

North Carolina - Rowan County

W. W. Rollins, W. P. Cammack,

W. S. Pearson, & S. Med. Dale,

Commissioners of Water:

North Carolina Rail Road Company, Plffs.

Against

Jacob S. Allen, J. W. Jones, Stewart

Ellison, James Pace & John C. Rhodes,

as the Board of Directors of the

State Penitentiary. Defts.

The plaintiffs complain and say:

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I That on the 13<sup>th</sup> day of March, 1875, an act  
entitled "an act" in relation in relation to the  
Western North Carolina Rail Road, was ratified  
by the General Assembly of the State, for the purpose  
of completing the Western North Carolina Rail  
Road Company (a corporation duly created  
under the laws of North Carolina), & that by the  
provisions of the before recited act, His Excellency,  
the Governor of the State, C. H. Bragg, & Messrs  
R. J. Armfield & James L. Robinson were appointed  
Commissioners to purchase the said Western  
North Carolina Rail Road & all the property apper-  
taining thereto, and that at a sale of said Corpora-  
tion, including all the property & franchises belonging  
thereto, duly made under a decree of the Circuit  
Court of the United States, the said Commissioners,  
appointed as aforesaid, purchased said Corporation

and all the property & franchises appertaining thereto.

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II That after said purchase, the Plffs, W. W. Collins, W. P. Curran & W. S. Purson, were duly appointed in conformity to said act of the General Assembly, Commissioners to manage said Rail Road Company & its affairs, during the pendency of the General Assembly, & were authorized and directed to complete the same to its terminus at Point Rock & the Georgia & Tennessee line near Ducktown, under the charter of the said Western North Carolina Rail Road Company, & the acts amendatory thereof,

III That in accordance with the provisions of the before recited act of the 13<sup>th</sup> March, 1875, the private stockholders of the said Western North Carolina Rail Road Company, duly elected the plaintiffs, & the State a Commission to manage said Rail Road Company & its affairs in their behalf.

IV That said Commission complied with such & every requirement imposed by the aforesaid act, and are now such Commission.

V That by the provisions of the before recited act, the plaintiffs are authorized & directed to work as laborers on the unfinished portion of said Western North Carolina Rail Road all such convicts as are not necessary for completing the State Penitentiary, and that said convicts

shall be used by Piffs for laborers upon the unfinished portion of the said Western North Carolina Rail Road Company as the Plaintiffs may require

VI Plaintiffs further show that so anxious was the General Assembly of this State, that said Western North Carolina Rail Road Company should be completed, and that convict labor should be worked thereon, that on the 22<sup>nd</sup> day of March, 1875, the General Assembly, ratified an act authorizing & directing Plaintiffs to work on the unfinished portion of said road as many convicts as they may require.

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VII That Piffs supposed from the great desire the State of North Carolina had expressed through the General Assembly for the completion of said Rail Road, & from the manifest advantage & benefit it would be to the people of said State, that they would have no difficulty in obtaining all the convict labor for the completion of said Rail Road that was not necessary to be kept at the State penitentiary.

VIII That under and by virtue of an act of the General Assembly, Jacob S. Allen, of Raleigh, Dr. J. M. Jones, of Salisbury, Stewart Edlison, of Raleigh, James Pace, of Pittboro, and John C. Rhodes, of Goldsboro, are the Board of Directors of the State Penitentiary, & have charge, custody & control of said convicts, and that plaintiffs have applied

to said Board that they deliver to the Commissioners  
aforesaid, all the convicts in said State Penitentiary,  
as Pliffs may need as laborers on the unfinished  
portion of said Rail Road, & that in February  
or March last, the Pliffs duly demanded of said  
Board of Directors all the convicts as laborers  
for the purposes aforesaid on said Rail Road,  
that were not required at said State Penitentiary,  
to which reasonable request the Defendants  
refused to comply.

IX Pliffs further show that although at least one  
thousand laborers are required to complete the  
unfinished portion of said Western North Carolina  
Rail Road, and although this fact has been  
made known to defendants, yet they retain in said  
Penitentiary about two hundred & sixty convicts,  
most of whom would be highly serviceable as  
laborers aforesaid, and although twenty five  
would be all that it would be required to remain  
at the State prison, yet they refuse to allow Pliffs  
the use of any of said convicts as laborers for  
the purposes aforesaid, and that Pliffs well  
knowing that but three hundred & fourteen  
convicts are engaged as laborers on the aforesaid  
Rail Road, have farmed out to one person one  
hundred and ninety six able bodied convicts to  
work on private enterprises to the great prejudice  
& injury of the Western North Carolina Rail Road.

Plaintiffs further say, that they are advised and believe, that they as Commissioners aforesaid, are legally entitled to have as laborers on the unfinished portion of said Rail Road every convict not needed at the State Penitentiary & at the insane Asylum at Morganton; and that the reason of the unjust refusal of Defts to allow Plffs to have said convicts as laborers aforesaid, the Western North Carolina Rail Road has been, & will continue to be, crippled, & the interests of the whole State be greatly damaged.

Wherefore, plaintiffs demand judgment that the defendants be required on some certain day, to be named by your Honor, to show cause why a mandamus shall not issue to be directed to the defendants, requiring Defts to deliver to the plffs as commissioners, & for the purposes aforesaid, all convicts now in the State Penitentiary, & all convicts, that Plffs are entitled to have as laborers on the unfinished portion of the Western North Carolina Rail Road, and now in the hands of other parties illegally, & for such other relief as their case may require.

W. H. K. atty for Plffs.

W. W. Rollins, one of the above named plaintiffs, being duly sworn, declares that he is President of the Commissioners of the Western

North Carolina Rail Road Company, & that  
the fact, set forth in the foregoing complaint  
as of his own knowledge are true, and these  
matters and things stated on information &  
belief, he believes to be true.

Sworn & subscribed W. W. Rollins  
before me, May 16<sup>th</sup> 1876

S. W. Watts, J. C.

At Chambers in Salisbury, May 16<sup>th</sup> 1876.  
Upon reading the foregoing affidavit, it  
is considered by me that Jacob S. Allen, J. W.  
Jones, Stewart Ellison, James Pace & John C.  
Rhodes, as the Board of Commissioners of  
the State Penitentiary, be required to show  
cause before me at Chambers, at the Court House  
in Salisbury, on the 5<sup>th</sup> day of June 1876,  
or on the day following if the said proceeding  
can not be heard on the said fifth day of  
June, 1876, why a peremptory mandamus  
should not issue against the said Jacob S.  
Allen, J. W. Jones, Stewart Ellison, James Pace  
& John C. Rhodes, as the Board of Commissioners  
of the State Penitentiary, requiring them to  
deliver to the Plaintiff, all convicts now in  
the State Penitentiary or all that may have  
been improperly sent therefrom, to the end  
that said convicts may work as laborers on

the unfinished portion of the Western North  
Carolina Rail Road. The Clerk of the Superior  
Court of Rowan County will issue a copy  
of the foregoing affidavits & this order to the  
above named defendants.

S. H. Watts, J.C.

A true copy  
J. M. Horah

Clerk Rowan Superior Court

CHAUTAQUA COUNTY NY HISTORICAL SOCIETY 2013

Copy to deliver

W. W. Rollins & others  
Comrs of

vs

Jacob S. Allen & others  
Director of

Copy of complaint

& order to show cause  
before Hon. J. W. Wallis at

~~the court house at~~  
1876

CHAUTAUQUA COUNTY HISTORICAL SOCIETY 2013