.

Sec. 22. To enable the State to pay her subscription to said stock, whenever the same shall be required as hereinbefore provided, the Treasurer of the State for the time being, shall from time to time issue bonds or certificates of debt, under the great seal of the State, signed by the Governor, countersigned by the Treasurer, and guaranteed by a pledge of the faith of the State, in sums not less than five hundred dollars, payable in currency of the United States or Great Britain, with interest at a rate not exceeding six per cent, payable semi-annually; the principal of which bonds shall be redeemable at the end of twenty years from the time the same shall be issued; but no greater amount of such bonds shall be issued at any one time, than may be sufficient to meet the instalment required to be made by the State at that time.

Sec. 23. Whenever it shall be necessary to issue said bonds or certificates of debt, the Treasurer shall advertise, in one or more public newspapers, and invite sealed proposals for said loan; and it shall be his duty to accept those terms which may be most advantageous to the State; and any premium which may be obtained on said loan, shall be paid into the Public Treasury of the State, and invested by the Treasurer, by and with the advice and consent of the Governor, in stocks or other evidences of debt, as a savings fund, to meet the payment of the interest on said loan as the same may accrue.

Sec. 24. As a security for the redemption of said bonds, the stock held by the State in the Fayetteville and Western Plank Road Company shall be, and the same is hereby pledged for that purpose; and any dividends of profits, which may from time to time, be declared on the stock so held by the State in said company, shall be applied to the payment of the interest on said loan; but until such dividends of profit may be declared, it shall be the duty of the Treasurer, and he is hereby authorized and directed to pay all such interest as the same may accrue, out of any moneys in the Treasury not otherwise appropriated.

Sec. 25. Be it further enacted, That this act shall be in force from and after the ratification thereof, and shall be regarded as a public act and continue in force for twenty-five years.

[Ratified 27th day of January, 1849.]

AN ACT to lay off and establish a public road from Trap Hill in Wilkes county, across the Blue Ridge, to Gap Civil, in the county of Ashe.

Sec. 1. 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 John S. Johnson, Thomas T. Casey and John G. Atkins of the county of Wilkes, and John Woodruff, Abraham Bryan and Andrew Carson of the county of Ashe, be, and they are hereby appointed commissioners to lay off and establish a public road, beginning at Trap Hill, in Wilkes county, and running across the Blue Ridge, the most practicable and convenient route, to Gap Civil in the county of Ashe.

Sec. 2. Be it further enacted, That a majority of said commissioners shall have power to act and fill vacancies in their board.

Sec. 3. Be it further enacted, That the sum of five hundred dollars be, and the same is hereby appropriated for the purpose of making and completing said road, and the Public Treasurer is hereby authorized to pay the same out of any moneys in the Treasury not otherwise appropriated: Provided, nevertheless, that said moneys shall not be paid over to said commissioners until the sum of five hundred dollars, under the direction of said commissioners, shall have been laid out on said road by the citizens of the counties of Wilkes and Ashe, either in labor, to be estimated by the said commissioners, or in money, paid over or secured to

them; and when that amount of labor has been expended on said road, and said commissioners, or a majority of them, shall certify that fact to the Public Treasurer, then he is directed to pay over to them, for the purpose aforesaid, the sum of five hundred dollars.

[Ratified 29th January, 1849.]

CHAPTER XCI.

AN ACT to improve the Cape Fear and Deep Rivers, above Fayetteville.

WHEREAS, the navigation of the Cape Fear and Deep Rivers, above Fayetteville, and as far up the same as is practicable, would be of important public utility; and many persons are willing to subscribe money to effect the work, and it is just that such subscribers, their heirs and assigns shall receive reasonable tolls in satisfaction for the money advanced by them to execute the said work and for the risk they run; and whereas the Cape Fear Navigation Company did, at their annual meeting in the year 1834, relinquish all claims to the river above Fayetteville, to any company that would improve the same:

Sec. 1. 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 it shall be lawful to open books in the town of Wilmington, under the direction of A. J. Derostet, Jr. John McKea, Miles Costen, Benjamin J. Howze, William C. Bettincourt, or any three of them; at Fayetteville, under the direction of James C. Dobbin, Archer McNeill, Benjamin J. Howze, John D. Cameron, David A. Ray, or any three of them; at Hillsboro, under the direction of Nathan A. Stedman, W. T. Horn, John J. Jackson, or any three of them; at Maurice Q. Waddell, John A. Hanks, S. McClanahan, or any three of them; at Haywood, under the direction of Robert K. Smith, Elias Brian, Robert Fawcett, William Crump, James D. Pullin, or any three of them; at Carthage, under the direction of John Morrison, Charles Chalmers, Angus R. Kelly, Samuel J. Person, Dr. Bruce, or any three of them; at Ashboro, under the direction of Alfred Marsh, Franklin Hoover, Jonathan Worth, Henry B. Elliott, William B. Lane, or any three of them; at Greensborough, under the direction of David F. Caldwell, John M. Moxhead, John A. Gilmer, James W. Doak, James Morehead, or any three of them; at Salisbury, under the direction of John W. Ellis, Willie Bean, John A. Lillington, Hamilton C. Jones, or any three of them; at Hillsboro, under the direction of Hugh Waddell, Giles Melane, Cadwallader Jones, Jr., John Berry, Sidney Smith, or any three of them; and at such other places, and under the direction of such other persons, as any three of the commissioners hereinafter named to superintend the receiving of subscriptions at Hillsboro shall direct, for the purpose of receiving subscription to an amount not exceeding two hundred thousand dollars, in shares of one hundred dollars each, for the purpose of effecting a communication by steamboats, from some point at or near Waddell's Ferry, in Randolph county, to Fayetteville, and for providing everything necessary and convenient for the purpose of transportation.

Sec. 2. The time and places for receiving subscriptions shall be advertised in one or more newspapers published in the town of Wilmington, Fayetteville and Hillsboro, and the books for receiving the same shall not be closed in less than ten days; and if it shall appear that more than two thousand shares of the capital stock aforesaid shall have been subscribed for within the said ten days, it shall be the duty of the said commissioners at Hillsboro, or any three of them, to reduce the number of shares subscribed for among the subscribers in fair and equal proportions to the amount of stock subscribed for respectively by each, until the whole amount of shares shall be reduced to two thousand; but if the whole amount shall not be subscribed for within ten days from the time the books shall be opened to receive subscription, then the books may be closed or continued open, or closed and reopened without further notice, as a majority of the above named commissioners at Hillsboro may judge to be most expedient, until the whole number of shares shall be subscribed for.

Sec. 3. When five hundred shares shall be subscribed for in manner aforesaid, the subscribers, their executors, administrators or assigns, shall be and they are hereby declared to be incorporated into a company by the name and style of "The Cape Fear and Deep River Navigation Company," and by that name shall be capable in law of purchasing, holding, selling, leasing and conveying estates, real, personal and mixed, so far as shall be necessary for the purpose hereinafter mentioned, and no further; and shall have perpetual succession; and by said corporate name may sue and be sued; and may have and use a common seal, which they shall have power to alter or renew at their pleasure; and shall have and enjoy, and may exercise all the powers, rights and privileges which other corporate bodies may lawfully do for the purpose mentioned in this act; and may make all such by-laws, rules and regulations, not inconsistent with the laws of this State or of the United States, as shall be necessary for the well ordering and conducting the affairs of the company.

Sec. 4. Upon any subscription of stock as aforesaid, there shall be paid at the time of subscribing, to the said commissioners or their agents appointed to receive such subscriptions, the sum of two dollars on every share subscribed; and the residue thereof shall be paid in such instalments and at such times, as may be required by the President and directors of said company. The said commissioners, or their agents, shall further, after the first election of 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 on ten days previous notice in the court of pleas and quarter sessions, or the Superior court of law in any county wherein such commissioner or commissioners, their executors or administrators may reside, or by warrant before a justice of said county.

Sec. 5. When five hundred shares or more of the stock shall have been subscribed, public notice of that event shall be given by three or more of the said commissioners at Hillsboro, 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 any such meeting, a number of persons entitled to a majority of all the votes, which could be given upon all shares subscribed, shall be present either in person or by proxy; and if a sufficient number to constitute a meeting do not attend on that day, those who do attend shall have power to adjourn from time to time, until a meeting shall be formed.)